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**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

Montana Democratic Party, Mitch Bohn,

Plaintiffs,

Western Native Voice, Montana Native
Vote, Blackfeet Nation, Confederated
Salish and Kootenai Tribes, Fort Belknap
Indian Community, and Northern
Cheyenne Tribe,

Plaintiffs,

Montana Youth Action, Forward
Montana Foundation, and Montana
Public Interest Research Group,

Plaintiffs,

vs.

CHRISTI JACOBSEN, in her official
capacity as Montana Secretary of State,

Defendant.

Cause No. DV 21-0451

Hon. Michael Moses

**BRIEF IN SUPPORT OF
YOUTH PLAINTIFFS'
RENEWED MOTION FOR
SUMMARY JUDGMENT**

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INTRODUCTION

House Bill 506 (“HB506”) unconstitutionally burdens the rights of eligible voters who turn 18 in the month before election day by limiting their access to early voting and to absentee ballots. As a result, HB506 violates the Montana Constitution in three ways. First, HB506 restricts the terms on which young Montanans can vote, thus directly interfering with their free exercise of the fundamental right of suffrage. Second, HB506 creates a class of eligible voters who turn 18 in the month before election day and prevents them from accessing their ballots at the same time as otherwise indistinguishable older voters, thereby insensibly violating their fundamental right to equal protection. Third, HB506 contravenes the Montana Constitution’s guarantee that persons under 18 shall enjoy the same rights and privileges as adults by rendering access to the ballot contingent on the date of individual Montanans’ 18th birthdays.

A Montanan’s age on election day—and no other day—determines their eligibility to vote. HB506 impermissibly saddles newly 18-year-olds with different rules than older but otherwise indistinguishable voters. As a result, HB506 runs counter to fundamental values of civic engagement, popular sovereignty, and self-government encompassed in the Montana Constitution.

Because no material fact as to HB506 is in dispute, Plaintiffs Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group (“Youth Plaintiffs”), hereby submit this Brief in Support of their Motion for Summary Judgment on Counts Three, Four, and Five of their Complaint. Youth Plaintiffs move

for summary judgment because HB506 unconstitutionally burdens new voters and discriminates against them based on their birth dates and status as minors.

BACKGROUND

I. Constitutional Framework

First among the fundamental rights identified by the Montana Constitution are popular sovereignty and self-government. Mont. Const., art. II, §§ 1, 2. These rights are secured and realized through the right to vote—an independent protection in the Montana Constitution provided in Article II, § 13. The right to vote is unequivocal, affirmative, and adamantly opposed to legislative interference: “All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” *Id.*, § 13.

Suffrage makes a second, separate appearance in the Montana Constitution. Article IV is dedicated to “Suffrage and Elections,” and announces certain requirements and definitions. Article IV, section 2 defines “Qualified Elector” as:

Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

References to the age 18 appear three times in the Montana Constitution. In the first instance, it is used to define “Adult Rights,” in Article II, § 14. It likewise appears in the Montana Constitution’s guarantee of the “Rights of Persons Not Adults,” which requires, “The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.” Mont. Const.,

art. II, § 15. When it appears a third time in the definition of “Qualified Elector,” it unequivocally attaches the right of suffrage to the age 18.

While consistent with the Twenty-Sixth Amendment (which was ratified in 1971—one year before Montanans voted to adopt the Montana Constitution), Montana’s commitment to the voting rights of younger persons predated federal changes. Montana voters ratified a measure to lower the voting age to 19 in 1969, and Montana was one of only nine states to reduce the voting age below 21 before ratification of the Twenty-Sixth Amendment.¹ Bromberg Report at 5 (Jan. 14, 2022). Montana’s 1972 Constitutional Convention similarly “articulated broad, consistent, and unopposed support for youth enfranchisement and youth voting rights.” *Id.* at 17.

Article IV also requires the legislature to “provide by law the requirements for residence, registration, absentee voting, and administration of elections,” and to “insure the purity of elections and guard against abuses of the electoral process.” Mont. Const., art. IV, § 3. The framers discussed and decided that absentee voting should be available to all Montanans, unanimously rejecting an amendment that would have limited absentee voting to “service-men and students.” Mont. Const. Conv., III Verbatim Tr., at 431–433 (Feb. 17, 1972) (discussing and voting on Delegate Kelleher’s proposed amendment); *see also* Bromberg Report at 18.

¹ Montana’s own Senator Mike Mansfield was “one of the leading congressional advocates of constitutional reform in the area of voting age.” Bromberg Report at 6 (quoting *Lowering the Voting Age to 18: Hearing on S.J. Res 8, S.J. Res. 14, and S.J. Res. 78 Before the Subcomm. on Constitutional Amends. of the S. Comm. on the Judiciary*, 90th Cong. 4 (1968) (Sen. Bayh’s remarks introducing Sen. Mansfield)); *see generally* Bromberg Report at 6–11.

II. Factual & Procedural Background

Representative Paul Fielder sponsored HB506 at Defendant Secretary of State's request. Ex. A, Email exchange between A. Nunn and P. Fielder (Feb. 9, 2021). The Secretary's intent—stated both by Elections Director Dana Corson in proponent testimony before the House State Administration Committee and in briefing before this Court—was to resolve apparent differences in how election administrators managed distribution of ballots to individuals turning 18 in the month before election day. *See* House State Admin. Hrg. Video on HB506, at 10:29:42 (Feb. 24, 2021); Def's Br. in Resp. to Ps' Prelim. Injunction Mots. & in Supp. of Def's Mot. for Summ. J. at 35 (hereinafter Def's PI Resp. Br.); Def's SUF ¶ 87. HB506 amended § 13-2-205(2), MCA, to impose the following requirement: "Until the individual meets residence and age requirements, a ballot may not be issued to the individual and the individual may not cast a ballot." *See* Def's PI Resp. Br. at 35.

When the bill was presented to the House State Administration Committee for discussion and public comment, testimony from many groups and individuals pointed out that withholding ballots from voters who would be eligible to vote by election day would impose barriers and sow confusion. *See* Bromberg Report at 33 (describing testimony from six witnesses who opposed HB506) (citing House State Admin. Hrg. Video on HB506, at 10:32:08).² Informational witness Regina Plettenberg—then-President of the Montana Association of Clerks & Records and election

² Available at http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/42591?agendaId=201039#agenda_

administrator in Ravalli County—testified that in Ravalli County, she normally mailed ballots to all registered voters who will be eligible to vote by election day. But, she explained, under HB506 the situation would change:

[Right now, i]f we receive the ballot back before they turn 18, we hold it, we don't process it, we just hold it, until . . . they turn 18, and then we'll process it. . . . So like let's say they turn 18 on Tuesday, we would not be able to start counting that until the Tuesday, the election day. So if this bill passes, I don't believe we'd be able to mail that ballot to the voter, so if they can't come vote in person, I think that is the concern of the opponents.

House State Admin. Hrg. Video on HB506, at 10:46:03. At the close of discussion, Representative Fielder acknowledged Plettenberg's testimony and opponents' concerns. He encouraged the Committee to amend the bill to reflect the practice in Ravalli County, noting that it would still accomplish the purpose of providing consistency across all of Montana's 56 counties. *Id.* at 10:59:46.

Two days later, Representative Kelly Kortum proposed an amendment to HB506, changing the language that prohibited the issuance and casting of ballots to instead read: "Until the individual meets residence and age requirements, a ballot submitted by the individual may not be processed and counted by the election administrator." Ex. B, HB506, Version 2, § 1(2).³ The House State Administration Committee passed the amendment unanimously. House State Admin. Hrg. Video on Kortum amendment to HB506, at 8:38:43 (Feb. 26, 2021).⁴ It then passed a floor vote in the House by a count of 90 to 10. Ex. C, HB506 Legislative History.

³ Available at https://leg.mt.gov/bills/2021/HB0599/HB0506_2.pdf

⁴ Available at http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210226/-1/40977#agenda_.

When Representative Fielder presented the bill to the Senate State Administration Committee, incorporating the Kortum amendment, Director Corson testified in support on behalf of the Secretary, explaining that “it helps clarify how 18-years-olds can get a ballot and vote.” Senate State Admin. Hrg. Video on HB506, at 15:10:41 (March 19, 2021).⁵ No additional testimony was offered in opposition or support of the amended bill. *Id.* at 15:11:58.

Following this public hearing on March 19, the legislative history reflects that another amendment was introduced and passed in a 5 to 3 vote during an unrecorded “Committee Executive Action” meeting on April 9. Ex. C. The amendment proved to be, in essence, a reversal to the bill’s original language, which again would prevent election administrators from distributing ballots to Montanans who would be 18 on election day but were not 18 at the time of mailing. Ex. D, HB506, Version 3, § 1(2). The Senate passed the reverted version of HB506, resulting in a conflict with the House version and forcing the bill into a free conference committee for reconciliation. Ex. C. The free conference committee adopted the Senate version. No reason justifying or even articulating the reversal exists in the legislative record.

LEGAL STANDARD

“Summary judgment is appropriate when there are no genuine issues of material fact.” *Brishka v. Dep’t of Transp.*, 2021 MT 129, ¶ 9. “Disputes concerning only factual interpretations are properly handled on summary judgment.” *Buckley*

⁵ Available at <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/41488?agendaId=208475>.

v. W. Mont. Cmty. Mental Health Ctr., 2021 MT 82, ¶ 12. If no genuine issue of fact exists, the Court determines “whether the moving party is entitled to judgment as a matter of law.” *Id.*

This Motion for Summary Judgment on Counts Three, Four, and Five of Youth Plaintiffs’ Complaint presents only legal issues related to HB506. There are no genuine issues of material fact. Summary judgment is therefore appropriate.

ARGUMENT

HB506 violates the Montana Constitution in three ways. HB506 burdens young adults *because* of the timing of their 18th birthdays. To interfere with the free exercise of the right of suffrage is to violate that right. Imposing an arbitrary, age-based obstacle to the free exercise of that fundamental right violates the right to equal protection. And subjecting minors to higher burdens precisely because they are minors plainly violates the Montana Constitution’s guarantee that persons under 18 are not to be treated differently unless the differential treatment enhances—rather than burdens—their rights.

I. Strict scrutiny applies to HB506.

When, as here, a suspect class or a fundamental right is affected, strict scrutiny applies. *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 17. This is well established. *See Driscoll v. Stapleton*, 2020 MT 247, ¶ 18 (“[S]trict scrutiny[is] used when a statute implicates a fundamental right found in the Montana Constitution’s declaration of rights.”); *Mont. Cannabis Indus. Ass’n v. State*, 2012 MT 201, ¶ 16 (“Legislation that implicates a fundamental constitutional right is evaluated under a

strict scrutiny standard, whereby the government must show that the law is narrowly tailored to serve a compelling government interest.”) (hereinafter *Mont. Cannabis I*; *Mont. Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality*, 1999 MT 248, ¶ 60 (strict scrutiny—the most stringent standard—applies when a law interferes with exercise of a fundamental right or discriminates against a suspect class) (quoting *Wadsworth v. State*, 275 Mont. 287, 302 (1996)).

A fundamental right under the Montana Constitution is “either found in the Declaration of Rights or is a right ‘without which other constitutionally guaranteed rights would have little meaning.’” *Wadsorth*, 275 Mont. at 299 (citations omitted).

HB506 violates the right of suffrage, the right of equal protection, and the rights of persons not adults—three rights that appear in the Montana Constitution’s Declaration of Rights. Art. II, §§ 4, 13, 15. Each is fundamental, and thus strict scrutiny applies. *See, e.g., Driscoll*, ¶ 18; *Mont. Cannabis I*, ¶ 16; *Mont. Env'tl. Info. Ctr.*, ¶ 60. Because the Secretary cannot justify HB506 with any compelling government purpose nor show that HB506 is narrowly tailored to advance such an interest, it must be struck down.

Even if the federal *Anderson-Burdick* standard applied, which it does not, HB506 could not survive because it is not a “‘reasonable, nondiscriminatory restriction[]’ upon the . . . rights of voters.” *Mays v. LaRose*, 951 F.3d 775, 791–92 (6th Cir. 2020) (quoting *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). Moreover, *Anderson-Burdick* has never been used to analyze a claimed violation of a fundamental right under the Montana

Constitution and it is neither needed nor appropriate here. And, as illustrated in the cases the Secretary cites for the proposition that even fundamental constitutional rights are not absolute, even where strict scrutiny applies, space remains for legislation that responds to compelling government interests, *see* Def’s PI Resp. Br. at 18 n.4, as well as for legislation that provides guide rails for—not interference with—the exercise of fundamental rights. The Montana legislature routinely sets requirements for voting that do not offend constitutional guarantees—and sometimes the legislature passes election related laws that run afoul of the Montana Constitution. *Compare Willems v. State*, 2014 MT 82, ¶¶ 33–34 (agreeing that “the shuffling of legislators is a necessary byproduct of the redistricting process” and upholding a redistricting plan) *with Finke v. State ex rel. McGrath*, 2003 MT 48, ¶¶ 21–23 (invalidating a law that limited the franchise to owners of real property); *see also Driscoll*, ¶ 29 (vacating the district court’s preliminary injunction of the ballot receipt deadline and affirming the preliminary injunction of the Ballot Interference Prevention Act). Strict scrutiny applies.

II. HB506 interferes with the right of suffrage in violation of the express requirements of Article II, Section 13.

HB506 interferes with new voters’ access to the franchise. The right of suffrage protects Montana elections, requiring that they be “free and open,” and absolutely prohibits interference that prevents free exercise of the right to vote. By limiting the time period during which newly 18-year-olds may vote—a limit no other voter faces, HB506 plainly contravenes the text of Article II, Section 13—it literally “interfere[s] to prevent the free exercise of the right of suffrage.”

In arguing that federal courts “hold that the right to vote does not include the right to vote absentee,” Def’s PI Resp. Br. at 36, the Secretary commits two fundamental errors. First, this case is not in federal court and Youth Plaintiffs’ claims do not invoke federal law.⁶ *Cf. State ex rel. Bartmess v. Bd. of Trs. of Sch. Dist. No. 1*, 223 Mont. 261, 272 (1986) (“[W]e conclude that participation in extracurricular activities is not a fundamental right under the U.S. Constitution. However, that does not preclude a finding that the right is fundamental under Montana’s Constitution.”). Second, the Secretary incorrectly assumes that absentee voting is all that HB506 affects, and that the Montana Constitution does not protect absentee voting. HB506 limits access to both early in-person voting and absentee voting because it prevents ballot *distribution*—whether in person or by mail—until an individual is 18 years old. Moreover, the Montana Constitution expressly requires

⁶ Most of the federal cases the Secretary cites for the proposition that the U.S. Constitution does not guarantee the right to vote absentee, Def’s PI Resp. Br. at 36, are a variation on a theme related to generally applicable deadlines: in *Mays v. LaRose*, plaintiffs challenged a generally applicable deadline for requesting an absentee ballot, 951 F.3d 775, 791–92 (6th Cir. 2020); in *Common Cause Indiana v. Lawson*, the challenged law required that absentee ballots be received by election day, 977 F.3d 663, 664 (7th Cir. 2020); in *Organization for Black Struggle v. Ashcroft*, plaintiffs challenged distinctions between absentee and mail-in ballots, also involving deadlines for the latter, 978 F.3d 603, 607–08 (8th Cir. 2020).

In the other two cases, the takeaway is that the U.S. Constitution does not require the availability of absentee voting. *See McDonald v. Bd. of Election Comm’rs of Chi.*, 394 U.S. 802, 809–10 (1969) (finding rational the Illinois legislature’s different treatment of “pretrial detainees” and “the physically handicapped”); *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 188 (5th Cir. 2020) (ruling that the Twenty-Sixth Amendment does not preclude a law that allows absentee ballots to issue exclusively to voters over age 65 and individuals who prove absence or disability).

that the legislature set requirements for absentee voting—presupposing its availability in Montana. Mont. Const., art. IV, § 3.

Montana law expressly allows any elector to vote absentee. Section 13-13-212(3), MCA (“An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application.”). Montanans need no reason to justify voting absentee. *See id.* § 13-13-212(1)(a). And, since 2014, more than 60% of Montanans have voted by mail—a proportion has grown steadily to more than 70% in the 2018 election cycle. Herron Report ¶ 28, Table 1. HB506 thus restricts newly 18-year-olds’ access to a tool that Montana voters use routinely, which is expressly contemplated in the Montana Constitution and guaranteed to all electors under Montana law.

The Secretary claims that HB506 is motivated by a desire for uniformity in the administration of elections across counties. Def’s PI Resp. Br. at 38. Youth Plaintiffs have no objection to uniformity, but that objective would have been equally achieved by the version of HB506 that the House passed and the Secretary supported. *See infra*. pp. 15–17. In its final form, however, HB506 restricts the terms on which certain persons can vote and thus interferes with young Montanans’ fundamental right of suffrage, flouting the guarantee that “no power . . . shall at any time interfere to prevent the free exercise of the right of suffrage.” Mont. Const., art. II, § 13.

III. HB506 violates the Montana Constitution’s right to equal protection.

HB506 creates a class of eligible voters who turn 18 in the month before election day and deprives them from accessing their ballots at the same time as otherwise indistinguishable older voters. The Secretary argues the distinction is constitutional because access to the franchise turns on age. But the right to vote is not bestowed in increments. The only day a voter’s age matters is election day.

Montana’s Equal Protection guarantee requires that “persons similarly situated with respect to a legitimate governmental purpose of the law must receive like treatment.” *Gazelka v. St. Peter’s Hosp.*, 2018 MT 152, ¶ 15 (citations omitted). Accordingly, it “ensures that ‘Montana’s citizens are not subject to arbitrary and discriminatory state action.’” *Wilks v. Mont. State Fund*, 2008 MT 29, ¶ 21 (quoting *Bustell v. AIG Claims Serv., Inc.*, 2004 MT 362, ¶ 19). To assess an equal protection challenge, Montana courts “first identify the classes involved, and determine if they are similarly situated.” *Reesor v. Mont. State Fund*, 2004 MT 370, ¶ 10. HB506 creates two classes: 1) individuals who turn 18 in the month before or on election day, and 2) individuals who turn 18 at any time before the month before election day.

In *Jaksha v. Butte-Silver Bow County*, the Montana Supreme Court invalidated a law that imposed a maximum hiring age on firefighters. 2009 MT 263, ¶ 23; *see also Reesor*, ¶ 19 (likewise invalidating a law that limited disability benefits for persons over a certain age). Because the right at issue—the right to pursue a particular job—was not fundamental, the Court applied rational basis review. *Jaksha*, ¶ 19. Even though the defendant had identified a “legitimate governmental

objective”—protecting both firefighter safety and public safety—the Court nonetheless concluded the age limitation bore “no rational relation to the [statute’s] purported objective” and held that the statute was unconstitutional. *Id.* ¶¶ 23–24.

Unlike in *Jaksha*, the equal protection violation here implicates the fundamental right to vote, and strict scrutiny applies. *Wadsworth v. State*, 275 Mont. 287, 302 (1996); see *Driscoll*, ¶ 11 n.3 (“It is undisputed here that the right of suffrage is a fundamental Montana Constitutional right.”). Limiting access to the ballot based on individuals’ specific birthdate serves no legitimate purpose, let alone the compelling government objective that strict scrutiny requires. And reduced access to absentee ballots and early in-person voting violates Youth Plaintiffs’ constitutional rights because “[t]he right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise.” See *Big Spring v. Jore*, 2005 MT 64, ¶ 18 (quoting *Bush v. Gore*, 531 U.S. 98, 104–05 (2000)). All Montanans who are eligible to vote on a given election day are indistinguishable with respect to their constitutional right to vote in that election—they all possess it, fully and unequivocally. See *Mont. Cannabis Indus. Ass’n v. State*, 2016 MT 44, ¶ 19 (hereinafter *Mont. Cannabis II*) (“Equal protection emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable.” (quotation marks omitted)). Requiring certain voters to wait to access their ballots—whether in person or by mail—violates equal protection.

The Secretary urges that the age classification created by HB506 is “based on a fundamental difference between the two classes—the individual’s qualifications as

an elector under Mont. Const. art. IV, § 2.” Def’s PI Resp. Br. at 39. But a person’s qualifications as an elector prior to election day are irrelevant—and they are not subject to legislative interference. Article IV is clear: “*Any citizen of the United States 18 years of age or older* who meets the registration and residence requirements provided by law *is a qualified elector.*” Mont. Const., art. IV, § 2. The legislature is clearly empowered to impose registration and residency requirements—but the text of the Montana Constitution makes clear that the age at which access to the franchise is guaranteed is, well, guaranteed.

HB506 turns on an irrational and artificial distinction between electors who are equally qualified to vote on the only day that matters—election day. That is, HB506 restricts access to the ballot based not on a voter’s age on election day (relevant), but on the proximity of a voter’s 18th birthday to election day (irrelevant).

In creating this distinction, HB506 limits newly 18-year-olds’ ability to access absentee ballots, a vital voting tool available to all other Montanans. *See supra* pp. 7–8; *see also, e.g.*, Roche Decl. ¶¶ 6, 13 (“I rely on the absentee ballot system.”); Dozier Decl. ¶¶ 4 (same); Lockner Aff. ¶¶ 11–12 (same); Hosefros Decl. ¶¶ 11 (same); Lockwood Decl. ¶¶ 13–16 (“Mail-in ballots have also been hugely important to me since the start of the COVID-19 pandemic.”). It also constrains the same individuals from early in-person voting. Declarant Isaac Nehring turns 18 today, with only four days until the June 7, 2022 primary election. Nehring Decl. ¶¶ 7–8. Nehring is also graduating from high school tomorrow. *Id.* ¶¶ 15–19. Without the preliminary injunction, Nehring would only have been able to access his ballot and vote on one of

the next three business days. *Id.* Had Nehring been unaware that he could pre-register to vote and had he attempted to register and vote in person after noon on Monday, June 6, he would be prevented from voting entirely due to the interaction between HB506 and House Bill 176, which eliminates election day registration and rolls the deadline for registering to vote back to noon the day before.

HB506 imposes extreme limits on Nehring's options for receiving and voting his ballot. *Id.* ¶¶ 6–7, 15–21. He is not alone. *See* Herron Report ¶¶ 39–42 (describing the limitations for individuals with 18th birthdays that fall in the week before election day); *id.* ¶¶ 53, 61, 64 (identifying the number of registered voters who turned 18 in the 30 days before election day for primary and general elections in 2014, 2016, 2018, and 2020). Dozens—sometimes hundreds—of registered voters turn 18 in the *week* before each election day. *See id.* ¶ 64. HB506 violates their right to equal protection by limiting their access to the ballot relative to similarly situated voters.

IV. HB506 violates the Montana Constitution's guarantee of equal access to fundamental rights for persons under 18 years of age.

The Montana Constitution is special in promising that persons under 18 enjoy the same rights and privileges of those over 18—unless an age-based restriction enhances (rather than interfering with) the exercise of a minor's fundamental rights. HB506 directly contravenes this requirement by identifying individuals turning 18 in the month before election day and depriving them of equal access to their ballots. It is exactly this type of law that Article II, Section 15 prohibits.

Youth Plaintiffs do not contend, as the Secretary would have it, that individuals should be allowed to vote in elections in which they are ineligible to vote.

Rather, Youth Plaintiffs are eligible to vote based on their citizenship, residency status, and age *on election day*. Accordingly, Youth Plaintiffs are entitled to access their ballots in the same way that all other Montana voters do. Youth Plaintiffs' status as minors in advance of election day may render them vulnerable to discrimination, but Article II, Section 15 guards against that vulnerability.

The Secretary's argument is essentially that minors are minors—and minors can't vote. *See* Def's PI Resp. Br. at 39–40 (quoting *Mont. Cannabis II*, ¶ 18). But HB506 only affects individuals who will be eligible to vote by election day. Their age on every day before election day is unrelated to their ability to meaningfully engage with voting in that election. *See Caldwell v. MACo Worker's Comp. Trust*, 2011 MT 162, ¶ 19 (holding “age was ‘unrelated to a person’s ability to engage in meaningful employment’”). The Montana Constitution specifically guarantees that when minors are distinguished from adults, it must be for the purpose of enhancing—not undermining—their rights. *Matter of S.L.M.*, 287 Mont. 23, 35 (Mont. 1997) (“[I]f the legislature seeks to carve exceptions to this guarantee, it must not only show a compelling state interest but must show that the exception is designed to enhance the rights of minors.”). Yet instead of choosing to support young people in exercising their right to vote for the first time, the State decided to make voting more difficult.

Beyond being a fundamental right, voting is likely the most effective form of civic engagement, making youth access to it extremely valuable. *See* Bromberg Report at 15 (voting is by its nature habit forming and “[d]eliberately making it more difficult for *new* voters to build that habit of political participation quite literally

threatens the future of participatory democracy” (quoting Jenny Diamond Cheng, *Voting Rights for Millennials: Breathing New Life into the Twenty-Sixth Amendment*, 67 Syracuse L. Rev. 653, 676 (2017)); cf. *Mont. Auto. Ass’n v. Greely*, 193 Mont. 378, 387 (1981) (“The only real influence that most voters can exert upon elected officials is to give or withhold their vote.”).

Depriving young people on the precipice of adulthood access to their ballots at the same time they become available to their older counterparts *because* they are on the precipice of adulthood is discriminatory and irreconcilable with the values embraced in Article II, Sections 4, 13, and 15 of the Montana Constitution. Moreover, it is exactly the sort of worse treatment for young people that Article II, Section 15 of the Montana Constitution meant to thwart. Youth Plaintiffs seek only to prevent a derogation of their fundamental right to vote.

V. HB506 is not closely tailored to advance a compelling government interest.

Because HB506 violates fundamental rights—the right of suffrage, the guarantee of equal protection, and the rights of persons not adults—it must satisfy strict scrutiny to survive. To satisfy strict scrutiny, the Secretary must show “the law is narrowly tailored to serve a compelling government interest”, *Mont. Cannabis I*, ¶ 16, and is “the least onerous path that can be taken to achieve the State’s objective,” *Mont. Env’tl. Info. Ctr*, ¶ 63. The Secretary cannot meet this burden.

The interests the Secretary professes motivate HB506 are freestanding ideas—election “integrity, reliability, and fairness,” Def’s PI Br. at 40–41—disconnected from the law itself. First, there is no evidence that election integrity is a problem in

Montana and the Secretary’s own witnesses say as much. *See, e.g.*, Ex. E, Dep. Tr. of D. Ellis, at 121 (April 20, 2022) (“No, I don’t believe there’s voter fraud in any of the counties.”); Ex. F, Dep. Tr. of M. Eisenzimer, at 90–91 (April 13, 2022) (unaware of any voter fraud related to underage individuals attempting to vote in Flathead County).⁷ Second, even if such evidence existed, HB506, as passed, bears absolutely no relationship to integrity and reliability—and it actively undermines fairness by senselessly depriving young people of equal access to their ballots.

The House passed and the Secretary supported a nondiscriminatory version of HB506 that would have allowed voting officials to hold ballots submitted by young voters until those voters turned 18—only to have the Senate revert to the original version after the time for public comment had elapsed. *See* Ex. B; Ex. C; *cf. Veasey v. Abbott*, 830 F.3d 216, 262 (5th Cir. 2016) (passing discriminatory ID law despite testimony about likely disparate impact “supports a conclusion of lack of responsiveness”).⁸ The Secretary was also aware before the 2021 legislative session

⁷ Where there is evidence showing a need to ensure integrity, reliability, and fairness in election processes, they are likely inarguable compelling government purposes. *See, e.g., Larson v. State*, 2019 MT 28, ¶ 40 (“Montana has a compelling interest in imposing reasonable procedural requirements tailored to ensure the integrity, reliability, and fairness of its election processes.”). Simply announcing these purposes divorced from any relationship to the law at issue—or facts on the record—is not enough. *See, e.g., Mont. Auto. Ass’n v. Greely*, 195 Mont. 378, 383, 632 P.2d 300 (1981) (“The mere recitation of a compelling state interest in the Act itself would not be conclusive.”).

⁸ The decision to pass the Senate version of the bill appears completely divorced from reason. *Compare* Free Conference Comm. Hrg. on HB506, at 8:04:43 (April 27, 2021) (“So [the Senate amendment] goes back to exactly the way it came out of the Secretary of State’s Office, and I’ve got no problem with that amendment.”) (Rep. Fielder) *with* House State Admin. Hrg. Video on HB506, at 11:00:35 (Feb. 24, 2021) (“Ms. Plettenberg seemed to say that what’s working in their county is that they . . . issue

that election administrators across Montana were handling distribution of ballots to new 18-year-olds in different ways—and had been since at least 2014. Def’s PI Resp. Br. at 35 (citing McLarnon Decl. ¶ 6); *see also Malcomson v. Northwest*, 2014 MT 242, ¶ 31 (where the state had long administered workers’ compensation cases “without exposing injured workers to a potential violation of their constitutional right of privacy,” the new statute that allowed *ex parte* communications was overbroad and could not stand).

Rather than rely on a genuinely nondiscriminatory, proven, and accessible method for handling ballots, *see generally* House State Admin. Hrg. Video on HB506, at 10:46:03 (Feb. 24, 2021) (Plettenberg testimony); McLarnon Decl. ¶¶ 6(f), (g), the Secretary chose the option that most burdens first-time voters—and for no apparent gain to election administrators, who must now hold back ballots until an individual’s actual birthday, regardless of the possibility that doing so will disenfranchise new voters. *Cf. Burns v. Cty. of Musselshell*, 2019 MT 291, ¶ 19 (“[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”). This failure to closely tailor HB506 to advance the purpose of uniformity using the least onerous path is *prima facie* evidence that the law is unconstitutional. *Mont. Envtl. Info. Ctr.*, ¶ 63 (any statute implicating a fundamental right “must be strictly scrutinized and

those ballots prior to the individual meeting the residency or, in this case, age requirements, and then they hold those ballots and they don’t actually enter them into the voting system until the individual reaches age 18, so that might be an option for this committee to amend this bill so that we’ll have consistency throughout the whole 56 counties in the state of Montana.”) (Rep. Fielder).

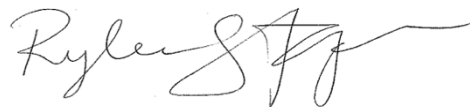
can only survive scrutiny if the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective").

Imposing an arbitrary and unnecessary constriction of the time available for voting on individuals who turn 18 in the month before election day is an unconstitutional restriction on their free exercise of the right to vote, the right to equal protection of law, and the right of minors to enjoy the same fundamental rights as adults. The Secretary's professed reason for imposing this limitation simply does not relate closely enough to HB506 to even begin to justify it.

CONCLUSION

For the reasons set forth above, Youth Plaintiffs respectfully request that this Court grant Youth Plaintiffs' Motion for Summary Judgment on Counts Three, Four, and Five of their Complaint.

Respectfully submitted this 3rd day of June, 2022.



Rylee Sommers-Flanagan
Upper Seven Law

Ryan Aikin
Aikin Law Office, PLLC

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above was duly served upon the following on the 3rd day of June, 2022, by email.

David M.S. Dewhirst
Office of the Attorney General
Justice Building, Third Floor
215 North Sanders Street
P.O. Box 201401
Helena, MT 59620-1401
david.Dewhirst@mt.gov

Dale Schowengerdt
Len Smith
Mac Morris
Ian McIntosh
Crowley Fleck, PLLP
900 North Last Chance Gulch, Suite 200
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P.O. Box 797
Helena, MT 59624-0797
DSchowengerdt@crowleyfleck.com
imcintosh@crowleyfleck.com

/s/ Rylee Sommers-Flanagan
Upper Seven Law

Exhibit A

Email exchange between A. Nunn and P.
Fielder (Feb. 9, 2021)

From: PCF <paulfielder@blackfoot.net>
To: Nunn, Angela
Sent: 2/11/2021 11:51:02 PM
Subject: [EXTERNAL] RE: RE: Election Bill

Thank you.

I appreciate your comment about pick-up coordinated with Senator Fitzpatrick.

The information that you've given me is clear.

I look forward to notice that it is time to pick up the bill.

Representative Paul C Fielder, HD-13

From: Nunn, Angela [<mailto:Angela.Nunn@mt.gov>]
Sent: Thursday, February 11, 2021 3:09 PM
To: PCF
Subject: RE: RE: Election Bill

Good afternoon Rep. Fielder –

I heard that you met with Dana Corson yesterday. He shared your questions with me. Please see my responses below:

1. Is he introducing this bill in the house? We were hoping you would be willing to be the primary sponsor and introduce it in the House.
2. Which committee will this go to? (Judiciary or Admin?) He prefers Judiciary. Unfortunately, we don't get to control which committee the bills get assigned to. Typically, the election bills are assigned to State Administration. If you are able to influence that, we wouldn't be opposed to it going to Judiciary.
3. What steps are next for him to pick up the bill, get co-sponsors etc. We gave the bill drafter our approval. The next step is for it to go to legal review (in legislative services). Once it is ready to pick up, Senator Fitzpatrick will have to meet you there to sign it over to you. At that point you can get co-sponsors – ideally before it is introduced.

If you have any additional questions, please let me know.

Thank you!
Angela

From: Nunn, Angela
Sent: Tuesday, February 9, 2021 10:30 PM
To: 'PCF' <paulfielder@blackfoot.net>
Subject: RE: [EXTERNAL] RE: Election Bill

Rep. Fielder –

That is great news! What time on Wednesday afternoon were you thinking? Unfortunately, I am unavailable tomorrow afternoon, but I will certainly see if the others can meet with you.

Thanks again,
Angela

From: PCF <paulfielder@blackfoot.net>
Sent: Tuesday, February 9, 2021 8:30 PM
To: Nunn, Angela <Angela.Nunn@mt.gov>
Subject: [EXTERNAL] RE: Election Bill

Ms Nunn,

After reviewing the LC0317, I would be happy to carry that bill on behalf of the Secretary of State. I hope to be able to meet with your office Wednesday afternoon to further discuss this issue.
Representative Paul C Fielder, HD-13

From: Nunn, Angela [<mailto:Angela.Nunn@mt.gov>]
Sent: Tuesday, February 9, 2021 9:50 AM
To: paulfielder@blackfoot.net
Subject: Election Bill

Good morning Rep. Fielder –

Secretary Jacobsen asked me to reach out to you to see if you would be interested in carrying one of the election bills she is proposing. We already have a draft started with Legislative Services under LC 0317. This bill covers three areas and we believe is generally just clean-up:

- Amend §13-2-205 to specify that a ballot may not be issued to an elector until an elector's eligibility and qualification has been verified (related to when an elector turns 18).
- Amend § 13-15-401 (1) to state the governing body "must complete" the canvas within 14 days after each election.
- Eliminate Experimental Voting Systems by County Election Administrators.

If you are interested, we would be happy to bring you in to discuss further. Please let me know what you think.

Thank you!
Angela



Angela Nunn | Operations Director
Montana Secretary of State, Christi Jacobsen
State Capitol Building
Helena, MT 59601
PHONE 406.444.2087

website [\[sosmt.gov\]](https://sosmt.gov) | email | map [\[goo.gl\]](https://goo.gl)

Exhibit B

HB506 Version 2

HOUSE BILL NO. 506

INTRODUCED BY P. FIELDER

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; REVISING PROCEDURES FOR PROSPECTIVE ELECTORS TO REGISTER AND VOTE; CLARIFYING REQUIREMENTS FOR A BOARD OF COUNTY CANVASSERS; ELIMINATING THE EXPERIMENTAL USE OF VOTE SYSTEMS; AMENDING SECTIONS 13-2-205 AND 13-15-401, MCA; AND REPEALING SECTION 13-17-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-2-205, MCA, is amended to read:

"13-2-205. Procedure when prospective elector not qualified at time of registration. ~~(1) An~~
Subject to subsection (2), an individual who is not eligible to register because of residence or age requirements
but who will be eligible on or before election day may apply for voter registration pursuant to 13-2-110 and be
registered subject to verification procedures established pursuant to 13-2-109.

(2) Until the individual meets residence and age requirements, a ballot SUBMITTED BY THE INDIVIDUAL
may not be issued to the individual and the individual may not cast a ballot PROCESSED AND COUNTED BY THE
ELECTION ADMINISTRATOR."

Section 2. Section 13-15-401, MCA, is amended to read:

"13-15-401. Governing body as board of county canvassers. (1) The governing body of a county
or consolidated local government is ex officio a board of county canvassers and shall meet as the board of
county canvassers at the usual meeting place of the governing body ~~within 14 days after each election,~~ at a
time determined by the board, ~~to and within 14 days after each election to complete the canvass the of~~ returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's
place must be filled by one or more county officers chosen by the remaining members of the governing body so

1 that the board of county canvassers' membership equals the membership of the governing body.

2 (3) The governing body of any political subdivision in the county that participated in the election may
3 join with the governing body of the county or consolidated local government in canvassing the votes cast at the
4 election.

5 (4) The election administrator is secretary of the board of county canvassers and shall keep minutes
6 of the meeting of the board and file them in the official records of the administrator's office."

7

8 NEW SECTION. **Section 3. Repealer.** The following section of the Montana Code Annotated is
9 repealed:

10 13-17-105. Experimental use of voting systems.

11 - END -

Exhibit C

HB506 Legislative History

Montana Legislature

Detailed Bill Information

2021 January
Regular Session



The 67th Regular Session of the Montana Legislature adjourned Sine Die on April 29th, 2021; Legislative day 80.

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Bill Draft Number: LC0317 **Current Bill Text:** [Previous Version\(s\)](#)

Bill Type - Number: HB 506

[Associated Amendments](#) Disclaimer: All amendments are drafts only for consideration by a committee and are subject to change. An amendment formally adopted by the committee will be incorporated into the standing committee report to the respective body and, if adopted, will be engrossed into the next version of the bill.

Short Title: Generally revise election laws

Primary Sponsor: [Paul Fielder](#) (R) HD 13















Chapter Number: 531

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 62

Print Friendly

Action - Most Recent First	Date	Votes Yes	Votes No	Committee / Audio
Chapter Number Assigned	05/14/2021			
(H) Signed by Governor	05/14/2021			
(H) Transmitted to Governor	05/04/2021			
(S) Signed by President	05/04/2021			
(H) Signed by Speaker	05/04/2021			
(C) Printed - Enrolled Version Available	04/28/2021			
(H) Returned from Enrolling	04/28/2021			
(H) Sent to Enrolling	04/28/2021			
(S) 3rd Reading Free Conference Committee Report Adopted	04/27/2021	<u>30</u>	<u>20</u>	
(H) 3rd Reading Free Conference Committee Report Adopted	04/27/2021	<u>64</u>	<u>34</u>	
(S) 2nd Reading Free Conference Committee Report Adopted	04/27/2021	<u>30</u>	<u>20</u>	
(H) Scheduled for 3rd Reading	04/27/2021			
(S) Scheduled for 2nd Reading	04/27/2021			
(H) 2nd Reading Free Conference Committee Report Adopted	04/27/2021	<u>65</u>	<u>35</u>	
(H) Scheduled for 2nd Reading	04/27/2021			
<u>(S) Free Conference Committee Report Received</u>	04/27/2021			(S) Free Conference
<u>(H) Free Conference Committee Report Received</u>	04/27/2021	4	2	(S) Free Conference
<u>(S) Hearing</u>	04/27/2021			<u>(S) Free Conference</u>
<u>(S) Free Conference Committee Appointed</u>	04/23/2021			(S) Free Conference
<u>(H) Free Conference Committee Appointed</u>	04/23/2021			(S) Free Conference

(H) 2nd Reading Senate Amendments Not Concurred	04/23/2021	94	6	 
(H) Scheduled for 2nd Reading	04/23/2021			
(S) Returned to House with Amendments	04/15/2021			
(S) 3rd Reading Concurred	04/15/2021	29	21	
(S) Scheduled for 3rd Reading	04/15/2021			
(S) 2nd Reading Concurred	04/14/2021	31	19	 
(S) Scheduled for 2nd Reading	04/14/2021			
(C) Printed - New Version Available 	04/13/2021			
(S) Committee Report--Bill Concurred as Amended	04/12/2021			(S) State Administration
(S) Committee Executive Action--Bill Concurred as Amended	04/09/2021	5	3	(S) State Administration
(S) Hearing	03/19/2021			(S) State Administration  
(S) Referred to Committee	03/08/2021			(S) State Administration
(S) First Reading	03/08/2021			
(H) Transmitted to Senate	03/02/2021			
(H) 3rd Reading Passed	03/02/2021	87	12	
(H) Scheduled for 3rd Reading	03/02/2021			
(H) 2nd Reading Passed	03/01/2021	90	10	 
(H) Scheduled for 2nd Reading	03/01/2021			
(C) Printed - New Version Available 	02/26/2021			
(H) Committee Report--Bill Passed as Amended	02/26/2021			(H) State Administration
(H) Committee Executive Action--Bill Passed as Amended	02/26/2021	19	0	(H) State Administration
(C) Amendments Available	02/25/2021			
(H) Hearing	02/24/2021			(H) State Administration   
(H) First Reading	02/19/2021			
(H) Referred to Committee	02/19/2021			(H) State Administration
(C) Introduced Bill Text Available Electronically 	02/19/2021			
(H) Introduced	02/19/2021			
(C) Draft Delivered to Requester	02/18/2021			
(C) Draft Ready for Delivery	02/18/2021			
(C) Executive Director Final Review	02/17/2021			
(C) Draft Ready for Delivery	02/17/2021			
(C) Draft in Assembly	02/17/2021			
(C) Executive Director Review	02/16/2021			
(C) Bill Draft Text Available Electronically	02/16/2021			
(C) Draft in Final Drafter Review	02/16/2021			
(C) Draft in Input/Proofing	02/16/2021			
(C) Draft to Drafter - Edit Review	02/12/2021			
(C) Draft in Edit	02/11/2021			
(C) Draft in Legal Review	02/10/2021			
(C) Draft to Requester for Review	02/10/2021			
(C) Draft to Requester for Review	02/10/2021			
(C) Draft Request Received	08/27/2020			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Fitzpatrick	Steve	
Drafter	Nowakowski	Sonja	
Primary Sponsor	Fielder	Paul	

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Elections (see also: Ballot Issues)		Simple	ELEC

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Additional Bill Information

Fiscal Note Probable: No

Preintroduction Required: N

Session Law Ch. Number: 531

DEADLINE

Category: General Bills

Transmittal Date: 03/02/2021

Return (with 2nd house amendments) Date: 04/20/2021

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
Sections 1, 5, and 6	14-MAY-21	
Sections 2-4	01-OCT-21	

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06/03/2022 02:14 PM Mountain Time

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Exhibit D

HB506 Version 3

1 HOUSE BILL NO. 506

2 INTRODUCED BY P. FIELDER

3 BY REQUEST OF THE SECRETARY OF STATE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTION LAWS; REVISING
6 PROCEDURES FOR PROSPECTIVE ELECTORS TO REGISTER AND VOTE; CLARIFYING
7 REQUIREMENTS FOR A BOARD OF COUNTY CANVASSERS; ELIMINATING THE EXPERIMENTAL USE
8 OF VOTE SYSTEMS; AMENDING SECTIONS 13-2-205 AND 13-15-401, MCA; AND REPEALING SECTION
9 13-17-105, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 13-2-205, MCA, is amended to read:

14 **"13-2-205. Procedure when prospective elector not qualified at time of registration. (1) An**
15 **Subject to subsection (2), an individual who is not eligible to register because of residence or age requirements**
16 **but who will be eligible on or before election day may apply for voter registration pursuant to 13-2-110 and be**
17 **registered subject to verification procedures established pursuant to 13-2-109.**

18 **(2) Until the individual meets residence and age requirements, a ballot** ~~SUBMITTED BY THE INDIVIDUAL~~
19 ~~may not be issued to the individual and the individual may not cast a ballot PROCESSED AND COUNTED BY THE~~
20 ~~ELECTION ADMINISTRATOR MAY NOT BE ISSUED TO THE INDIVIDUAL AND THE INDIVIDUAL MAY NOT CAST A BALLOT."~~

21
22 **Section 2.** Section 13-15-401, MCA, is amended to read:

23 **"13-15-401. Governing body as board of county canvassers. (1) The governing body of a county**
24 **or consolidated local government is ex officio a board of county canvassers and shall meet as the board of**
25 **county canvassers at the usual meeting place of the governing body** ~~within 14 days after each election,~~ **at a**
26 **time determined by the board, to and within 14 days after each election to complete the canvass the of returns.**

27 **(2) If one or more of the members of the governing body cannot attend the meeting, the member's**
28 **place must be filled by one or more county officers chosen by the remaining members of the governing body so**

1 that the board of county canvassers' membership equals the membership of the governing body.

2 (3) The governing body of any political subdivision in the county that participated in the election may
3 join with the governing body of the county or consolidated local government in canvassing the votes cast at the
4 election.

5 (4) The election administrator is secretary of the board of county canvassers and shall keep minutes
6 of the meeting of the board and file them in the official records of the administrator's office."

7

8 NEW SECTION. **Section 3. Repealer.** The following section of the Montana Code Annotated is
9 repealed:

10 13-17-105. Experimental use of voting systems.

11 - END -

Exhibit E

Deposition Transcript of Doug Ellis

1 Q. And why do you believe that?

2 A. That's the only other time I can remember
3 discussing this.

4 Q. Okay. And what do you remember about
5 that conversation?

6 A. All I remember is he asked me how I felt,
7 if that was -- if these were my words and -- which
8 they are, and if I would be willing to testify or
9 come to this deposition.

10 Q. Have you discussed with Mr. Morris
11 whether you're going to testify at trial in this
12 case?

13 A. I was kind of hoping this would keep me
14 out of court. I kind of like my privacy. But, no,
15 we haven't talked at length about this, no.

16 Q. Have you talked at all about it?

17 A. We talked about maybe having this
18 deposition would keep me out of court. That's all I
19 remember.

20 Q. Do you intend at this point in time to
21 testify at trial if asked?

22 A. No.

23 Q. You intend to not testify at trial?

24 A. I wasn't even aware there was a trial.

25 Q. Understood.

Doug Ellis

1 A. I -- this lawsuit came up, and I think
2 because of my testimony at the Legislature I was
3 contacted to see if I would be willing to give my
4 declaration about how I felt.

5 Q. I want to show you -- and please let me
6 know if you can see this, Mr. Ellis.

7 A. Okay.

8 Q. I'm going to show you again [Exhibit 70](#).
9 And this is Exhibit A to [Exhibit 70](#). Do you see
10 that?

11 A. I do.

12 Q. And you testified that Mr. Morris
13 transmitted this document to you and discussed with
14 you the document request; is that correct?

15 A. I'm reading through this right now. Give
16 me a minute, please.

17 Q. Sure.

18 A. Yeah, this was -- yeah, I believe that
19 was on the e-mail that he sent that was advising me
20 what particular types of documents he wanted for
21 this deposition.

22 Q. Just to be clear, Mr. Ellis, I'm going to
23 show you the other pages here, too, just so you
24 know. I was showing you the third page which was
25 Exhibit A, but here's the first page, subpoena, and

1 there's the rest of it.

2 A. Okay, yep.

3 Q. Okay. I want to ask you about -- oh, I'm
4 sorry. What, if any, efforts did you make to obtain
5 the documents requested in Exhibit A to the subpoena
6 which is marked as [Exhibit 70](#)?

7 A. I don't have access to any of those
8 documents, so I -- I don't know how I was supposed
9 to obtain them.

10 Q. Okay. So you didn't do anything to try
11 to obtain these; is that right?

12 MR. MORRIS: Object to the form.

13 THE WITNESS: Yeah.

14 Q. (By Mr. Gordon) I want to ask about
15 your testimony about Topic No. 2 here, or Document
16 Request No. 2. This is calling for documents or
17 communications related to voter fraud, et cetera.

18 In your earlier testimony, I believe you
19 said that you received an e-mail form letter from
20 then Secretary Stapleton regarding seven cases with
21 potential signature mismatches in Broadwater County.
22 Do I have that right?

23 A. Seven or nine, yeah.

24 Q. Okay. And you said that those seven or
25 nine individuals were individuals that you or your

1 staff had determined were signature mismatches, and
2 so the ballots had not been counted; is that right?

3 A. That's correct.

4 Q. And so why was -- when did this e-mail
5 and letter from Secretary Stapleton come in relative
6 to the timing of your decision to not count those
7 seven or nine ballots?

8 A. After.

9 Q. After? Okay.

10 And so was it months after, weeks after?
11 Do you remember?

12 A. I don't remember. I don't remember when
13 he took office.

14 Q. Okay. And do you remember, based on the
15 e-mail or the letter, why Secretary Stapleton was
16 reaching out to you about those seven or nine
17 ballots that had been rejected?

18 A. I do. When he took office, one of his
19 first proclamations was he thought there was rampant
20 voter fraud in Montana, and he sent one of those
21 letters to all 56 counties as far as I know.

22 Q. So your understanding is that the letter
23 was in connection with his state of concern about
24 rampant voter fraud?

25 A. Yes.

1 Q. And do you believe that there's rampant
2 voter fraud in Broadwater County?

3 A. No, I don't believe there's voter fraud
4 in any of the counties.

5 Q. I want to ask you about Topic No. 7. Do
6 you see that? This is documents and communications
7 involving the Secretary of State's office or others
8 regarding the implementation of various bills.

9 And I believe earlier you testified that
10 you received some e-mails from the Secretary
11 regarding the implementation of HB 176, HB 530,
12 HB 506 or SB 169. Do I have that right?

13 A. I believe so, yeah. They keep the clerk
14 and recorders pretty well-posted with the
15 legislation coming out.

16 Q. Do you recall the approximate time frame
17 when you received those e-mails?

18 A. No.

19 Q. Do you recall how many e-mails there were
20 approximately?

21 A. No, no. During the legislation session,
22 I get a ton of e-mails. I couldn't even begin to
23 guess how many.

24 Q. Are you saying that you believe those
25 e-mails came in during the legislative session?

1 A. Some did. The ones that came in from the
2 legislative session were probably from our people
3 that handle the legislation -- legislative committee
4 that the clerk and recorders have.

5 Q. Let me -- oh, I'm sorry. Go ahead.

6 A. I can't tell you without a question of a
7 doubt whether they came from the Secretary of
8 State's office or from the clerk and recorders.
9 They were just random e-mails about what was -- what
10 was coming down the pike about the legislative
11 session.

12 Q. I want to ask specifically about
13 communications from the Secretary's office after
14 these bills were passed related to the
15 implementation of these bills, okay?

16 Do you recall receiving any
17 communications from the Secretary of State's office
18 regarding the implementation of HB 176 after it had
19 been passed and signed into law?

20 A. If I did receive anything from them, it
21 would have been to instruct us how to handle the new
22 law that had been passed.

23 Q. Do you recall whether or not you did
24 receive anything from the Secretary?

25 A. I'm surely we probably did. Like I say,

Exhibit F

Deposition Transcript of
Monica Eisenzimer

1 you are and are not saying. So do you have -- and
2 this is not a memory test. I'm really just asking
3 you. Do you know what it takes to qualify for a
4 Montana driver's license?

5 A. Yes.

6 Q. Are you aware what it takes to acquire,
7 say, a Montana State University identification card?

8 A. Not lately.

9 Q. And you don't know, for example, whether
10 the university is perhaps more stringent in what it
11 requires?

12 A. No.

13 Q. Okay. And Ms. Thomas asked you about
14 fraud in Flathead County, but I just want to make
15 sure I understand. Have you ever seen any voter
16 fraud in Flathead County that was the result of
17 someone using a college or university identification?

18 MR. MORRIS: Objection. Speculation.

19 BY MR. BREWSTER:

20 Q. You may answer.

21 A. Not that I'm aware of.

22 Q. And how long have you been in Flathead
23 County?

24 A. I've been in this position since 2005.

25 Q. And I think off the record you said you

1 actually grew up there. Right? You've been there
2 all your life?

3 A. That's correct. Yes.

4 Q. Okay. And then the last -- I want to ask
5 you a little bit -- a few questions about 506. And
6 506, do you recall, is a bill that prohibits election
7 officials from distributing ballots to individuals
8 before they turn 18?

9 A. Right.

10 Q. Are you familiar with that?

11 A. Yes.

12 Q. Now, so -- and this is honestly just a
13 conclusion. In paragraph 13 of your declaration, you
14 said prior to the passage of House Bill 506, you did
15 not send out these applications to people who would
16 be 18 by election day. Is that correct?

17 MR. MORRIS: Objection to form.

18 THE WITNESS: I believe so.

19 BY MR. BREWSTER:

20 Q. Okay. And can you explain to me, just so
21 I understand, were there people who were asking for
22 this and you weren't giving it to them or there just
23 was no one asking for it?

24 MR. MORRIS: Object to form.

25 THE WITNESS: It really wasn't asked for

1 because usually they could -- if they were turning
2 18, that would -- it used to be more people went to
3 the polling place, so they would go vote on their --
4 on election day, if they turned 18 before that.

5 BY MR. BREWSTER:

6 Q. Okay. Before 2021, do you recall how your
7 office generally handled ballots for individuals who
8 would turn 18 in the month prior to election day?

9 A. Yeah. They would come into the election
10 office and register to vote and get their ballot.

11 Q. And either they would get their ballot
12 handed to them, or it would be mailed to them?

13 MR. MORRIS: Objection to form.

14 THE WITNESS: It would be handed to them.
15 Or if they turned 18 and they went to a polling place
16 on election day, they would just vote a regular
17 ballot there if they had registered in time.

18 BY MR. BREWSTER:

19 Q. Was there any administrative burden
20 associated with giving these ballots to people who
21 would be 18 by election day in your office?

22 A. No.

23 Q. Do you know of anyone who committed voter
24 fraud by trying to vote underage in Flathead County?

25 MR. MORRIS: Objection. Speculation.

Monica Eisenzimer

1 THE WITNESS: Not that I'm aware of.

2 MR. BREWSTER: Okay. That is all the
3 questions I have.

4 MR. MORRIS: Rylee, do you have anything?

5 MS. FLANAGAN: Hey, Mac, no, I don't.

6 MR. MORRIS: Okay. I don't have anything
7 either.

8 MR. BREWSTER: All right. Well,
9 Ms. Eisenzimer, it's been a pleasure to meet you and
10 good luck. And I hope you have a great summer up in
11 Montana.

12 THE WITNESS: Oh, thank you.

13 MR. MORRIS: Thanks a lot, Monica.

14 (Whereupon, the deposition
15 concluded at 3:35 p.m.)

16 SIGNATURE RESERVED.

17 * * * * *

18

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24

25

CERTIFICATE OF SERVICE

I, Rylee Sommers-Flanagan, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 06-03-2022:

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**IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,

Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

Christi Jacobsen, in her official capacity as
Montana Secretary of State,

Defendant.

Consolidated Case No. DV 21–0451

Hon. Michael Moses

**DEFENDANT’S BRIEF IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER RE:
DEPOSITION OF CHRISTI JACOBSEN**

Defendant Christi Jacobsen, in her official capacity as Montana Secretary of State (“Secretary Jacobsen” or the “Secretary”) files the following brief in support of the Motion for Protective Order to prevent the individual deposition of Secretary Jacobsen.

INTRODUCTION

Plaintiffs have already deposed the Secretary of State through the proper procedures of Rule 30(b)(6), Mont. R. Civ. P., yet they now demand another deposition wherein Secretary Jacobsen herself must personally appear as a witness. This extraordinary request appears to be without any historical precedent in Montana: neither the Secretary nor her counsel are aware of any instance where a high-ranking elected official in Montana has been required to personally sit for a deposition regarding the constitutionality of a Montana statute. To the contrary, the courts have rejected efforts to depose high-ranking elected officials who, like Secretary Jacobsen, are being sued solely in an official capacity. *See White v. Governor Judy Martz*, Cause No. CDV 02-133, 2002 Mont. Dist. LEXIS 1987 (Mont. 1st Jud. Dist., Dec. 3, 2002) (granting motion for protective order to prevent depositions of Governor Judy Martz and Montana Supreme Court Chief Justice Karla Gray). The requested deposition of Secretary Jacobsen is abusive and harassing, and the justifications Plaintiffs assert for seeking the deposition are specious.

Individual depositions of high-level public officials such as the Secretary of State are disfavored and have been prohibited by various courts based on the tremendous potential for abuse that such depositions present, and the burden and disruption caused by the consumption of the public official's time. *See e.g., Fitzpatrick v. Secretary of State*, 176 Mich.App. 615, 617–618, 440 N.W.2d 45 (1989) (denying plaintiff's request to depose the secretary of state of Michigan). Depositions of a governmental agency head or an apex-level public official should only be allowed in the most extraordinary and compelling circumstances, where the official has unique, first-hand, non-repetitive knowledge of relevant facts that cannot be obtained by other less intrusive means. *Id.*

No such extraordinary circumstances are present here. Secretary Jacobsen's constitutional role is to implement and administer Montana's election laws, but she is not a legislator. As discussed below, the fact that the Office of the Secretary of State supported the legislation (which is a matter of public record) is entirely irrelevant to the issue before the Court – i.e., the constitutionality of statutes passed by the legislature. Secretary Jacobsen has no unique first-hand knowledge of relevant facts that Plaintiffs have not already obtained or had

the opportunity to obtain through less disruptive and less burdensome means, including written discovery and the Rule 30(b)(6) deposition of her Office.

Requests to depose high-ranking elected officers raise serious implications with respect to the separation of powers and abusive use of the judiciary and discovery process for political purposes. An elected official's public or private support for legislation should not be used as a pretext to allow harassment of the official through unnecessary and abusive depositions. To avoid facilitating political attacks on executive branch officers, the judiciary should view such depositions with disfavor and strictly require that the deposing party demonstrate "a compelling reason for the deposition." *White*, 2002 Mont. Dist. LEXIS 1897 at **2. To do otherwise would open a Pandora's box and invite rival political parties and advocacy groups to weaponize the courts and abuse the discovery process to harass sitting Montana officeholders, purely because of the office they occupy. The Court should not permit this, and a protective order should issue under Rule 26(b)(2)(C)(i), Mont. R. Civ. P., precluding an individual deposition of Secretary Jacobsen.

BACKGROUND

The Secretary of State is an elected executive branch officer charged by the Montana Constitution to perform duties as prescribed by the Constitution and any other duties provided by law. Mont. Const. art. VI, §§ 1, 3-4. This lawsuit challenges the constitutionality of four laws passed by the 2021 Legislature relating to election procedure and administration: HB 176, SB 169, HB 506, and HB 530. Plaintiffs seek to enjoin the implementation of these laws and have sued Secretary Jacobsen in her official capacity, because the Secretary of State is statutorily designated as "the chief election officer of this state" and is charged with the duty "to obtain and maintain uniformity in the application, operation, and interpretation of [its] election laws." § 13-1-201, MCA; *Larson v. State By & Through Stapleton*, 2019 MT 28, ¶ 41, 394 Mont. 167, 434 P.3d 241.

Plaintiffs first requested to take the deposition of the Secretary of State pursuant to the procedures of Rule 30(b)(6), Mont. R. Civ. P., and that deposition was scheduled for May 26, 2022. See Exh. A (Notice of Rule 30(b)(6) Deposition). The Plaintiffs' Notices of Deposition collectively listed 71 broad-ranging topics, with an additional 36 separately-enumerated

subtopics. *Id.* The Secretary of State designated Austin James, Chief Legal Counsel, as the witness who would testify on behalf of the Office of the Secretary of State. Exh. B (Unofficial Rough Transcript of Rule 30(b)(6) Deposition).

However, before the Rule 30(b)(6) deposition of the Secretary of State had even been taken, Counsel for the Plaintiff Montana Democratic Party (“MDP”) also began demanding an additional, separate deposition of Secretary Jacobsen individually. *See e.g.*, Exh. C (E-mail from Matthew Gordon dated May 13, 2022). Counsel for MDP justified the demand by asserting that the Secretary of State had supported the challenged legislation, made public statements expressing concern about election integrity, and generally described having conversations with Montana citizens, election officials, and legislators regarding matters of election administration and security. *Id.*

On May 19, 2022, MDP served a Notice of Deposition for the individual deposition of Secretary Jacobsen, setting a deposition date for May 25, 2022 (one day before the scheduled Rule 30(b)(6) deposition). *See* Exh. D (MDP Notice of Deposition). However, following additional discussions with the Secretary’s counsel, Plaintiffs agreed to withdraw the notice at least until after the Rule 30(b)(6) deposition had taken place, to see whether the Rule 30(b)(6) deposition of the Secretary might obviate any need for an individual deposition.

The Secretary’s Rule 30(b)(6) deposition proceeded on May 26, 2022, and her designated witness gave thorough, informed testimony on the broad range of matters in the deposition notice, including the same topics about which Plaintiffs now seek to question Secretary Jacobsen individually. *See generally*, Exh. B. After over six hours of testimony, the Rule 30(b)(6) deposition was left open, and the parties agreed the deposition may be resumed and completed at a later date. *Id.*, 233:24-234:8. 298:1-23. Thus, Plaintiffs still have some opportunity to depose the Secretary of State (through the Secretary’s properly-designated Rule 30(b)(6) witness), on any topics they believe have not been sufficiently covered. However, Plaintiffs have not attempted to resume the Rule 30(b)(6) deposition or indicated how much additional time, if any, they want for additional questioning.

Instead, Plaintiffs immediately resumed their demands for a separate, individual deposition of Secretary Jacobsen. Without any explanation, counsel for MDP took the

predictable position that “the SOS 30(b)(6) deposition did not obviate the need to take her deposition....” Exh. E (E-mail dated June 1, 2022 from Matthew Gordon). Counsel for Plaintiffs Western Native Voice and counsel for Montana Youth Action each served separate Notices of Deposition for the Secretary’s individual deposition. See Exh. F and Exh. G (Deposition Notices dated May 27, 2022).

In order to fully consider the Plaintiffs’ requests, counsel for the Secretary responded and invited Plaintiffs’ counsel to provide any additional reasons (beyond those stated in the May 13, 2022 e-mail from counsel for MDP) why they believe they are entitled to depose Secretary Jacobsen individually. See Ex. H (E-mail from Ian McIntosh dated May 30, 2022). Counsel for Western Native Voice responded with a list of six additional justifications for the deposition, all relating to alleged insufficiencies of prior discovery. Exh. I (E-mail from Alex Rate dated May 31, 2022). These reasons were listed in cursory fashion, with no supporting details, context or explanation. *Id.* Counsel for Montana Youth Action responded that the reasons provided by the other Plaintiffs’ counsel were sufficient, and offered no separate basis for seeking the deposition. Exh. J (E-mail from Rylee Sommers-Flanagan dated May 31, 2022).

In a good-faith effort to avoid having to seek court intervention, and pursuant to the meet-and-confer obligation under Rule 26(c), counsel for the Secretary responded on May 31, 2022, and addressed and rebutted each of the six justifications posited by counsel for Western Native Voice. Exh. K (E-mail dated May 31, 2022 from Mac Morris). As a final effort to better understand the basis of Plaintiffs’ extraordinary request, counsel for the Secretary again sought further clarification of the vague justifications Western Native Voice had offered. *Id.* Instead of providing a substantive explanation, counsel for Western Native Voice cut off the meet-and-confer process, asserting that because the Secretary “is the Defendant in these consolidated cases, we are presumptively entitled to take her deposition” and that “[t]he burden is not on us to identify the reason or reasons why such a deposition is necessary.” Ex. L (E-mail from Alex Rate dated June 3, 2022). Counsel for the Secretary also sent MDP’s counsel a letter addressing the reasons stated in his May 13, 2022 e-mail, and seeking further explanation. Exh. M (Letter from Mac Morris dated June 3, 2022). Like the other Plaintiffs, MDP responded by ending the meet-and-confer process and stating that MDP wished to proceed with noticing the Secretary’s

individual deposition. Exh. N (E-mail from Matthew Gordon dated June 3, 2022). On June 9, 2022, all of the Plaintiffs served amended notices of deposition on the Secretary of State, scheduling the deposition of Secretary Jacobsen for June 22, 2022, at 9:00 a.m. See Exh. O (Notices of Deposition).

Because Plaintiffs refuse to participate in a meaningful meet and confer process yet continue to insist on deposing the Secretary, the Secretary is forced to move the Court for a protective order.

STANDARDS APPLICABLE TO MOTIONS FOR PROTECTIVE ORDERS

This Court “must limit” discovery if it determines that “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive,” or where the Court determines that “the party seeking discovery has had ample opportunity to obtain the information,” or where the Court determines that “the burden and expense of the proposed discovery outweigh its likely benefit....” See Mont. R. Civ. P. 26(b)(2)(C)(i)–(iii). “[D]iscovery, like all other matters of procedure, has ultimate and necessary boundaries.” *Hickman v. Taylor*, 329 U.S. 495, 507-508 (1947). “[T]he desire to allow broad discovery is not without limits and the trial court is given wide discretion in balancing the needs and rights of both plaintiff and defendant.” *EEOC v. Kansas City Southern Railway*, 195 F.R.D. 678, 679 (D. Kan. 2000). A district court has inherent discretionary power to control discovery under its authority to control trial administration, and “a district court’s objective in controlling and regulating discovery is to ensure a fair trial for all concerned, neither according one party an unfair advantage nor placing the other at a disadvantage.” *Hegwood v. Montana Fourth Jud. Dist. Ct.*, 2003 MT 200, ¶ 16, 317 Mont. 30, 75 P.3d 308. Discovery is not allowed if it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. See Mont. R. Civ. P. 26(b)(1). The Court can issue a protective order to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense.” Mont. R. Civ. P. 26(c)(1).

ARGUMENT

I. PLAINTIFFS HAVE ALREADY DEPOSED THE SECRETARY OF STATE USING THE APPROPRIATE PROCEDURES OF RULE 30(B)(6), MONT. R. CIV. P., AND ARE NOT ENTITLED TO A SECOND, INDIVIDUAL DEPOSITION OF SECRETARY JACOBSEN.

Initially, Plaintiffs are not “presumptively entitled” to an additional, individual deposition of Secretary Jacobsen simply because “she is the Defendant in these consolidated cases.” See Exh. L. Any suggestion that Plaintiffs have been denied the opportunity to depose the Defendant in this case is entirely baseless.

Plaintiffs are certainly allowed to depose the Defendant, but they have already done so pursuant to the procedures of Rule 30(b)(6), Mont. R. Civ. P. The Rules of Civil Procedure provide a specific method whereby a plaintiff may depose an institutional or organizational defendant, specifically including a defendant that is a “governmental agency.” Rule 30(b)(6), Mont. R. Civ. P. Plaintiffs availed themselves of this procedure and sent the Secretary lengthy Rule 30(b)(6) deposition notices, collectively listing 71 broad-ranging topics and an additional 36 subtopics about which they wished to question the Secretary of State. See Exh. A. Plaintiffs have already spent over six hours deposing the Secretary’s designated witness under these extremely broad-ranging notices. That deposition remains open, though Plaintiffs have made no effort to resume it. Plaintiffs have no basis to claim they are being denied the opportunity to depose the Defendant.

Furthermore, an individual deposition is not warranted because Plaintiffs have not sued the Secretary in an individual capacity. Instead, they brought suit against Secretary Jacobsen expressly “in her official capacity as Montana Secretary of State,” because they wished to enjoin the Office of the Secretary of State from carrying out official duties prescribed by statute and the Montana constitution – i.e., the implementation and administration of election laws. In a case such as this, where the nominal Defendant is the head of a government office sued only in her official capacity as such, Rule 30 (b)(6) provides an appropriate procedure for deposing the Defendant. Plaintiffs have used that procedure, and are not entitled to another deposition simply because they would prefer to question Secretary Jacobsen herself, rather than her office’s designated witness. It is axiomatic that the party requesting the deposition does not get to select the opponent’s designee. “Because Rule 30(b)(6) imposes on the organization the

obligation to select the individual witness, the party seeking discovery under that provision of the rule is not permitted to insist that it choose a specific person to testify.” Wright & Miller, 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.).

As further discussed below, Plaintiffs’ vague and conclusory assertions that the Secretary’s Rule 30(b)(6) deposition testimony or other discovery responses have somehow been inadequate or unsatisfactory are specious. First, it is pretext for Plaintiffs to claim that the 30(b)(6) deposition “did not obviate the need to take her [individual] deposition” before Plaintiffs have even completed the Rule 30(b)(6) deposition. Moreover, despite repeated requests, Plaintiffs have refused to identify any specific deficiency in the testimony provided by the Secretary’s Rule 30(b)(6) designee, Austin James. When asked to identify specific testimony that was inadequate to their needs, Plaintiffs refused and simply ended the meet-and-confer process. See Exhs. K, L, M and N. But even if the Plaintiffs believe that the Secretary’s Rule 30(b)(6) deposition testimony or other discovery responses are inadequate, the appropriate remedy would be to identify the specific discovery at issue, meet and confer with the Secretary’s counsel about it and then, if those efforts fail, ask the Court to compel further answers or testimony. Plaintiff’s failure to do so—or to even identify any supposedly deficient testimony—demonstrates the pretextual nature of their demands to depose the Secretary individually.

The assertion that Plaintiffs are “presumptively entitled” to the deposition without having to provide any justification (see Exh. L) is simply incorrect. Courts have consistently held that deposing parties have the initial burden to show that the high-ranking elected official they seek to depose has “‘unique personal knowledge’ of some relevant issues,” and that the information they seek cannot be obtained through other methods of discovery, including the Rule 30(b)(6) deposition. *Naylor Farms, Inc. v. Anadarko OGC Co.*, 2011 WL 2535067, at *3 (D. Colo. June 27, 2011); *White*, at **7-8 (finding “nothing to indicate that the Governor has any unique knowledge” and that “it appears the information sought could be obtained through other sources.”).

II. THE COURT SHOULD ENTER AN ORDER PURSUANT TO ITS INHERENT POWERS UNDER RULES 26(B) AND 26(C), MONT. R. CIV. P., PROTECTING SECRETARY JACOBSEN FROM AN INDIVIDUAL DEPOSITION.

A. Rule 26(b)(2)(C), Mont. R. Civ. P., Precludes the Depositions of High-Ranking Elected Officials Except in Compelling Circumstances.

Through application of Rule 26(b)(2)(C), Mont. R. Civ. P., the Court is empowered to protect high-ranking public officials from unnecessary and harassing depositions. Although the Montana Supreme Court has not directly addressed such depositions, numerous courts (including Montana state district courts and the U.S. District Court for Montana) have applied what has become to be known as the “apex doctrine,” wherein the “[h]eads of government agencies are not normally subject to deposition.” See, e.g., *Kyle Engineering Co. v. Kleppe*, 600 F.2d 226, 231 (9th Cir. 1979); *White*, at **3 (citing *Kyle Engineering* for the proposition that “high ranking government . . . officials are not subject to depositions in their official capacities unless there is a compelling reason for the deposition.”); *Voelker v. BNSF Ry. Co.*, 2019 WL 6910167, *2-4 (D. Mont. Dec. 19, 2019); *Stephanie Mooring v. Bozeman Deaconess Health Servs.*, No. DV-18-235(B) (Mont. 18th Jud. Dist. April 7, 2021).¹

“[T]he apex-deposition rule prevents high-ranking public officials from being compelled to give oral depositions unless a preliminary showing is made that the deposition is necessary to obtain relevant information that cannot be obtained from another discovery source or mechanism.” *Alberto v. Toyota Motor Corp.*, 289 Mich. App. 328, 334, 796 N.W.2d 490, 493 (2010). The rationale for this rule is that “high level executives and government officials need some measure of protection from the courts because they are vulnerable to numerous, repetitive, harassing, and abusive depositions.” *Asberry v. Sch. Bd. of Pasco Cnty., Fla.*, 2019 WL 12383128, at *1 (M.D. Fla. Aug. 20, 2019).

¹ In a similar doctrine stemming from *United States v. Morgan*, 313 U.S. 409, 422, 61 S.Ct. 999, 85 L.Ed. 1429 (1941), federal courts have concluded that depositions of top executive department officials should not be permitted absent “extraordinary circumstances,” based on considerations that “[h]igh ranking government officials have greater duties and time constraints than other witnesses” and that, without appropriate limitations, such officials will spend an inordinate amount of time tending to pending litigation. *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir.1993).

The Court does not need to expressly adopt the “apex doctrine” to grant the Secretary’s motion for protective order. The Montana Rules of Civil Procedure already supply the authority required, because at its core, the doctrine is simply a reasoned application of the Court’s already-existing ability to limit discovery and protect parties from annoyance, harassment, and undue burden. See Mont. R. Civ. P. 26(b)(2)(C)(i) – (iii); Mont. R. Civ. P. 26(c)(1). The rationale for precluding apex depositions is built into Rule 26(b)(2)(C)’s requirement that discovery must be limited where it can be obtained through “more convenient, less burdensome, or less expensive” means. The Rules of Civil Procedure are designed for efficiency (see Rule 1, Mont. R. Civ. P.) and apex depositions are rarely an efficient way to gather discoverable facts. Such depositions inherently involve “leap-frogging to the apex” without first attempting discovery through more efficient means. *Liberty Mutual Ins. Co. v. Superior Court*, 13 Cal.Rptr.2d 363, 366 (Cal. App. 1992).

In addition to the inefficiency of jumping directly to high-level personnel, “[v]irtually every court that has addressed deposition notices directed at an official at the highest level or ‘apex’ of corporate management has observed that such discovery creates a tremendous potential for abuse or harassment.” *Naylor Farms*, 2011 WL 2535067, at *1 (citing *Celerity, Inc. v. Ultra Clean Housing, Inc.*, 2007 U.S. Dist. LEXIS 8295, at *8 (N.D. Cal. Jan. 25, 2007); see also *Voelker*, 2019 WL 6910167, at *2; *Simmons*, 2012 WL 6725844, at *2 (depositions of high-level corporate officers have a “tremendous potential for abuse or harassment”). Here, the potential for abuse is especially apparent, considering that the deposition is being sought by one of the major political parties, against an elected officeholder from an opposing party.

To address the potential for harassment, abuse, and inefficiency that is inherent in such depositions, courts have considered “(1) whether the deponent has unique first-hand, non-repetitive knowledge of facts at issue in the case and (2) whether the party seeking the deposition has exhausted other less intrusive discovery methods.” *Groupon, LLC v. Groupon, Inc.*, 2012 WL 359699, at *3 (N.D. Cal. Feb. 2, 2012) (citing *Affinity Labs of Texas v. Apple, Inc.*, 2011 WL 1753982, at *15 (N.D. Cal. May 09, 2011)); *Liberty Mut. Ins. Co.*, 13 Cal. Rptr.2d at 367; see also *White*, at **3 (courts should consider whether the witness has “unique” or “first-hand knowledge” and “whether less onerous discovery procedures provide the information sought.”)

A court should protect an apex employee from a deposition notice “when any of the following circumstances exist: (1) the executive has no unique personal knowledge of the matter in dispute; (2) the information sought from the executive can be obtained from another witness; (3) the information sought from the executive can be obtained through an alternative discovery method; or (4) sitting for the deposition is a severe hardship for the executive in light of his obligations....” *Naylor Farms*, 2011 WL 2535067, at *1.

B. Secretary Jacobsen Has No Unique or Superior First-Hand, Non-Cumulative Knowledge of Facts Relevant to this Lawsuit.

A protective order is warranted because Plaintiffs have not established that Secretary Jacobsen has any unique personal knowledge that would justify compelling her to personally testify at deposition. An executive has “unique personal knowledge” only if she “has information that cannot be had ‘through interrogatories, deposition of a designated [corporate] spokesperson, or deposition testimony of other persons.’” *Naylor Farms*, 2011 WL 2535067, at *3 (citing *Baine v. General Motors Corp.*, 141 F.R.D. 332, 334 (M.D. Ala. 1991)). “[U]nique personal knowledge must be truly unique.” *Id.* When unique, non-repetitive, first-hand knowledge of the facts relevant to the issues in the lawsuit is absent, a protective order will be issued to preclude the deposition. *See Groupion*, 2012 WL 359699, at *3.

In support of her Motion for Protective Order, Secretary Jacobsen has submitted a sworn affidavit establishing that she lacks any unique personal knowledge of the relevant issues in this case. *See* Exh. P. Her affidavit constitutes “competent evidence that may be properly considered by the Court” when weighing whether a deposition should proceed. *Naylor Farms*, 2011 WL 2535607 at *3.

The Plaintiffs’ conclusory assertions that Secretary Jacobsen has “personal knowledge of matters directly at issue in this case” do not hold up under scrutiny. For example, MDP has claimed it needs to depose Secretary Jacobsen because she personally “requested” HB 176 and SB 169. *See* Exh. C. However, the Secretary’s Rule 30(b)(6) designee testified that although the Secretary’s office utilized a process made available by the Legislature to mark the bills as being made “by the request of the Secretary of State,” the Secretary herself did not personally “request” these bills or seek that they be drafted. Exh. B, 45:8-46:2; 255:4-256:23. Plaintiffs

have already deposed the Office of the Secretary of State on this subject, and the Secretary herself has no unique personal knowledge beyond the Rule 30(b)(6) testimony that has already been given.

Similarly, MDP's assertion that "her office was involved in pushing for adoption" of the legislation is not grounds to depose Secretary Jacobsen individually. *See* Exh. C. Plaintiffs have already extensively questioned the Secretary, through her Rule 30(b)(6) designee, about her office's involvement in supporting the legislation. *See e.g.*, Exh. B, pp. 37-40 (questioning regarding the Secretary's "legislative priorities"), 45-75 (questioning regarding Secretary's support for HB 176), 115-121 (questioning regarding the Secretary's position on HB 530). Any questions about the Office of the Secretary of State's involvement with the legislation were answered or could have been answered by the Rule 30(b)(6) witness, and Secretary Jacobsen has no unique knowledge to provide beyond that testimony.

Next, MDP has claimed it needs to personally question the Secretary about "conversations and communications" she has had with Montanans, and her "personal communications with legislators and other stakeholders." Exh. C. Without explanation, MDP claims "it is essential that Plaintiffs have an opportunity to ask her about these conversations." *Id.* But as an elected public official, Secretary Jacobsen regularly interacts with other elected public officials (including legislators) and Montana citizens regarding issues relating to election administration. Exh. P, ¶ 4. Secretary Jacobsen has explained in her affidavit that she does not recall details of such communications and her Office does not create or maintain notes or records of such conversations. Exh. P, ¶ 4. Thus, Secretary Jacobsen can provide no information regarding any specific personal conversations beyond what her Office has already provided. Additionally, Plaintiffs had the opportunity to question Secretary's Rule 30(b)(6) witness about communications between her office and Montana citizens, election officials, and legislators, and did so at length. *See e.g.* Exh. B, pp. 53-58. Secretary Jacobsen has shown she has no unique personal knowledge to add to that discussion beyond what her 30(b)(6) designee has testified, and Plaintiffs have not shown otherwise.

The case law MDP has cited to justify deposing Secretary Jacobsen about her communications with legislators and Montanans is inapposite and distinguishable. MDP first

cites *League of Women Voters of Fla., Inc. v. Lee*, 2021 WL 4962109, at *1 (N.D. Fla. Oct. 19, 2021). In *League of Women Voters*, the court recognized the apex rule that “depositions of high-ranking officials are disfavored.” *Id.*, at *1. The court, however, ultimately allowed the deposition of a county election supervisor based on specific witness testimony that the supervisor had been directly involved in lobbying efforts regarding a challenged election law while it “moved through the legislative process.” *Id.*, at 3. Specifically, the election supervisor had served on a work group within her professional organization that had lobbied the Florida legislature relating to a challenged election law, and communicated with lobbyists and legislative committees who were considering the challenged bills. *Id.*, at 3. By contrast, Secretary Jacobson did not have direct personal involvement with passage of the challenged bills other than testifying in support, and while she may have generally spoken with Montana citizens and legislators, she has no recollection (and no record) of the details of any such communications. Exh. P, Jacobsen Aff., ¶ 4. Thus, unlike the county elections official in *League of Women Voters*, Secretary Jacobson has made it clear she cannot provide any further information, and the only knowledge she could provide has already been given by the Office of the Secretary of State.

MDP also relies on *Greater Birmingham Ministries v. Merrill*, 321 F.R.D. 406, 410 (N.D. Ala. 2017), where a federal court allowed the deposition of the Secretary of State of Alabama on certain topics. In *Merrill*, a Rule 30(b)(6) deposition had been conducted and, significantly, the court applied the apex deposition rule and refused to allow the deposition on a topic that it found could have been adequately covered by the Rule 30(b)(6) designee. *Id.* The court did, however, allow deposition questioning on other topics based on specific evidence that the Rule 30(b)(6) designee had been unable to testify about which the Secretary of State had uniquely personal knowledge. In contrast to *Merrill*, the Plaintiffs in this action have not identified any area in which the Secretary’s Rule 30(b)(6) testimony was supposedly deficient. Even when asked to identify and explain the alleged shortcomings of that testimony during the meet-and-confer process, Plaintiffs could not do so and claimed a non-existent “presumptive” right to a second, individual deposition of the Secretary. See Exh. L.

Merrill is further distinguished by the fact that the evidence in this case demonstrates that Secretary Jacobsen lacks the kind of unique personal knowledge that warranted the deposition of the Alabama secretary of state in *Merrill*. Where such knowledge is lacking, an apex deposition of a secretary of state has been found improper. See *Fitzpatrick v. Secretary of State*, 176 Mich.App. 615, 617–618, 440 N.W.2d 45 (1989) (denying deposition of the secretary of state on the grounds that he lacked personal knowledge of the relevant facts and that the information sought could be obtained by other means). *Merrill* is not binding authority and is inapposite. This Court should instead follow the reasoned approach of *White* and *Fitzpatrick*, which better match the facts of this case and properly adhere to the rule that depositions of high-ranking public officials should only be permitted for “compelling reasons.” *Fitzpatrick*, 176 Mich.App. at 618, 440 N.W.2d at 45; *White*, at **2.

Plaintiffs also have not demonstrated that Secretary Jacobsen’s testimony would even be relevant. MDP asserts that it needs to “ask [Secretary Jacobsen] about her intent” (see Exh. C), but the only potentially relevant “intent” for purposes of determining constitutionality is the intent of the Legislature, which passed the bills at issue. See *Larsen*, ¶ 40 (“the Legislature has exclusive authority to enact laws” regarding election processes). Secretary Jacobsen is not a legislator and she lacks foundation to testify regarding the intent of any legislators. The Secretary’s support of specific legislation is simply not relevant to her statutory and constitutional duties to implement and administer Montana’s election laws, nor is it relevant to determining the intent of legislators in passing the bills, or to whether the legislation is constitutional. The Secretary’s individual deposition will not provide information relevant to any matter at issue in this case, and the request to depose her is not reasonably calculated to lead to the discovery of admissible evidence. See Rule 26(b)(1) Mont. R. Civ. P.

C. Plaintiffs Have Not Met Their Burden to Show Compelling Reasons for the Secretary’s Individual Deposition.

The burden is on the Plaintiffs to show that an individual deposition of Secretary Jacobsen is justified. *Contractors’ State License Bd.*, 23 Cal.App.5th 125, 132 (2018); *Naylor Farms*, 2011 WL 2535067, at *3 (“where a party seeks to depose a high government official, and the official moves for a protective order, the burden is on the deposing party to show that

compelling reasons exist for permitting the deposition.”); *White*, at **3 (“the party requesting the deposition” must “make a particularized showing of need for the deposition....”). Plaintiffs have not met that burden, and the various reasons they have offered for the deposition are specious.

1. The Secretary’s Public Statements Do Not Justify the Requested Deposition.

Plaintiffs cannot justify their request for the personal deposition of Secretary Jacobsen based on general public statements or press releases from her office in support of the challenged legislation, or other election-related issues. *See* Exh. C (MDP citing public statements and press releases by the Secretary’s office relating to the challenged legislation). “Isolated general statements made by an executive do not defeat the application of the apex doctrine.” *Naylor Farms*, 2011 WL 2535067, *3. Even public statements specifically relating to these bills do not justify the deposition, because “[t]he mere fact that [an executive] made public statements, even on issues that [the party seeking to depose him] considers relevant to its claims, is insufficient to justify his deposition.” *Affinity Labs of Tex.*, 2011 WL 1753982, at *16 (emphasis added). “Courts have repeatedly denied apex depositions even on a showing that the executive made public statements on relevant issues.” *Id.* (citing *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364, 366 (D.R.I. 1985) (rejecting request to depose executive based on public statements he made relevant to company’s liability, and instead requiring plaintiffs to submit written interrogatories). Moreover, the Secretary’s Rule 30(b)(6) witness explained that the language quoted in Secretary’s press releases was in fact prepared by the Office of the Secretary of State, and not by the Secretary personally. *See* Exh. B, 252:13-16, 254:253:14-254:17 (“This was our office working on putting out a press release, and including making a quote that – that could be used.”).

2. Plaintiffs Have Not Established that Alternative Forms of Discovery Are Inadequate.

Plaintiffs should not be permitted to take the deposition of Secretary Jacobsen because they have not shown that other methods have been inadequate to obtain the information they seek. This Court “must limit” discovery if it “can be obtained from some other source that is

more convenient, less burdensome, or less expensive,” or where the Court determines that “the party seeking discovery has had ample opportunity to obtain the information,” or where the Court determines that “the burden and expense of the proposed discovery outweigh its likely benefit....” See Mont. R. Civ. P. 26(b)(2)(C). All these factors weigh in favor of limiting discovery here.

Plaintiffs have certainly had “ample opportunity” to obtain the information they seek through methods that are “more convenient” and “less burdensome” than taking another deposition of the Secretary individually. Rule 26(b)(2)(C)(i) and (ii), Mont. R. Civ. P. Courts regularly hold that parties must attempt to obtain the discovery through a designated agency or corporate representative under Rule 30(b)(6), before demanding to speak with an agency head or CEO. *Voelker*, 2019 WL 6910167 at **2, 4 (noting that the party requesting the deposition “has many other avenues for discovery of the information sought” and that “less intrusive methods of discovery,” specifically including a Rule 30(b)(6) deposition, “remain open to Voelker”); *Folwell v. Hernandez*, 210 F.R.D. 169, 173 (M.D.N.C. 2002) (requiring plaintiffs “to first take the Rule 30(b)(6) corporate deposition, as should already have occurred.”).

The information Plaintiffs claim they need is encompassed within the broad-ranging topics of their Rule 30(b)(6) Notice. Compare Exh A (Rule 30(b)(6) deposition notice) and Exh. C (Matthew Gordon E-mail dated May 13, 2022). Indeed, the Secretary’s Rule 30(b)(6) designee was questioned and testified at length about these topics, specifically including the Secretary’s support for the challenged legislation, whether she “requested” the bills, and communications the Secretary and her Office had with legislators, election officials, and Montana citizens. See generally Exh. B. MDP’s assertion that the Secretary’s “30(b)(6) deposition did not obviate the need to take her [individual] deposition” is unsupported and entirely conclusory.

Similarly, the various other reasons offered by Plaintiff Montana Native Voice for an additional, individual deposition are unavailing. For example:

- Montana Native Voice referenced the individual deposition of the Secretary’s Chief Legal Counsel, Austin James, and complained of “[t]he repeated assertions of privilege and standing objection on that basis during Mr. James’ deposition.” Exh. I. This is a *non-sequitur*, because the Secretary’s claim of privilege over legal advice Mr. James offered to the office of the Secretary is unrelated to any purported need to take

Secretary Jacobsen's individual deposition. Even if Secretary Jacobsen were deposed and asked the same questions, she would not waive the attorney-client privilege.

- Counsel for Montana Native Voice also referenced supposedly "evasive and nonresponsive answers to deposition questions." Exh. I. Yet Plaintiffs have refused to identify any answers given by Mr. James—either in his individual deposition or while testifying as the Secretary's Rule 30(b)(6) designee—that were not adequately answered or which they contend require further response. Even if Plaintiffs could identify some evasive or non-responsive testimony, the proper remedy is to inquire further when the Rule 30(b)(6) deposition resumes or, if necessary, move to compel further responses.
- Montana Native Voice references "[t]he Secretary's use of e-mail as a form of communication within her office, and her failure to produce responsive e-mails." Exh. I. However, testimony at the Rule 30(b)(6) deposition established that the Secretary does not often use e-mail at work, and that responsive e-mails were produced in discovery. Exh. B, 17:22-18:23. The Secretary's office has produced all responsive emails of which it is aware, and Plaintiffs have offered no basis to claim otherwise.
- Montana Native Voices next alleges Mr. James' supposed "refusal to specifically answer questions about what the Secretary did or did not do to implement the challenged laws." Exh. I. However, Mr. James provided extensive testimony regarding the Secretary's implementation of the challenged laws. See *e.g.* Exh. B, pp. 32-33, 104-109, 132-136, 156-158 (discussing implementing regulations for challenged bills). And yet again, Plaintiffs have refused to identify any particular deposition question that Mr. James supposedly refused to answer.
- Montana Native Voice vaguely points to "[t]he bases behind the Secretary's blanket denials of the RFA's propounded by MDP." Exh. I. But none of the Plaintiffs have ever raised any issue regarding the Secretary's answers to MDP's Requests for Admission, nor did any Plaintiff even attempt to question the Secretary about the answers during the Rule 30(b)(6) deposition.
- Finally, Montana Native Voice complains of "Mr. James' evasive answers in response to questions about the Secretary sending and receiving work-related text messages." Exh. I. However, Mr. James testified in the Rule 30(b)(6) deposition that employees of the Secretary specifically did not text for work. Exh. B, 18:7-8; 199:3-11. The Secretary is unaware of any text messages that would be responsive to any discovery requests, and Plaintiff has never identified any such messages or discovery requests they contend were not adequately answered.

Plaintiffs have not demonstrated that any of the information they seek cannot be (or has not been) adequately obtained through other means. Whatever benefit Plaintiffs might

suppose exists in Secretary Jacobson's deposition is outweighed by the burden, expense, and disruptive precedent such a deposition would create. *See* Rule 26(b)(2)(C)(iii).

III. ALLOWING THE REQUESTED DEPOSITION WOULD INVITE ABUSIVE DISCOVERY PRACTICES AND WEAPONIZATION OF THE RULES OF DISCOVERY FOR POLITICAL PURPOSES.

Consistent with the doctrine of separation of powers found at Article III, Sec. 1 of the Montana Constitution, courts should exercise great caution to not allow the judiciary to be used as a tool for political purposes against executive branch officials. Since Plaintiffs have not presented any compelling, non-pretextual reason for requiring Secretary Jacobsen to personally testify in this case, the Secretary can only conclude that Plaintiffs' motivations are political. The evidence bears this out: at the Secretary's Rule 30(b)(6) deposition, MDP's counsel asked the Secretary's Rule 30(b)(6) witness several questions that are wholly irrelevant and obviously politically motivated, including the following:

Q. Okay. What about the Secretary. What is her position on whether the 2020 election was stolen?

Q. How much money has the Secretary of State spent on this lawsuit to date?
Exh. B, 265:18-23; 291:10-11. The Court should take no part in affording MDP an opportunity to ask such harassing questions to the Secretary personally.

Nor should the Court set the precedent of allowing individual depositions of executive branch officers based on public or private comments by an elected official or the official's office regarding challenged legislation. Public officials (including the Governor, the Attorney General, Secretary of State, Legislators, and other officeholders) routinely comment on legislation. They do so both before and after passage, and when the legislation is challenged in litigation. Such public comments are a natural, healthy, and commonplace feature of our system of governance through elected officeholders. These comments should not provide an excuse for political rivals (including, in this case, an opposing political party) to wield the powers of the judiciary's discovery procedures to harass an elected executive branch official.

Protecting public officials from abusive and unnecessary depositions is not a partisan issue. In this instance, it happens to be the Montana Democratic Party seizing on Secretary

Jacobsen's public comments as justification to demand the opportunity to place a Republican Secretary of State under oath and question her. However, the precedent that MDP seeks by demanding this deposition would, in the future, undoubtedly be wielded by political actors of all stripes, against public officials of any party or no party. Allowing a deposition of Secretary Jacobsen on the threadbare grounds offered by Plaintiffs would open a Pandora's box inviting political actors and advocacy groups to use the judiciary to harass executive branch officers on the thinnest of pretexts. Secretary Jacobsen and future secretaries of state would be distracted from carrying out constitutional duties while their time is consumed with the burden of responding to litigation.

It is unseemly and incongruous with the principal of separation of powers when one branch of government is weaponized against officials of another branch. Statewide elected officials serving as nominal defendants in constitutional challenges to state statutes should not be compelled to personally give deposition testimony. See *White*, at ** 1 (granting protective order to preclude the deposition of Governor Martz where she was "being sued in her official capacity"). There is good reason that "[v]irtually every court" to address deposition notices directed at apex public officials or management "has observed that such discovery creates a tremendous potential for abuse or harassment." *Naylor Farms*, 2011 WL 2535067, at *1.

Like the Montana First Judicial District Court did in *White*, this Court should adhere to the sound principle that depositions of executive branch officers named as defendants in their official capacity should be allowed only in the most extraordinary of circumstances, and only after a showing of "compelling reasons" why the deposition must proceed. *White*, at **2; see also *Fitzpatrick*, 176 Mich.App. at 618, 440 N.W.2d at 45. Plaintiffs have not met that high burden in this case, and their request to depose Secretary Jacobsen should be denied.

CONCLUSION AND REQUEST FOR ATTORNEY FEES

Plaintiffs cannot demonstrate that Secretary Jacobsen has any unique, first-hand knowledge of discoverable facts pertaining to the issues in this case, which would warrant her deposition. Accordingly, the Court must limit discovery under Rule 26(b)(2)(C), Mont. R. Civ. P., and grant Secretary Jacobsen's Motion for Protective order.

Plaintiffs' demands for the individual deposition of Secretary Jacobsen are unreasonable and harassing, and unjustified as set forth above. Accordingly, Pursuant to Rules 26(c)(3) and 37(a)(5), Mont. R. Civ. P., the Court should require the Plaintiffs, whose conduct necessitated the Secretary's Motion for Protective Order, to pay the Secretary's reasonable attorney fees incurred in bringing the motion.

Dated this 10th day of June, 2022.

By: /s/Leonard H. Smith

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EXHIBIT A

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)

Plaintiffs,)

Cause No. DV 21-0451

Western Native Voice, Montana Native Vote,)
Blackfeet Nation, Confederated Salish and)
Kootenai Tribes, Fort Belknap Indian)
Community, and Northern Cheyenne Tribe,)

Plaintiffs,)

**PLAINTIFFS' AMENDED NOTICE
OF RULE 30(b)(6) M.R.Civ.P.
DEPOSITION OF DEFENDANT
MONTANA SECRETARY OF STATE**

Montana Youth Action, Forward Montana)
Foundation, and Montana Public Interest)
Research Group,)

Plaintiffs,)

v.)

CHRISTI JACOBSEN, in her official)
capacity as Montana Secretary of State,)

Defendant.)

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30(b)(6), Plaintiffs the Montana Democratic Party ("MDP") and Mitch Bohn will take the deposition of the Montana Secretary of State at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be conducted in person and recorded via stenographic means and via video. The deposition will continue until completed.

Person to be examined:	Montana Secretary of State
Date and time of deposition:	May 27, 2022 8:00 a.m. MDT
Place of deposition:	The Law Offices of Crowley Fleck PLLP 900 N Last Chance Gulch Helena, MT 59601

Pursuant to Rule 30(b)(6) M.R.Civ.P., the Montana Secretary of State is required to designate one or more persons to testify on its behalf with respect to the topics identified on Exhibit A.

DATED THIS 6th day of May, 2022.

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Exhibit A—Deposition Topics

SB 169

1. The Secretary's involvement in and knowledge of the efforts to enact SB 169, including the identity of individuals involved in and communications related to that effort.
2. The Secretary's role in the implementation of SB 169, including any administrative rule-making process and any oral or written guidance issued by the Secretary regarding voter ID requirements.
3. The Secretary's knowledge of oral or written guidance regarding voter ID requirements issued by the Montana Attorney General, the Montana Commissioner of Political Practices, Montana County Attorneys, or County Election Administrators.
4. The Secretary's knowledge of evidence supporting the State's purported interests in SB 169, including the Secretary's knowledge of:
 - a. any instances of voter fraud in Montana related to voter identification, generally, and specifically related to student ID;
 - b. any investigatory or enforcement actions undertaken in response to any alleged voter fraud in Montana related to voter identification generally, and specifically related to student ID;
 - c. complaints regarding voter fraud in Montana related to voter identification generally, and specifically related to student ID, including the resolution of any such complaints;
 - d. facts regarding whether SB 169's voter identification requirements are likely to decrease instances of voter fraud in Montana;
 - e. facts regarding whether SB 169's voter identification requirements are likely to ensure compliance with residency requirements for voting;
 - f. facts regarding whether the use of student IDs for voting in Montana affected public confidence in Montana elections;
 - g. any complaints regarding the use of student IDs for voting in Montana elections; and
 - h. facts regarding how SB 169's voter identification requirements has affected or will affect public confidence in Montana's elections.
5. The Secretary's knowledge of information regarding the anticipated effect of SB 169's voter identification requirements on voter turnout, generally, and specifically among voters under the age of 25 and college-student voters.

HB 176

6. The Secretary's involvement in and knowledge of the efforts to enact HB 176, including the identity of individuals involved in and communications related to that effort.
7. The Secretary's role in the implementation of HB 176, including oral or written guidance issued by the Secretary regarding HB 176.
8. The Secretary's knowledge of oral or written guidance regarding HB 176 issued by the Montana Attorney General, the Montana Commissioner of Political Practices, Montana County Attorneys, or County Election Administrators.
9. The Secretary's knowledge of facts supporting the State's purported interests in HB 176, including the Secretary's knowledge of:
 - a. Any facts regarding burdens caused by Election Day Registration, including burdens on election officials;
 - b. any facts indicating that HB 176 would relieve any such burden;
 - c. any complaints regarding burdens caused by Election Day Registration, including complaints by election officials;
 - d. any facts indicating that HB 176 would address the issues raised in any such complaints;
 - e. any facts regarding whether Election Day Registration causes longer lines at the polls, and if so, how much longer, by county and by polling place;
 - f. any instances of voter fraud in Montana related to Election Day Registration;
 - g. any investigatory or enforcement actions undertaken in response to any alleged voter fraud in Montana related to Election Day Registration;
 - h. any complaints regarding voter fraud or election integrity in Montana related to Election Day Registration, including the resolution of any such complaints;
 - i. facts regarding whether Election Day Registration affected public confidence in Montana elections;
 - j. facts regarding how HB 176 has affected or will affect public confidence in Montana's elections;
 - k. facts regarding whether Election Day Registration affected the integrity of Montana's elections;
 - l. facts regarding how ending Election Day Registration will affect the integrity of Montana's elections; and

- m. facts regarding how HB 176 will affect public belief in the integrity of Montana's elections.
10. The Secretary's knowledge of Election Day Registration practices in each county prior to the implementation of HB 176, including the Secretary's knowledge of
 - a. The logistical details of Election Day Registration by county, including the location(s) in each county where Montanans were able to register on Election Day, whether there were separate lines for Montanans seeking to vote and Montanans seeking to register to vote, and whether separate poll workers assisted with voting and voter registration; and
 11. The Secretary's knowledge of the effects of HB 176 on elections offices and officials, including how HB 176's requirements affect administrative burdens and lines at polling centers.

HB 530¹

12. The Secretary's involvement in and knowledge of the efforts to enact HB 530, including the identify of individuals involved in and communications related to that effort.
13. The Secretary's role in the implementation of HB 530, including oral or written guidance issued by the Secretary regarding organized ballot return assistance or other ballot assistance.
14. The Secretary's knowledge of oral or written guidance regarding organized ballot return assistance or other ballot assistance issued by the Montana Attorney General, the Montana Commissioner of Political Practices, Montana County Attorneys, or County Election Administrators.
15. The Secretary's knowledge of evidence supporting the State's purported interests in HB 530, including the Secretary's knowledge of:
 - a. any instances of alleged voter fraud related to organized ballot return assistance or other ballot assistance in Montana;
 - b. any investigatory or enforcement actions undertaken in response to any alleged voter fraud related to organized ballot return assistance or other ballot assistance in Montana;
 - c. complaints by members of the public regarding alleged voter fraud related to organized ballot return assistance or other ballot assistance in Montana received by Montana County Attorneys or County Election Administrators;

¹ Unless otherwise noted, "HB 530" refers to section 2 of HB 530.

- d. any instances of alleged voter coercion or intimidation related to organized ballot return assistance or other ballot assistance in Montana;
- e. any investigatory or enforcement actions undertaken in response to any alleged voter coercion or intimidation related to organized ballot return assistance or other ballot assistance in Montana;
- f. complaints regarding alleged voter coercion or intimidation related to organized ballot return assistance or other ballot assistance in Montana received by Montana County Attorneys or County Election Administrators;
- g. facts regarding whether organized ballot return assistance or other organized ballot return assistance or other ballot assistance affected public confidence in Montana elections;
- h. facts regarding how HB 530 has affected or will affect public confidence in Montana's elections;
- i. facts regarding whether organized ballot return assistance or other ballot assistance affected the integrity of Montana's elections;
- j. facts regarding how prohibiting paid organized ballot return assistance or other ballot assistance will affect the integrity of Montana's elections; and
- k. facts regarding how HB 530 will affect public belief in the integrity of Montana's elections.

General Topics

- 16. The Secretary's role in and knowledge of the administration of Montana elections, including the Secretary's role in and knowledge of maintaining uniformity in the application, operation, and interpretation of the election laws, enforcing election-related deadlines, and certifying election results.
- 17. The Secretary's role in and knowledge of the dissemination in any form of information about election integrity, voter fraud, or alleged problems with election integrity or voter fraud, including information about purported voter fraud in connection with the 2020 election.
- 18. The Secretary's knowledge of public confidence in elections in the United States, generally, and Montana, specifically, including knowledge of the reasons for any recent decline in confidence.
- 19. The Secretary's knowledge of, involvement in, and communications related to any and all instances of alleged or prosecuted voter fraud in the State of Montana, including the instances involving:
 - a. Two foreign residents in Phillips County;

- b. Michael Winters of Gallatin County; and
 - c. Alan Lloyd Skari of Liberty County.
20. The Secretary's knowledge of documents provided by the Secretary of State's office to Plaintiffs in this litigation.
 21. The Secretary's knowledge of any threats to election security or integrity in Montana.
 22. The Secretary's communications with elections officials about potential testimony at any public hearing related to SB 169, HB 530, or HB 176.
 23. The Secretary's knowledge of administrative rule making related to HB 176, SB 169, and/or HB 530.
 24. The bases for the Secretary's contention, on page 1 of Appellant's Rule 22(2) Motion to Stay filed with the Montana Supreme Court on April 27, 2022, that the stay entered in this case would "upend[] nearly a year of voter education, election administrator and poll volunteer training, and administrative rules that have been successfully applied in three elections over the past year."
 25. Communications between the Secretary or her predecessor in response to Senator Sue Malek's letter to Secretary Stapleton dated August 3, 2017 (see Attachment A).
 26. The Secretary's communications with her predecessors, any state or federal legislators, any Montana elections officials, the Montana Association of Counties, or any members of the media, regarding any allegations of voter fraud or election integrity.
 27. The Secretary's or her predecessor's public comments or statements regarding voter fraud or election integrity.
 28. The Secretary's communications with any Montana Republican official or officials, including but not limited to Governor Greg Gianforte, U.S. Senator Steve Daines, U.S. Representative Matt Rosendale, former Montana Attorney General Tim Fox, Montana

Representatives Bob Phalen, Paul Fielder, Steve Galloway, Jerry Schillinger, Brad Tschida, Montana Senator Theresa Manzella, the Ravalli County Republican Women, persons involved with the members of the Montana Election Integrity Project, Seth Keshel, Douglas Frank, David Clements, and Attorney General Austin Knudsen regarding the results of the 2020 presidential election.

29. The Secretary's knowledge of any election security symposiums, including any pre- or post-symposium events, held in Montana following the 2020 general election, including but not limited to a November 15, 2021, symposium held at the Richland County Extension Office and a similar symposium held in Ravalli County.
30. The Secretary's knowledge of requests made by Republican officials in Montana for the creation of a special legislative committee regarding the security of Montana's elections following the 2020 general election.
31. The Secretary's communications with any persons involved with or about the Montana Elections Integrity Project.
32. The Secretary's Proposed Rules related to Section 1 of 530.
33. The Secretary's April 6, 2022, public comments reflected in Attachment B, and the bases for the statements therein
34. The Secretary's comments reflected in Attachment C, and the bases for the statements therein.
35. The Secretary's public comment that "voting violations do not exist because voting crimes are not prosecuted," as reflected in Attachment D, and the basis for that comment.
36. The Secretary's efforts, if any, to comply with the preliminary injunction issued in this case.

CERTIFICATE OF SERVICE

I, Matthew P. Gordon, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

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Solicitor General
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Helena, MT 59624-0797

DATED: May 6, 2022

/s/ Matthew P. Gordon
Matthew P. Gordon

ATTACHMENT A



The Big Sky Country

SENATOR SUE MALEK SENATE DISTRICT 46

HELENA ADDRESS:
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HELENA MT 59620-0500
PHONE: (406) 444-4800

August 3, 2017

HOME ADDRESS:
1400 PRAIRIE WAY
MISSOULA, MT 59802
PHONE: 406-370-2424
EMAIL: suemalek@gmail.com

Montana Secretary of State Corey Stapleton
State Capitol Building
1301 E. 6th Avenue
Helena, MT 59601

Secretary Stapleton,

State Administration and Veterans Affairs Interim Committee (SAVA) members appreciated the introduction to your office provided at our opening meeting in July. Thank you for your presentation.

During our discussion with you, we spoke about your office's allegations of voter fraud in Montana. An Associated Press article that appeared the next day, cited you saying there were 360 cases of voter fraud in Montana.

To fulfill our oversight duties, the SAVA committee needs more information. As chair of the committee, I request that your office please work with SAVA staff person, Sheri Scurr, in Legislative Services and provide the following information for discussion at our September 14 meeting. Please also have a Secretary of State representative at the September 14 meeting to present the information and respond to any questions SAVA members may have.

County Name

Number of fraudulent votes your office cites in each county

Number of cases cited by rationale for the charge, such as, mismatched signatures, no signatures, or other issues, remembering that a charge of fraud must be proven legally with proof of intent

What legal actions have been taken by each county against any alleged fraud cases, i.e., report to the Election Canvassing Committee, reports to police and county attorneys and any follow-up by them.

Thank you for your attention to this critical matter. None of us condone voter fraud and all of us want to do all we can to ensure all Montanans who are eligible are encouraged to vote.

Sincerely,

A handwritten signature in cursive script that reads "Sue Malek".

Senator Sue Malek, Chair
State Administration and Veterans Affairs Interim Committee

Cc: SAVA Committee members, Sheri Scurr and Ginger Aldrich, Legislative Services

ATTACHMENT B

12:41

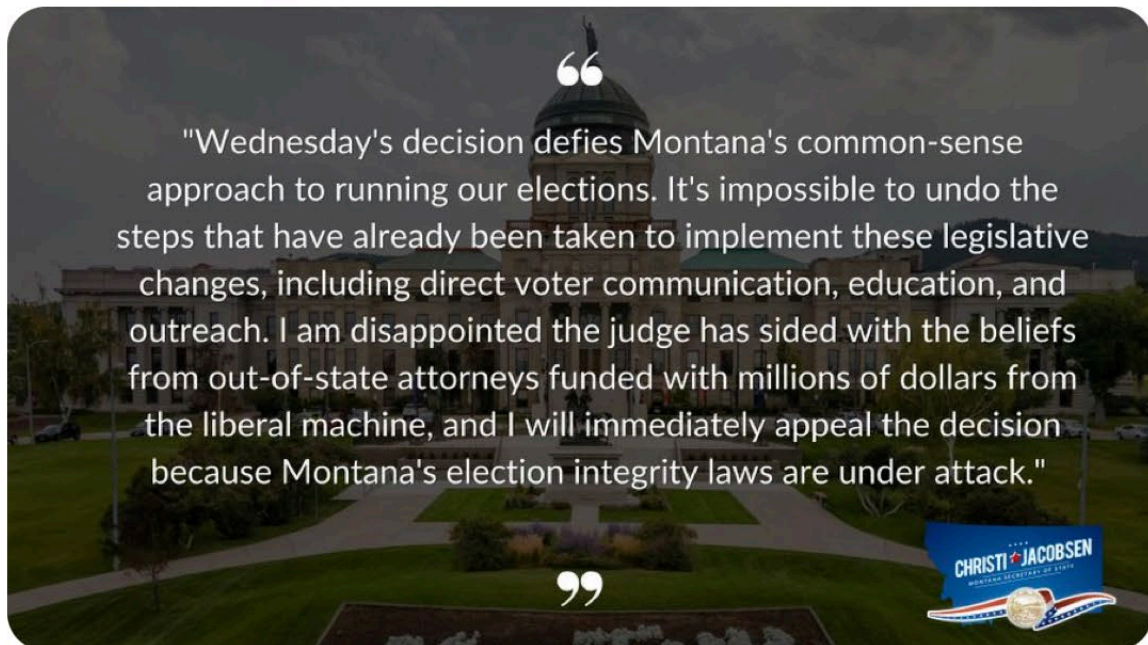


Tweet



Montana Secretary of State Christi...  
@SOSJacobsen

My full quote on Wednesday's decision.



7:13 PM · 4/6/22 · [Meltwater Social](#)

5 Retweets 10 Likes



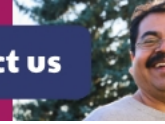
Exhibit A

ATTACHMENT C



Safe + Strong

COVID vaccine boosters protect us



HOME

ON AIR

LISTEN

APP

WIN STUFF

WEATHER

LISTEN |
Mark Levin

NEED TO KNOW

RADIO ON DEMAND

UNIVERSITY OF MONTANA

MISSOULA MARATHON

LOCAL CRIME

GET THE KGVO APP

HOW TO USE THE KGVO APP

WE'RE ALEXA

MISSOULA



56

MONTANA SECRETARY OF STATE PLANS TO FIGHT COURT'S ELECTION DECISION

Peter Christian | Published: April 11, 2022

Credit: State of Montana



SHARE ON FACEBOOK

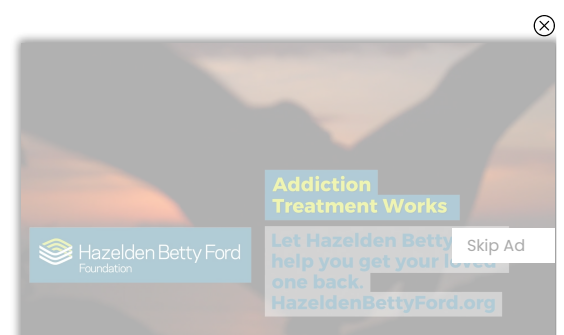


SHARE ON TWITTER

This week, Montana District Court Judge Michael Moses in Billings temporarily blocked several new election laws passed by the recent legislative session.

The Montana Democratic Party, tribal organizations and university groups argued the new laws were meant to make it more difficult for Native Americans, new voters, the elderly and those with disabilities to vote.

The laws that specifically eliminated same-day voter registration, disallowed college students to use their student ID's to register to vote, and halted the paid collection of voted ballots, commonly called 'ballot harvesting', were passed by the Republican controlled legislature.





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Responding on Friday, KGVO News learned that Montana Secretary of State Christi Jacobsen has vowed to fight the court's decision.

"We've seen record turnover in the jobs of election officials with numerous new election officials trained to run their first election in the coming weeks," began Jacobsen. "This decision destroys the training that they had just received over the past year to confidently run their upcoming local elections."

Jacobsen blamed big money political groups for attempting to overthrow the will of the Montana people who supported these new election laws.

"Montana's judicial system should not be able to be bought, paying millions of dollars to out of state lawyers to meddle with Montana elections is unacceptable," she said. "Montana's election system matters, and we will fight and do everything we can to provide relief to all the parties involved and impacted by this chaotic decision."

ADVERTISEMENT

KGVO has reached out to Attorney General Austin Knudsen on their plans to appeal Judge Moses' rulings.

NOTICE OF APPEAL

POPULAR DOWNTOWN MISSOULA BARS FOR SALE

See photos of the iconic Missoula bars The Badlander, Locals Only, The Golden Rose, and Three in the Side. The businesses were **listed for sale** with an asking price of \$3,200,000.

Gallery Credit: **KC**

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Amazon Alexa



22 Kirkland Products That Are Big Brands In Disguise

MoneyWise

Recommended



ATTACHMENT D



ELECTIONS

Election crimes alleged in Phillips County

The secretary of state's office announced two incidents of alleged election crime stemming from a November 2021 municipal election in Dodson, misstating multiple key details in the process.

by Alex Sakariassen

02.07.2022



Credit: Eliza Wiley / MTFP

Secretary of State Christi Jacobsen's office issued two separate press releases late last week, both containing inaccurate information about alleged election crimes in Phillips County, situated along the Hi-Line, during the 2021 municipal election there.

At 4:53 p.m. Friday, Jacobsen issued a press release announcing that two "non-
citizens" in Phillips County had been "convicted and sentenced to prison."

citizens in Phillips County had been arrested and pled guilty to charges involving election crimes” during last November’s election. On Saturday morning, Jacobsen’s office released a correction noting that the two individuals had in fact pleaded not guilty at an initial appearance in Phillips County Justice Court. Montana Free Press learned Monday morning in an interview with Phillips County Sheriff Jerry Lytle that the individuals referenced in the release had not been arrested, contrary to both announcements released by Jacobsen’s office.

According to Lytle, the suspects named in both releases were cited in early January for illegally registering to vote in the November 2021 municipal election in Dodson. Lytle said both are Filipino nationals who are in the United States on exchange visitor visas and thus not eligible to vote in U.S. elections.

That information was confirmed Monday in a press release from the Phillips County Attorney’s Office. The release, sent to MTFP by Deputy County Attorney Dan O’Brien, stated that Grace O. Albia and Jannet Benitez Zeta have been charged with deceptive election practices for allegedly falsifying their voter registration forms in October 2021 by declaring they were U.S. citizens. The release went on to state that several Dodson residents notified the Phillips County Clerk and Recorder’s Office of Albia and Zeta’s citizenship after the November election, and the two were informed in December that their voter eligibility had been challenged.

“Zeta and Albia have entered not guilty pleas,” the release concluded. “An attorney has not been appointed to represent them. A trial date will be set in the future. They are presumed innocent until proven guilty.”

The Phillips County press release stated as well that the clerk and recorder’s office cancelled Zeta and Albia’s voter registrations on Jan. 3, 2022.

Lytle told MTFP that his office was asked to investigate the allegation shortly after Phillips County Clerk and Recorder Lynnel LaBrie received the post-election complaints, and that the investigation determined the individuals had submitted voter registration forms despite being ineligible to vote. LaBrie declined to

comment on the situation, referring an inquiry to the Phillips County Attorney's Office. Lytle said the charges are misdemeanors, for which he believed the maximum penalty is "a fine of \$585 and/or six months in jail." He added that the two have not been detained.

"As far as I know, I think they're just free to do whatever," Lytle said.

In both its releases, Jacobsen's office claimed that the charges had been referred to Attorney General Austin Knudsen's office for prosecution. O'Brien informed MTFP via email Monday that, contrary to the secretary of state's release, the Phillips County Attorney's Office is prosecuting the case. Emilee Cantrell, a spokesperson for Knudsen's office, also confirmed via email Monday that "this is the county attorney's case."

Last week's releases also attributed the information about the alleged election crimes to the Phillips County Sheriff's Office. Lytle, however, told MTFP on Monday that he has not spoken to Jacobsen or her staff about the situation, but noted that her office left a message with his staff for him on Friday. In response to questions emailed by MTFP Monday about the allegations and the press releases' inaccuracies, Richie Melby, Jacobsen's communications director, wrote, "we published the information based on reports our office received from the Montana Attorney General's Office, and have updated the information based on reports we have received since."

Cantrell on Monday informed MTFP that Knudsen's office "has never provided any official reports regarding [the case] to the Secretary of State's Office," as the attorney general is not investigating or prosecuting it. She added that an unnamed Department of Justice employee did share "what they noted was unverified information with the secretary of state's office on Friday and recommended [the secretary of state's office] substantiate it with the local officials who were working the case."

Jacobsen's press releases specifically noted that last November's mayoral race in Dodson, where the alleged election crimes took place, was decided "by only two votes." Records obtained from LaBrie late Monday show that her office accepted and processed ballots submitted by Zeta and Albia in Dodson's November 2021

and prosecuted since submitted by both the Montana and local jurisdictions for a municipal election.

Jacobsen's first release included the following statement:

"Thank you to the Attorney General and all law enforcement involved for a job well done. This office is repeatedly reminded that voting violations do not exist because voting crimes are not prosecuted. As such, I will work to ensure that election law violations such as this are finally taken seriously and will continue to work to prevent them from happening in the first place."

The corrected release Saturday added to that statement: "Our office is going to make sure they are prosecuted for these election crimes."

Lytle said that in his 18 years with the Phillips County Sheriff's Office, this is the first case he's experienced involving alleged election crimes.

"This is kind of a new territory for us all, really," he said.

MTFP will update this story as more information becomes available.

This story was updated Feb. 7, 2021 to include additional information.

LATEST STORIES

'Come Home Montana' push collides with housing angst

The Department of Commerce has spent \$700,000 trying to encourage Montana college grads to return to the state as part of its "Come Home Montana" campaign. Some recipients interviewed by MTFP reported that the outreach sparked feelings of fondness for their former home, but others wondered where they would live amid Montana's surging popularity and...

by [Amanda Eggert](#) 05.06.2022

Railroaders quit after BNSF institutes 'draconian' attendance policy

Employees say working conditions at BNSF Railway have worsened following the introduction of a new attendance policy one labor representative calls “the worst and most egregious” ever adopted by a rail carrier. Hundreds have left their jobs as a result.

by [Justin Franz](#) 05.05.2022

Hyundai announces R&D investment at MSU

Hyundai Motor Group is investing \$20 million over the next five years to operate its latest research and development facility on the campus of Montana State University, company and state officials announced Thursday. The Research, Development and Lab Center is part of Hyundai’s New Horizons Studio aimed at developing what it calls Ultimate Mobility Vehicles,...

by [Frank Eltman](#) 05.05.2022



ALEX SAKARIASSEN

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Staff reporter Alex Sakariassen covers the education beat and the state Legislature for Montana Free Press. Alex spent the past decade writing long-form narrative stories that spotlight the people, the politics, and the wilds of Montana. A North Dakota native, he splits his free time between Missoula’s ski slopes and the quiet trout water of the Rocky Mountain Front. Contact Alex by email at asakariassen@montanafreepress.org.

More by Alex Sakariassen

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)	
)	
Plaintiffs,	)	Cause No. DV 21-0451
)	
Western Native Voice, Montana Native Vote,	)	Hon. Michael Moses
Blackfeet Nation, Confederated Salish and)	
Kootenai Tribes, Fort Belknap Indian)	
Community, and Northern Cheyenne Tribe,)	
	)	PLAINTIFFS' NOTICE OF RULE
Plaintiffs,	)	30(b)(6) M.R.Civ.P. DEPOSITION OF
	)	DEFENDANT MONTANA
	)	SECRETARY OF STATE
Montana Youth Action, Forward Montana)	
Foundation, and Montana Public Interest)	
Research Group,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CHRISTI JACOBSEN, in her official)	
capacity as Montana Secretary of State,)	
)	
Defendant.)	
)	

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30(b)(6), Plaintiffs Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe will take the deposition of the Montana Secretary of State at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be recorded via stenographic means and will be video recorded. The deposition will continue until completed.

Person to be examined: Montana Secretary of State

Date and time of deposition: May 26, 2022 at 8:00 a.m. until conclusion.

Place of deposition: Helena, MT, and by remote means via Zoom

Please inform Plaintiffs' counsel of the individual designated for each topic at least five (5) days before the deposition. Please produce to undersigned counsel the documents requested in Exhibit A no later than May 16, 2022.

Topics

Pursuant to Rule 30(b)(6) M.R.Civ.P., the Montana Secretary of State is required to designate one or more persons to testify on its behalf with respect to the following topics:

1. Knowledge of each and every document provided by Defendant to Plaintiffs and searches done to find such documents, including, but not limited to, each and every document, correspondence, report, manual, policy, memoranda, notes, logs, email or text message referring to HB 530 and/or HB 176.
2. Knowledge of the facts provided by the Secretary's office (either through publicly available material or non-public material given directly to the experts) that underpin Defendant's expert reports.
3. The Secretary's role in and knowledge of the administration of Montana elections, including the Secretary's role in and knowledge of maintaining uniformity in the application, operation, and interpretation of the election laws, enforcing election-related deadlines, and certifying election results.
4. Knowledge of the Secretary's evaluation(s), stud(ies), opinions and discussions with state legislators, officers, elections administrators, boards or commissions and the public regarding HB 530, HB 406, and HB 176.
5. Knowledge of Montana's election system and how HB 530 and HB 176 will operate within it.

6. Knowledge of the geography of Montana especially as it pertains to election administration, including locations of Indian Reservations and general understanding of the distances to election offices.
7. Knowledge of the history and availability of satellite voting locations in Montana.
8. Knowledge of Defendant's statements, assertions, or positions related in any way to whether the 2020 Presidential Election was "stolen," "rigged," or fraudulent.
9. Knowledge of any evidence of voter fraud, voter intimidation or pressure, corruption, or the improper influence of money in any of Montana's elections.
10. Knowledge of any evidence of declining voter confidence.
11. Knowledge of Defendant's discovery responses in this case and documents produced by Defendant in connection with the same.
12. Knowledge of the Secretary of State's rulemaking process as required by HB 530.
13. Knowledge of policies, procedures, practices, and orders and directives related to the definition of "pecuniary benefit" pursuant to HB 530.
14. Knowledge of whether, if an individual "request[s]," "distribut[es]," "collect[s]," *and* deliver[s]" a single ballot for pecuniary gain, that individual would be subject to multiple fines or just one.
15. Knowledge of policies, procedures, practices and orders and directives related to the definition of "governmental entity" pursuant to HB 530.
16. Knowledge of any fraudulent or otherwise illegal conduct relative to the collection of absentee ballots.
17. Knowledge of policies, procedures, and practices, and orders and directives to elections administrators and/or county attorneys regarding administration and/or enforcement of

HB 530.

18. Knowledge of specific interests proffered by the State to support HB 530, including, but not limited to, allegations of fraud, election integrity, election purity, ulterior motives of ballot collectors, vote buying schemes, and declining voter confidence.
19. Knowledge of the legislative process, including, but not limited to, legislative testimony, surrounding the adoption of HB 530.
20. Knowledge of Montana voters' use of ballot collection to cast ballots
21. Knowledge of evaluations and criticism of HB 530 and its ability to meet the interests proffered by the State.
22. Knowledge of Native American voters' use of ballot collection to cast ballots in Montana.
23. Knowledge of litigation surrounding the Ballot Interference Prevention Act (*Western Native Voice et al. v. Stapleton*, No. DV 20-0377 (Mont. Dist. Ct. Sept. 25, 2020); *Driscoll v. Stapleton*, 2020 MT 247).
24. Knowledge of any fraudulent or otherwise illegal conduct relative to Election Day Registration.
25. Knowledge of policies, procedures, practices, and orders and/or directives to elections administrators and/or county attorneys regarding administration and/or enforcement of HB 176.
26. Knowledge of the administration of Election Day Registration throughout the State, including in smaller and larger counties
27. Knowledge of voter use of Election Day Registration to cast ballots, and the particular use of Election Day Registration by various categories of voters, including but not limited

to Native voters, young voters, college student voters, voters with disabilities.

28. Knowledge of the history of Election Day Registration, including its adoption and the later referendum about whether Montana should keep Election Day Registration.

29. Knowledge of specific interests proffered by the State to support HB 176, including, but not limited to, allegations of fraud, election integrity, reliability, fairness election day administration, including burdens on staff, delays, long lines, and declining voter confidence.

30. Knowledge of the legislative process, including, but not limited to, legislative testimony, surrounding the adoption of HB 176.

31. Knowledge of the use of Election Day Registration by Native American voters in Montana.

32. Knowledge of evaluations and criticism of HB 176 and its ability to meet the interests proffered by the State.

33. Knowledge of the new election management IT system and the extent to which the system is impacted by HB 176 and HB 530.

34. Knowledge of advertising and education conducted to inform the public about the operation of HB 176 and HB 530.

35. Knowledge of the steps taken by the Secretary of State to implement HB 176 and HB 530, including but not limited to direction provided to county elections officials.

DATED THIS 4th day of May, 2022.

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Attorneys for Western Native Voice Plaintiffs

EXHIBIT A

In compliance with Mont. R. Civ. P. 26(b) and 30, please produce by electronic mail to Plaintiffs' counsel, the following documents or tangible things by May 16, 2022:

1. All documents reviewed by you in preparation for this deposition.
2. All documents concerning the Secretary's training of Election Administrators related to:
 - a. Processes for ensuring voters are not unable to vote because of administrative errors, as discussed in paragraph 13 of the declaration of Austin James dated February 16, 2021¹ [hereinafter, "James Declaration"];
 - b. The "process" referenced in paragraphs 14-15 of the James Declaration;
 - c. The implementation of HB 176 or HB 530;
 - d. The Montana Election Judge Handbook, and any documents reflecting changes made to the Election Judge Handbook as a result of the passage of HB 176 or HB530.
3. All documents reflecting any facts or data considered in forming the assertions in the James Declaration.
4. All materials and documents relied upon in formulating the assertions expressed in the James Declaration.
5. All documents and communications reflecting the Secretary's work to implement HB 176 and Section 2 of HB 530.
6. All documents and communications to or from election officials regarding changes made to the Election Judge Handbook as a result of the passage of HB 176 or HB 530.
7. Any materials, correspondence and emails related to communications with Montana election administrators that have communicated their concerns regarding the state of Montana election law, including the practical problems, if any, with election-day registration, long lines at polling places, ballot collection, absentee ballots, voter ID, or voter fraud.
8. All trainings, correspondence, emails, manuals, guides or other documents prepared by your office for election administrators regarding election-day registration, long lines at polling places, or ballot collection.

¹ The Declaration of Austin James is dated February 16, 2021, but it was submitted February 16, 2022.

9. Any materials, correspondence and emails related to communications with constituents or Montana citizens that have communicated their concerns regarding the state of Montana election law, including those regarding election-day registration, long lines at polling places, ballot collection, absentee ballots, voter ID, or voter fraud.
10. All documents or communications regarding your deliberation regarding HB 176, HB 530, HB 506, and SB 169.
11. Any materials, documents, or reports prepared by the legislature in your possession regarding voter fraud in Montana elections.
12. All documents and communications regarding the *Declaration of Impediment* form and the Secretary's communication with county election officials regarding the same.
13. All documents and communications, including those with county officials and members of the Legislature, regarding the implementation of HB 176 and HB 530.
14. All documents or communications regarding the Secretary's outreach efforts to voters—including but not limited to public service announcements, radio ads, television ads, website content—regarding changes to election laws following the passage of HB 176 or HB 530.
15. All documents or communications related to voter confusion.
16. All documents or communications related to voter confidence in Montana.

CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

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DATED: May 4, 2022

/s/ Alex Rate
Alex Rate

EXHIBIT B

1 UNCERTIFIED ROUGH DRAFT TRANSCRIPT NOTICE

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3 understand that if we choose to use the rough draft
4 printout, that we are doing so with the understanding that
5 the rough draft is an uncertified copy. This unedited
6 transcript contains no appearance page, certificate page,
7 index, or certification.

8 We agree not to share, give, copy, scan, fax, or in
9 any way distribute this rough draft in any form, written or
10 computerized, to any party. However, our own experts,
11 co-counsel, and staff may have limited internal use to same
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13 draft and/or any computerized form, if any, and replace it
14 with the final transcript upon its completion.

15 We further understand that the uncertified rough draft
16 transcript may contain untranslated steno, reporter's notes
17 in parentheses, misspelled proper names, incorrect or
18 missing Q/A symbols or punctuation, and/or nonsensical
19 English word combinations. All such entries will be
20 corrected on the final certified transcript.

21 The certified transcript is the only official
22 transcript which may be relied upon for the purposes of
23 verbatim citation of testimony.
24
25

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<p>1 The following proceedings were had and testimony 2 3 taken: 4 * * * * * 5 6 7 THE VIDEOGRAPHER: This is 30(b)(6) deposition of 8 the defendant, Montana Secretary of State, taken by the 9 plaintiff in the matter of Montana Democratic Party and 10 Bohn, et al, v. Jacobsen in the Montana Thirteenth Judicial 11 District Court Yellowstone County. The Cause Number 12 DV-21-0451. The witness's name is Austin James. The 13 deposition is being held at the offices of Crowley Fleck, 14 PLLP, 900 North Last Chance Gulch, Helena, Montana. 15 Today's date is May 26, 2022. The time is 9:02. 16 My name is John Murphy, videographer for Digital 17 Evidence Group. The court reporter's name is Holly Fox in 18 association with Digital Evidence Group. 19 Counsel will now introduce themselves, and the court 20 reporter will swear in the witness. 21 MS. LEE: Theresa Lee for the Western Native Voice 22 plaintiffs. 23 MR. RATE: Alex Rate for the Western Native Voice 24 plaintiffs. 25 MS. SOMMERS-FLANAGAN: Rylee Sommers-Flanagan for</p>	<p>1 Q. Sure. But in terms of giving verbal answers, 2 trying not to speak over each, other do you understand that 3 all those sorts of logistical ground rules apply today? 4 A. I'll do my best to go slow for you and to not to 5 talk over anyone. Yeah. 6 Q. Okay. Perfect. And as as reminder, if you do not 7 understand a question or any part of it, please say so, and 8 I'll be happy to rephrase. If you answer my question, I'll 9 take that to mean that you understood it. 10 Can you agree with that? 11 A. I'll do my best. 12 Q. Great. Is there any reason that you could not 13 testify truthfully and completely today? 14 A. I don't think so. 15 Q. Do you understand that you're testifying today as 16 the corporate representative on behalf of the Office of the 17 Secretary of State? 18 A. I do. 19 Q. Okay. And you understand that you're giving 20 binding answers on the Secretary's office? 21 MR. MCINTOSH: Objection; misstates the legal 22 standard. 23 THE DEPONENT: I understand that I'm doing the 24 30(b)(6) for the Secretary of State. 25 Q. (By Ms. Lee) And do you understand that you're</p>
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<p>1 the youth plaintiffs Montana Youth Action, et al. 2 MR. GORDON: Matthew Gordon for Montana Democratic 3 Party and Mitch Bohn. 4 MR. MCINTOSH: Ian McIntosh and Mac Morris for the 5 defense. 6 7 AUSTIN JAMES, 8 having been first duly sworn by the Court Reporter, was 9 examined and testified as follows: 10 11 EXAMINATION 12 BY MS. LEE: 13 Q. Good morning, Mr. James. Good to see you again. 14 A. Good morning. 15 Q. Been not too long. And as I think you know and I 16 just said, my name is Theresa Lee, and I'm counsel to 17 plaintiffs in the Western Native Voice case. 18 You've been deposed recently; is that right 19 A. Right. 20 Q. Okay. And do you understand that all the same 21 ground rules for a deposition that you went over in your 22 last deposition apply today as well? 23 A. I know that I did it individually, and now I'm 24 doing a 30(b)(6). But I think there's probably some 25 similarities between most of the rules.</p>	<p>1 answering not only on behalf of yourself, but on behalf of 2 the Secretary's office? 3 A. I think I answered on behalf of myself on Monday 4 and Tuesday, and then today I'm answering on behalf of the 5 larger office. 6 Q. Okay. I've marked the following document as 7 Exhibit SOS 1 and handing it to the witness? 8 A. Okay. 9 (Exhibit 1 marked for identification.) 10 Q. (By Ms. Lee) Have you seen this document before? 11 A. It's stapled kind of funny. 12 Q. The -- the two-sided flipped on the short edge 13 instead of the long edge. 14 A. Okay. Let's see. Oh. Yeah. Yeah. I've seen 15 this. I think there was several iterations of it; right? 16 Is this the amended one? Amended -- yeah, I believe -- I 17 mean, I remember -- I've definitely looked at the -- the 18 notice to go through the topics, so... 19 Q. Okay. Great. 20 A. As long as this is the most recent one. 21 Q. It is. And I'll represent that this is the most 22 recent -- and actually, I think, only, as far as Western 23 Native Voice plaintiffs go -- notice of deposition for the 24 30(b)(6) deposition. 25 A. Ah, yes. And I looked at the 30(b)(6) topics for</p>

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1 today. I know that there was a couple different send-ins
2 and we've had a couple different dates, but -- for the --
3 for the plaintiffs that are going to be asking for the
4 30(b)(6) today during the seven hours. I looked at all the
5 topics combined.
6 Q. Okay. And so looking at Page 2, that's the
7 list -- that's the beginning of the list of topics that you
8 reviewed; is that right?
9 A. I don't know. Well, I mean, I think I looked at
10 this one second, so kind of continuation, and it looked
11 like they were mostly the same, with a few extra or
12 different ones. But, yeah, I've seen Number One.
13 Q. What steps did you take to gather the information
14 necessary to testify on these topics?
15 MR. MCINTOSH: And hold on. For the record, I
16 just want to make sure we're -- have the standing
17 objection --
18 MS. LEE: Oh, I'm -- I have it written down and
19 totally forgot to do it. Let me put the entire -- I
20 apologize, Ian.
21 Earlier this week plaintiffs in the three consolidated
22 cases and defendant came to stipulation that there's -- the
23 defendant has a standing privilege objection throughout the
24 deposition, so it is not waived if the defendant's counsel
25 doesn't specifically make an objection.

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1 Also, as part of that stipulation, the witness will
2 identify when he is withholding on the basis of privilege
3 in one of his answers, and the plaintiffs will have the
4 ability to then question as to the grounds of the assertion
5 of privilege.
6 MR. MCINTOSH: Thank you.
7 Q. (By Ms. Lee) I'll restate the question, obviously.
8 Apologies for that, all.
9 What states -- steps did you take to gather the
10 information necessary to testify on the topics in Exhibit
11 SOS 1?
12 A. Well, hopefully I can remember all of them with
13 this answer, but, I mean, this was a huge -- there was a
14 topic list, so I had to carve out several days. I spoke
15 with a lot of different individuals, and we went through a
16 lot of files. I probably looked at thousands of pages -- I
17 guess I should say hundreds, maybe thousands of -- that
18 have been in this case. I tried to look and pull boxes
19 over at the historical society. Read the different
20 pleadings.
21 I -- I had to make lots of personal things. I had
22 a surgery originally scheduled on -- I think it was the
23 second time that the 30(b)(6) was scheduled, and I had to
24 move that around. And then also we had some -- were
25 supposed to go to -- on a -- on a -- to a funeral in

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1 Michigan this weekend, so we had to move that around.
2 There's obviously a lot of of things outside of just
3 logistically carving time. We're really, really busy right
4 now. And so -- and I wanted to make sure that I was
5 prepared for this one, so I carved a lot of hours and spent
6 a lot of time, and I think that's probably evident based on
7 our discussion on Monday and Tuesday.
8 Q. Okay. Great. And so you said that you spoke to a
9 lot of individuals to gather the information necessary.
10 Who were the individuals that you spoke with?
11 A. I spoke with Dan Corson, Stewart Fuller, Julie
12 Lake multiple times, even to get information that I didn't
13 know from the last deposition. I spoke to Christi Jacobsen
14 I spoke to Angela Nunn. I spoke with -- let's see. Who
15 else. Connor. I spoke to Missy. I had to reach out to
16 Lisa, who now works at Delta, which means that the schedule
17 to try to speak to a Delta worker is actually fairly
18 difficulty because she no longer works at the Secretary of
19 State and she's on a plane most of the time. Let's see.
20 Who else did I speak to. Well, I asked a question to
21 Senator Cuffe yesterday. Let's see. There's probably
22 more, but, I mean, I went through the topic list and tried
23 to find out as much information as I could for as many
24 relevant parties as I could to prepare the best I could.
25 Q. Great. When you said Connor, is that Connor

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1 Gagnon [CHECK THAT]?
2 A. I think that's his last name. Yes.
3 Q. Okay. And when you said Missy, is that Missy or
4 Melissa McLarnon*?
5 A. I should have specified. Yeah, her first name is
6 Melissa, but she goes by Missy. Yeah.
7 Q. And McLarnon is the last name?
8 A. I believe so, yeah.
9 Q. Okay. And what's Lisa's last name, if you know?
10 A. Schlosser*.
11 Q. And then you also referenced that you looked at
12 documents in preparation. Setting aside the pleadings,
13 since you said those differently, and I understand what you
14 mean by those, what documents were you reviewing to gather
15 the information necessary?
16 A. Well, I mean, I think there's, like, what,
17 75 topics, and some of them have, like, you know, nine or
18 10 subparts, so I don't know that I have a full list of
19 everything. But I -- I went over to the historical society
20 to try to find stuff. I went through my, you know, legal
21 files and the office files. I -- I was able to find a
22 couple of, you know, historical books at the law library
23 and at the historical society to try to find information
24 there. I looked at the Laws site to try to, you know,
25 recall various things about the legislature. I looked at

1 transcripts. I mean, it was kind of the course of, like, a
2 month of trying to carve as much time as I could for the
3 multiple times that it was scheduled. So...
4 Q. And when you refer to transcripts, are you
5 referring to deposition transcripts from these consolidated
6 cases?
7 A. Yeah. Yeah.
8 Q. And are you prepared to answer plaintiff's
9 questions on the topics in Exhibit SOS 1 today?
10 A. I hope so.
11 Q. Great. Okay. You can set that one to the side
12 now.
13 How much time did you spend in total preparing for
14 this deposition?
15 A. Oh my gosh. You know, honestly, I bet a full
16 paycheck of state resources went towards preparing for this
17 deposition. A lot. A lot. And as -- and, you know, all
18 the way up to this morning trying to find more information
19 for things I didn't know. I -- I couldn't even -- I don't
20 even know how to guess that.
21 Q. And did you have any meetings with defendant's
22 counsel in preparation for today's deposition?
23 A. Oh yeah.
24 Q. Okay. More than one meeting?
25 A. We met over Zoom and then we had an in-person,

1 maybe -- maybe two. But yeah.
2 Q. Okay. And as to the -- to the Zoom meeting, who
3 was on that call?
4 A. Well, that one would have been, let's see,
5 Mr. McIntosh, Mr. Morris, and Len.
6 Q. And how long was that -- that Zoom meeting?
7 A. That one would have been -- it felt too short for
8 me, because obviously this is going to be a long
9 deposition, there's a lot of topics, but it was, I don't
10 know, an hour or so. Hour and a half or so.
11 Q. And then you also mentioned --
12 A. Could have been more than that. We had lunch,
13 so -- yeah. During the day.
14 Q. And then you had also mentioned that you had had
15 an in-person meeting in preparation for today's deposition
16 with counsel.
17 Who attended that in-person meeting?
18 A. Well, that one would have been Mr. -- Dale
19 Shwiniger [sic, phonetic] and Mr. Morris. And I believe
20 Len joined us virtually. There was another one too, but I
21 can't -- but at that for sure I remember those two
22 individuals in room. Yeah.
23 Q. Okay. And when you said there was another one
24 too, were you referring to another person being present or
25 that -- to a different in-person meeting as well?

1 A. Well, a different in-person meeting. And I think
2 that would have been the same individuals.
3 Q. Okay. And as for the first in-person meeting, how
4 long was that meeting?
5 A. The first one -- well, the first one would have
6 been, I don't know, four, five hours. Something like that.
7 Q. Okay. And as to the second in-person meeting you
8 just testified to, how long was that?
9 A. Well, I think that was the one that we were just
10 talking about that I said we had lunch, so four -- three,
11 four hours. Something like that. Tough for me to remember
12 all the different times because, like I said, we're really
13 busy right now and I'm trying to carve out each slot I can.
14 Q. In your role at the Secretary's office, who do you
15 report to?
16 A. I think technically I would report to Secretary
17 Jacobsen currently.
18 Q. Okay. What individuals work in the election
19 division in the office?
20 A. Well, that would include Mr. Corson, Mr. Fuller,
21 Mr. Gagnon [CHECK THAT], Mr. Carpenter, and Mrs. Ames*.
22 And then it's -- there's Ray. I forget his name. Foley.
23 He's records mainly, but, like, especially right now where
24 there's so much, you know, loop over, then sometimes we
25 have to backfill, so there would be, like, helping answer

1 the phone or even just try to do the pleasantries of
2 keeping people on hold for the next person. And then, of
3 course, like, on election day or whatnot, we'll have --
4 we'll have, like, business services staff, and the same
5 thing. It's just, like, they're experienced in customer
6 service, and so to try to facilitate the amount of demands,
7 we will -- you know, it's a backfill-type thing. So it's
8 not like they're election specialists, but they work in
9 some way related to elections.
10 Q. Okay. And is Ray's last name Dagnall*?
11 A. You know, that's -- that's it. Yeah. Yeah.
12 Q. Did you speak with Mr. Carpenter in preparing to
13 testify on behalf of the Secretary's office?
14 A. I don't know if I spoke with Mark about the --
15 about any of the topics here. He wouldn't really have a
16 role, I don't think, on the topics. He's supervised by
17 Stewart, so he kind of encompasses a lot of things. And
18 he's also on the phone most of the time.
19 Q. And did you speak with Ms. Ames in preparation for
20 today's deposition?
21 A. She's -- she's really been the key organizer of
22 ballot issues, and we -- we have, like -- I think it's
23 probably a record number of ballot issues. And so she --
24 I've spoke with her on those issues. But -- but I don't
25 think there would have been any topics. I definitely speak

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1 to her to keep in contact as to what position we're at with
2 various issues so that I know when my duties related to
3 those processes are upcoming. It could have been, but --
4 but I -- if we're talking and a conversation comes to mind,
5 then I'll say it. But sitting here right now, I -- it's
6 not -- I don't think of anything where a topic actually
7 made me go say, well, Gabs is only one that can help me
8 understand this -- this topic.
9 Q. Okay. Great. What are the responsibilities of
10 the Secretary of State with respect to elections?
11 A. It's -- it's broad, but, I mean, Title 13. The --
12 we're the statewide election office. We -- we oversee
13 helping counties manage through those processes. We -- we,
14 you know, have candidate filing and we go through the
15 petition process for a variety of different things. Try to
16 help answer constituent questions. We try to help, you
17 know, implement statutes and -- let's see. We facilitate
18 trainings. We make training material. We correspond a
19 lot.
20 Stewart Fuller one time said something that
21 honestly sums it up pretty well. He said he's in the job
22 of mental gymnastics. And I think that sometimes an
23 election specialist in Montana is definitely -- involves a
24 lot of mental gymnastics.
25 Q. And is the Secretary of State the chief elections

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1 officer of the state?
2 A. Yeah. So in the statute in the beginning of
3 Title 13 it refers to the chief election officer. Yeah.
4 Q. How does the Secretary communicate at work?
5 A. The Secretary -- like the Secretary's office?
6 Q. Secretary Jacobsen.
7 A. I mean, I guess it depends on what she's
8 communicating. I -- a lot of time in person, as she's a
9 very -- we do personality tests, and she's definitely the
10 type that likes the meetings. I'm one of those types that
11 likes the meeting, but likes to go away and be by myself
12 and think and then come back. And she's, like, one that
13 likes to think through. We definitely are different in
14 that regard.
15 Let's see. There's been times where she's sent
16 letters out, I suppose, but, you know, most of those are,
17 like, land board-type things. I'm trying to think of other
18 types of communication. I mean, she's one of the members
19 of the team, and we all kind of have our duties, and most
20 of the time, you know, she -- she does a lot of traveling
21 and things like that, so...
22 Q. Does she often email regarding work?
23 A. Not really. I mean, she's on the chain, so she's
24 trying to monitor everyone else that's doing it. But,
25 like, it's not -- you know, she's the elected official, so,

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1 like, there's -- we're trying to work, you know, and carry
2 out the duties. And she's trying to keep track of
3 everything that's going on more so, so...
4 Q. Of the individuals you identified earlier who work
5 in the elections division, do any of them use text messages
6 to communicate for work?
7 A. No, we don't text for work. And, I mean, very
8 specifically.
9 Q. And of the individuals you identified who work in
10 the elections division, do any of them use any other
11 messaging platform to communicate for work?
12 A. I mean, I -- I know that -- that they -- that they
13 have, like, a ticket system sometimes for, like -- but --
14 and I guess they individually may have different --
15 different methods, just based on what's -- what type of
16 personality they are or what works for them. I definitely
17 know they -- you know, we send emails, and that's why we've
18 produced those. The SOS elections portion, usually they're
19 always cc'ed, the SOS elections, and they -- they send out
20 and receive out from SOS elections. They have their
21 morning meetings. That's when they -- we really coordinate
22 everything. Let's see. I think that's the -- to the best
23 I can answer that.
24 Q. And of the individuals you identified who work in
25 the elections division, do any of them use their personal

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1 email addresses to communicate for work?
2 A. They better not. No, we -- you know, it's
3 required to use our work, and very important to do so.
4 Q. Are you familiar with the requests for production
5 propounded by the plaintiffs?
6 A. I --
7 MR. MCINTOSH: Objection; vague. Did you mean
8 multiple? You said one.
9 MS. LEE: Sorry.
10 MR. MCINTOSH: You said the request for
11 production.
12 MS. LEE: I said the requests, plural.
13 MR. MCINTOSH: Oh, I didn't hear the "s."
14 THE DEPONENT: I heard "the" too, and so I was,
15 like, man, it seems like there's been a lot.
16 I know that -- I'm familiar with spending a lot of
17 time gathering a lot of documents for a lot of broad
18 categories, so to that extent.
19 Q. (By Ms. Lee) And did you assist in responding to
20 the requests for protection?
21 A. Yeah. I'm sure.
22 Q. How did the office identify whose files to search
23 to respond to the requests for production?
24 A. Well, I mean, we -- the files are on, like, a
25 share drive. So to the -- I mean, we were able to search

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<p>1 that. I'll tell you, I'm pretty sure that you could go 2 onto AOL on Window 95 and let dial up internet connect and 3 then disconnect and then do that process again before a 4 search file result is finished. The good old server, it 5 takes so long. I guess some of that has to do with -- 6 because of critical state infrastructure, you know, 7 cloud-based technologies and other highly -- things that 8 would help for searching those types of document, they've 9 been guarded against for, you know, security concerns, 10 which I know is a debate in itself amongst people in an 11 industry that I'm not in.</p> <p>12 But spent a ton of time on those shared files. We 13 only have the things that we have in the office there. And 14 then, let's see, we went through each -- so many emails, 15 which I'm sure you've seen. Let's see.</p> <p>16 Is -- the question was everything we did to look 17 for all of them?</p> <p>18 Q. No, it was how did the office identify whose files 19 to search?</p> <p>20 A. Oh, I mean, we -- the request was from the 21 Secretary, so we looked at the Secretary's files that we 22 had available.</p> <p>23 Q. And was the Secretary's own email account searched 24 in response to the request for production?</p> <p>25 A. Yeah, I mean, the emails are in -- like, they're</p>	<p>1 voter turnout?</p> <p>2 A. I mean, like I said, our job is to do the best we 3 can with elections. Voter turnout is a part of elections.</p> <p>4 Q. Has the office taken any steps to increase turnout 5 specifically among Native Americans?</p> <p>6 A. Well, sure. I mean, like I said, I think that 7 we're trying to increase turnout for all Montanans. 8 Working the best we can with a servant's heart to 9 administer elections the best we can for the state of 10 Montana.</p> <p>11 Q. Okay. And so in addition to work done to increase 12 turnout for all Montanans, has the office taken any steps 13 specifically aimed at increasing turnout among Native 14 American voters?</p> <p>15 A. Well, I mean, so it seems like a vague -- a vague 16 question, but as we -- we went through this topic on -- 17 man, when was that? Tuesday? Where I provided some 18 examples, and one of those examples was the -- was the -- 19 we're looking at re-upping a half-million dollar contract 20 to increase the addressing system to where even 21 non-conventional addresses have mail delivery through USPS. 22 When -- and if you talk to Dulcey* Bear Don't Walk, it's 23 made --</p> <p>24 (Court reporter clarification.)</p> <p>25 THE DEPONENT: It's made a huge stride. And I</p>
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<p>1 all copied into the share file. So, like, we looked 2 through it, and I think you can see that in the production 3 where there's emails that are included.</p> <p>4 Q. Were cell phone messages searched in response to 5 the requests for production?</p> <p>6 A. We don't have cell phones for work. I know that 7 some agencies do. Maybe we will at some point, but...</p> <p>8 Q. What are the Secretary of State's goals related to 9 elections in Montana?</p> <p>10 A. Well, I mean to do our jobs the best that we can 11 with a servant's heart.</p> <p>12 Q. Is it a goal of the office of the Secretary of 13 State to promote democracy?</p> <p>14 MR. MCINTOSH: Objection; vague.</p> <p>15 THE DEPONENT: Yeah, I mean, I don't know that -- 16 that -- that we have some type of general thing like that. 17 I know that at one point the Secretary's office in the past 18 had, like, a mission that included those terms from a -- 19 from a previous Secretary's, like, experience in the Navy, 20 it was important to have these, you know, tag lines. But, 21 I mean, elections are -- pertain to democracy, and our job 22 is to fulfill our statutory duties with elections, so I 23 guess to the extent of that, you know, vague question, I 24 provide a vague answer.</p> <p>25 Q. (By Ms. Lee) Does the office work to increase</p>	<p>1 think that we've improved -- improved turnout through the 2 voter ID improvements for tribal identification. I mean, 3 if you look the testimony in this case by Western Native 4 Voice from Keenan Sun Child* or listen to his speech at -- 5 for the League of Women Voters at the Helena library where 6 he discusses tribal identification and the importance of 7 that, I think there's another example. I mean, there's 8 probably more examples, but there's no doubt the answer to 9 your question is yeah.</p> <p>10 (Exhibit SOS 2 marked for identification.)</p> <p>11 Q. (By Ms. Lee) And I'm handing you what's been 12 marked as SOS Exhibit 2.</p> <p>13 A. Okay.</p> <p>14 Q. It's another where the -- the two-sided went a 15 little weird. So there'll only be a couple of these where 16 the stapling takes you in this direction.</p> <p>17 A. Okay.</p> <p>18 Q. This document was produced by the Secretary, and 19 from the first page it appears to be an email from the U.S. 20 Commission on Civil Right regarding a first draft 21 of Montana -- Montana Advisory Committee's Native American 22 voting rights memo seeking feedback from the recipients of 23 the email in track changes.</p> <p>24 Is that fair to say, obviously after you have a 25 chance to take a look at it?</p>

<p>Page 24</p> <p>1 A. Yeah. I mean, let me look through it, and then 2 you might have to repeat your question there. 3 (Reviews document.) 4 Looks like there's some findings, and it's a 5 draft -- I mean, what was your question? 6 Q. Oh, so just as to the -- to the cover email -- 7 A. Uh-huh. 8 Q. -- is this an email sharing a draft of the -- the 9 Native American voting rights memo, and it's seeking 10 feedback from the recipients of the email in track changes? 11 Is that fair to say? 12 A. Well, I see that it says in the first sentence: 13 This is a first draft of the advisory memo 14 authored by the Montana Advisory Committee with compiles 15 testimony and outlines findings and recommendations. 16 And I see a page here at the back that says, like, 17 testimony from, let's see, Jacqueline De Leon*, Shane 18 Morigeau, Keith Sun Child, Alex Rate. And so I guess it 19 looks like a draft from the advisory committee. 20 That was your question? It looks like that -- I 21 see draft, I see the sentence. 22 Q. Okay. And so the third sentence down says: 23 Please review the attached draft and return with 24 track changes and/or direct edits/comments to me by Tuesday 25 May 18, 2021.</p>	<p>Page 26</p> <p>1 answers your question pretty well. 2 Q. Okay. And you can put that exhibit aside. 3 Is any specific person in the office responsible 4 for the Secretary's working relationship with tribes and 5 tribal members as it relates to accessibility in voting? 6 A. I don't know that the -- that we have a statutory 7 position of such, you know, definition. I know that we 8 have election specialists that serve Montanans in 9 elections. I know that, you know, the governor's office 10 has a position dedicated to that, and the Department of 11 Justice has a position that is specific. But that's -- you 12 know, we -- we serve all Montanans. 13 Q. Is voter turnout in Native American communities 14 lower than the state average? 15 A. I think it depends on which election and which 16 precinct. And there's times where it is and times where 17 it's not. 18 Q. What constitutes a successful statewide election 19 in the view of the Secretary's office? 20 A. I think there's a lot of factors. You know, I 21 think when there's a lot of people that have participated, 22 I think when people are showing up and having a valuable 23 experience, when there's people that aren't -- have the 24 least amount of frustrations, when there's not problems or 25 the election doesn't have a carry over days, seems to</p>
<p>Page 25</p> <p>1 Do you see that? 2 A. COB. Yeah, I see -- I see that sentence. 3 Q. Okay. Great. So did anyone in your office 4 contribute any track changes, edits, or comments to this 5 draft memo? 6 A. I mean, we probably would have produced it if we 7 did, I would imagine. Maybe it was not something that was 8 was able to be found. As you probably know, the production 9 requests were extremely broad and highly voluminous, so 10 we -- we tried to find as much stuff as we could to 11 produce. I'm sure that -- I mean, just looking at the 12 terms in here, it would make sense as to why it would be 13 something that was, you know, dumped in that type of 14 folder. 15 I also see here that it's May 10, 2021, and, as 16 we've discussed, at that time the legislature had ended. 17 We were implementing a lot of laws. We were doing a ton of 18 work. We had laws that were effective immediately. And 19 this would have been right after, you know, first type of 20 elections and going into the second type of wave of 21 elections where we had a lot of questions. It looks like 22 we did participate in the panel. I see Dana back here, so 23 this is a draft summary some of the testimony. Whether or 24 not we had specific changes or instructions to help the 25 group out, I don't know specifically. But I think that</p>	<p>Page 27</p> <p>1 be smooth. I mean, obviously, for me, if I can get home 2 before 3:00 in the morning that's a -- that's a good 3 success. For when the county and state workers are -- feel 4 very proud of themselves. When -- when the -- when the 5 volunteers feel well-trained. When there's -- there's a 6 lot of factors. I think that would be probably -- that 7 would be some of them, definitely not all of them. But at 8 the end of the day, where the people of Montana are proud. 9 Q. Okay. And you said that that's definitely not all 10 the factors. Just sitting here today, do any other factors 11 specifically come to mind? 12 A. Well, I guess I could sit and think of -- of more. 13 Let's see. Well, you know, when -- school elections, for 14 example, there's times when people don't even realize that 15 they're going on and maybe even -- I'm speculating -- but 16 don't even know anyone on the ballot. It's always 17 important when the voters feel like they know -- know the 18 candidates and feel proud to vote for a certain way. Of 19 course, you know, when the -- when there's confidence in 20 the process. It's always bad when there's not confidence 21 in the process. Let's see. There's fewer logistical 22 aspects. I mean, for just speaking on -- on what makes a 23 good election, I mean, obviously when a pandemic occurs 24 right before an election, it's not like that makes it a bad 25 election, but it make it to where there's new challenges.</p>

1 And so having a streamlined process, you know, where it
2 just -- things -- there's always going to be things that
3 come up, but some challenges are greater than others. And
4 I think those are -- those are examples. We could probably
5 go rounds and rounds, you know, but at the end of the day,
6 like I said, we want to have -- have a -- our system be --
7 be upheld and voters be proud of that system.
8 Q. Are you aware of any examples of voter
9 intimidation or voter harassment in Montana?
10 A. Oh, sure. Yeah. I mean, you hear -- there's --
11 there's examples out there. It's not like I was there -- I
12 was there or anything, but, of course, there's -- there's
13 instances where people say or instances where it's
14 reported. Sure.
15 Q. And do you -- sitting here today, do you know any
16 specifics of any of those instances you've just referred
17 to?
18 A. Yeah. I mean, I know that there was -- let's see.
19 What would it have been, down in Livingston where there
20 was -- they were mentioning in the paper of people calling
21 the police because -- or people at the front door asking to
22 collect their ballots, and they felt intimidated. There
23 was also a situation in Missoula of the same thing. Let's
24 see. There's been some complaints, I think, in -- that
25 would relate to that in the recent election. Obviously I

1 was -- I was there only for the one major general, so it's
2 not like I have a history throughout the whole time. And
3 plus, anecdotally, I mean, for instance -- let's see. What
4 was one of the ones I read about. I can't remember if it
5 was in Butchertown or Corktown in Butte where the -- there
6 were two individuals that walked into a precinct and shot
7 both of the precinct workers and took the ballot boxes. So
8 that'd be pretty intimidating. I think there's a lot of
9 different examples.
10 I mean, I can tell you that in Butte, where -- you
11 know, where I grew up, my father is a printer. So he
12 prints election signs for lots of candidates. And there's
13 heavily -- you know, even though it was definitely my
14 grandfather and my great-grandfather's generation of the
15 level of intimidation, the effects have -- have continued
16 on. And so there were times where my father, when it was
17 consolidated down to the civic center, didn't want to vote
18 because he was afraid of someone seeing his ballot or
19 knowing his voter activity and that impact on his business
20 and on our livelihood.
21 There's a lot of, you know, variables in terms of
22 intimidation, but there's certainly lots of examples of it
23 throughout the course of history in the state of Montana.
24 I think that's some.
25 Q. Does the Secretary's office gather or record

1 instances of the kind that you've just described?
2 A. Gather or record instances of voter intimidation?
3 Q. Yeah. Does the Secretary keep records
4 reflecting --
5 A. I don't know --
6 Q. -- things like that?
7 A. -- how you would -- you'd do everything. I mean,
8 like, some of the examples I said where they called the
9 sheriff, you see that in the news, and it's not like I'm
10 taking a newspaper article and logging it in our system. I
11 mean, the goal for us is to find ways to make the system be
12 more preventative in the future. We hope that the system
13 kind of guards against those instances instead of trying
14 to -- to log or go after. I mean, election officials are
15 already are very busy, and there's a lot of things that go
16 on to them in the first place. So plus I think that's such
17 a highly specific example.
18 Are there time when we receive communications from
19 individuals? Sure. But that would also depend on when it
20 was sent or the topic area for -- as to whether -- you
21 know, for instance, the record retention would be, like,
22 30 days; right? So it's not like after -- after that time
23 of disposal, then that's gone. I don't know what, you
24 know...
25 Q. Are you aware of any examples of the improper

1 influence of money in any elections in Montana?
2 MR. MCINTOSH: Objection; vague.
3 Go ahead.
4 THE DEPONENT: Sure.
5 Q. (By Ms. Lee) What are those examples?
6 A. I mean, so I think it's in Copper Camp, could be
7 in Smoke Wars, but there was this one quote that always --
8 I grew up on O'Neill Street in Walkerville, which is a
9 neighborhood in Butte. Centerville and Walkerville is the
10 Irish and Cornish splie. The Jameses are Cornish, and
11 the -- my grandmother is a Gallahan, was Irish. The
12 neighborhoods are two different ethnicities. So the
13 Cornish and the Irish, which dominated Butte -- Clark and
14 Daly -- they tended to have this -- this ideologue of the
15 Cornish being Republicans and the Irish being Democrats.
16 And there was this quote in there that -- in one of those
17 books that says: When I'm asked whether I'm Irish or
18 Cornish leading up to election day, I respond with,
19 "Whichever one pays me more." And -- and that's -- that
20 obviously being, you know, Cornish and Irish split, it was
21 easy for me to remember. So, yeah, there's -- there's a
22 lot of examples of -- of that situation occurring. Sure.
23 Q. Are you aware of any examples of improper
24 influence of money in any elections in Montana in the
25 present day?

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<p>1 MR. MCINTOSH: Objection; vague.</p> <p>2 Go ahead.</p> <p>3 THE DEPONENT: Yeah. I mean, that seems to be a</p> <p>4 pretty broad situation -- you know, broad -- broad area. I</p> <p>5 think that there's -- there may be examples, but then you'd</p> <p>6 have to tick them off. And then, of course, like,</p> <p>7 there's -- there's -- one thing I think we can say for</p> <p>8 certain is there's no doubt of a perception of it; right?</p> <p>9 And -- which counts to itself.</p> <p>10 Q. (By Ms. Lee) As a general matter, does the</p> <p>11 Secretary's office adopt rules implementing election</p> <p>12 legislation passed by the legislature?</p> <p>13 MR. MCINTOSH: I'm sorry. Can you read that back,</p> <p>14 please.</p> <p>15 (Record read.)</p> <p>16 THE DEPONENT: That would depend; right? I mean,</p> <p>17 if a -- if a law passed and -- and it has one section, and</p> <p>18 that section amends one statute, and that statute is not</p> <p>19 cited anywhere in administrative rules and would not need</p> <p>20 to be supplemented by administrative rules, then there</p> <p>21 would be no purpose for administrative rules. In fact,</p> <p>22 creating an administrative rule that would be otherwise</p> <p>23 unnecessary would probably be bad government. So in that</p> <p>24 situation, no. In other situations, yeah.</p> <p>25 Q. (By Ms. Lee) Would you say it is an ordinary part</p>	<p>1 though the legislature was -- would convene and end in</p> <p>2 April or May, presumably by June 1st we would have had to</p> <p>3 make rules for -- from a bill that was passed the cycle</p> <p>4 before. And sometimes the legislature will actually amend</p> <p>5 that bill asking for rules in -- from some distant time</p> <p>6 with a session in between. And even though a bill was</p> <p>7 passed asking the agency to promulgate rules because the</p> <p>8 legislature met in between and changed that, the agency</p> <p>9 never ends up doing it in the first place, which is</p> <p>10 probably better than if they did and then the legislature</p> <p>11 changed it right after that. So I suppose it just depends;</p> <p>12 right?</p> <p>13 Q. As a general matter, does the Secretary's office</p> <p>14 offer training to county elections officials when new</p> <p>15 election-related legislation is passed by the legislature?</p> <p>16 A. Oh, sure. I mean, I think it's a pretty common</p> <p>17 thing for the Secretary of State's office to go over any</p> <p>18 changes in election law which would stem from the</p> <p>19 legislature. And usually there's, like, you know, round --</p> <p>20 legislative roundups, as you'd call it, a post-session-type</p> <p>21 thing. And, of course, like, MACo will do something</p> <p>22 similar. And we do that with -- you know, a lot of</p> <p>23 election clerks are also clerk and recorders, so it goes</p> <p>24 well beyond just, like, elections. I mean, obviously when</p> <p>25 the Remote Online Notarization Act was passed a couple</p>
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<p>1 of the duties of the office of Secretary of State to adopt</p> <p>2 rules implementing elections legislation that require</p> <p>3 administrative rules?</p> <p>4 A. Sorry. That was just long enough, and I was</p> <p>5 thinking off the first part. I'll have to have you repeat</p> <p>6 it real quick. Either one.</p> <p>7 Q. (By Ms. Lee) I can just say it again.</p> <p>8 Would you say it is an ordinary part of the duties</p> <p>9 of the office of the Secretary of State to adopt rules</p> <p>10 implementing elections legislation that requires</p> <p>11 administrative rules?</p> <p>12 A. So I think, if I understand your question, you're</p> <p>13 saying, is it -- is it -- is it typical when a bill says</p> <p>14 you must adopt administrative rule that you adopt</p> <p>15 administrative rule?</p> <p>16 Q. Yes. And that that's an ordinary part of the</p> <p>17 duties of the office.</p> <p>18 A. Yeah. I mean, I don't know what you define as</p> <p>19 ordinary, right, because the legislature meets every two</p> <p>20 years. And -- and so in a way recent legislation can be</p> <p>21 within the last decade. And of course there's examples</p> <p>22 within the last decade of -- of requiring the Secretary of</p> <p>23 State to promulgate rules. Sometimes it's well after -- I</p> <p>24 know in the corporate act* it was, like, the -- June 1st of</p> <p>25 of -- of maybe even the next legislative cycle. So eve</p>	<p>1 cycles ago, I remember a massive amount of training because</p> <p>2 that's a -- those are significant pieces of legislation.</p> <p>3 Sometimes it's just cleanup, and the actual processes</p> <p>4 are -- for county officials aren't changed that much. I</p> <p>5 mean, not all state election laws touch county officials</p> <p>6 perhaps. So in that sense it would be less important to</p> <p>7 train them on -- on the legislation or the changes because</p> <p>8 it wouldn't affect them. But when it affects both offices,</p> <p>9 you know, those types of factors. But it's certain our</p> <p>10 duty to work to try to make elections the best run that we</p> <p>11 possible can, and I know counties are doing the same thing,</p> <p>12 so we want to make sure we're familiar. So we'll train old</p> <p>13 dogs new tricks, if you will, and then train new dogs the</p> <p>14 first trick they learn.</p> <p>15 Q. Did Secretary Jacobsen have a set of legislative</p> <p>16 priorities coming into the 2021 legislative session?</p> <p>17 A. I mean, every -- I think there was things that</p> <p>18 were -- were -- not priority but then, you know, there's a</p> <p>19 bill draft in, there's things that you'd like to do.</p> <p>20 It's -- we're talking about an elected office. So the</p> <p>21 legislature is the legislature, but I think every statewide</p> <p>22 elected official -- or anyone who runs on the ballot, for</p> <p>23 that matter -- has policies that they would like to see the</p> <p>24 legislature do, and they may advocate on behalf of. I</p> <p>25 mean, a quick -- a quick look at commissioner's, you know,</p>

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1 reporting will show that the agencies are -- are -- have
2 supported legislation or opposed legislation in the same
3 way that, you know, your -- like your client, the ACLU or
4 Western Native Voice, or -- or even parties -- anyone
5 that's involved in trying to support or oppose bills
6 that -- and then the legislature ultimately makes the
7 decision, and then, of course, you know, the -- even the
8 governor has the ability to sign legislation, and he may
9 have legislative agendas, but he can't do anything till it
10 gets to his desk; right?
11 Q. I'm handing you the next exhibit, which has been
12 marked as SOS 3.
13 (Exhibit SOS 3 marked for identification.)
14 **THE DEPONENT:** Cool.
15 Q. (By Ms. Lee) This appears to be an email from
16 Angela Nunn to the email group SOS Executive; is that fair
17 to say?
18 A. Yeah. I see "SOS Executive" here.
19 Q. And Ms. Nunn is the operations director for the
20 Secretary of State; is that correct?
21 A. It looks operations director on the title here,
22 yeah. I don't know whether that's her current title or
23 not. It very well could be. She certainly is helpful at
24 directing operations, so I would imagine that that's still
25 a fitting title.

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1 Q. And in the second line of this email Ms. Nunn
2 writes:
3 Attached is the latest draft of our priority
4 bills, including their current status.
5 Did I read that correctly?
6 A. Yeah. I see that attached is the latest draft of
7 our priority bills, including their current status.
8 Q. Okay. And so turning the page to look at the
9 attachment to this email --
10 A. Uh-huh.
11 Q. -- does this document reflect the Secretary's 2021
12 legislative priorities?
13 A. Well, I think that, as it says here, this is the
14 latest one. It appears that this is from January 31st, so,
15 you know, there's -- by that time you're able to kind of
16 see which bills have been put in the hopper. They're still
17 at that time -- I learned this last session. You can
18 broadly topic bills, and you can narrow the bill down, but
19 you can't make it any broader. So it helps if you're a
20 legislator to have a bill draft request that says
21 "generally revise election laws," because anything you want
22 to do with election laws, you can -- that would narrow it
23 down. Unfortunately, what it doesn't help is someone like
24 in the Secretary of State's office, where you're -- where
25 you're trying to figure out what those are, and there's not

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1 a bill draft request to read yet, because it could be
2 absolutely anything. So there's -- as of January 30th, you
3 know, January 31st, at that time there still would be ones
4 out there that are generally revised and there's no bill
5 draft -- no have idea what it is. It could end up being a
6 priority, it could not be. There's also things that could
7 die at this time. But, yeah, you know, we, of course, are
8 looking through all of the different ones.
9 It looks like this one is just elections, but, I
10 mean, we had, you know, everything from -- from -- from
11 looking over, like, priority things for, you know, vacation
12 for state workers or different -- you know, from the
13 operations to the state government to our daily practices
14 to our divisions. Of course there's going to be priority
15 ones that we're -- that we're looking at, and that may
16 be -- you know, this is a priority because it would require
17 a lot of work. It may be a priority because we need to
18 keep an eye on it. It may be a priority because we need
19 to -- we are definitely going to have to testify and follow
20 this. And it could be a priority because it's something we
21 support doing or oppose doing.
22 Q. Okay. And looking at the attachment to this
23 email, second page of the exhibit, do you see that there's
24 the heading "Top Priorities," and then a list of six
25 priority areas?

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1 A. Yeah. I see one through six here. Looks like
2 some bullet points. Yep. Uh-huh.
3 Q. How was it determined that these would be the
4 Secretary's top priorities as relates to election bills?
5 A. Well, like I said, I know that we looked through a
6 lot of different bill draft requests. We had different
7 ideas. We had, you know, just lived experience of things.
8 I mean, we -- we're already looking for -- for, like, next
9 session, for instance. And so -- so through the whole
10 process, I think that there's a lot of different factors
11 that go into it, the same way that anyone else that is --
12 has bills they'd like to see pass the legislature.
13 You know, we have a citizen legislature that meets
14 once every two years. It's important to try and pay
15 attention to that because once the session is over, then
16 you're waiting for, you know, two more years. And that's
17 true for -- for anyone that -- that is trying to advocate
18 one way or another or that participates in the legislative
19 process to some degree.
20 Q. Sitting here today do you have sort of any other
21 specific knowledge about how it was determined that these
22 six items would be the Secretary's top priorities?
23 A. Well, I think I just told you. I'm mean,
24 they're -- they're -- things that are important for the
25 improvement process and elections or that would not be an

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1 improvement process. There's that's thing we would, lived
2 experience, like to see. I mean, I'm just looking at
3 comprehensive revision of minor party qualification
4 statutes. I mean, obviously, that -- there was four years
5 of where -- where the office was so bogged down and it was
6 so complicated, county officials, state officials were
7 doing literally everything they could to the tee to follow
8 the law and still ended up making it to where I missed
9 seeing my dad on Father's Day for the first time in my life
10 trying to prepare.
11 (Exhibit SOS 4 marked for identification.)
12 Q. (By Ms. Lee) Okay. I'm going to -- you can put
13 that document -- that exhibit aside. I'm going hand you
14 what I just marked as SOS Exhibit 4.
15 MR. MCINTOSH: Thank you.
16 Q. (By Ms. Lee) This appears to be an email from
17 Angela Nunn to the email address
18 katie.montana.campaign@gmail.com; is that right?
19 A. Yeah. I see the to -- yeah.
20 katie.montana.campaign@gmail.com.
21 Q. Okay. And we've already identified who Ms. Nunn
22 is.
23 Whose email is katie.montana.campaigns@gmail.com?
24 A. Yeah, I have no idea. I mean, I'm trying to
25 review the document really quick here, and it looks like

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1 there's a copy. But in the text here it says that
2 Secretary Jacobsen asked to send a draft for the language
3 that have not yet been introduced. So, I mean, I would
4 have to speculate but it looks to me like it's somebody
5 that asked to send drafts. I don't know who Katie at
6 Montana is.
7 Q. Okay. And in the attachments to this email
8 Ms. Nunn conveys the remaining three priority bills that
9 have not yet been introduced, as well as the updated copy
10 of the Secretary's priority bill list; is that right?
11 A. Let's see here. So we've got -- looks like
12 generally revised election bill draft, revised draft, minor
13 party bill package, and SOS elections bill 2/9/21, which
14 would be also the date of the email. So it would be some
15 form of update of ones that were the priority for us to --
16 to pat attention to in the legislature. Yeah.
17 Q. Are bills that have not been introduce yet
18 accessible to the public?
19 A. That depends, you know, like I was talking about
20 earlier. If -- if a bill is in a position where it's --
21 where there's a draft available as an LC, then -- then it's
22 posted up on Laws site to look at. I can tell you that
23 sometimes -- you know, for instance, you'll look at --
24 you'll look at the bill draft that's available. It'll kind
25 of look like this, but it'll say a bill enacted, entitled,

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1 and then in the paren -- the quotation there it will say
2 generally revised election laws -- kind of like this one
3 where it says bill number and introduced by STARS. That
4 means that it hasn't been updated yet. And so where the
5 section would be, there would also be, you know, STARS, and
6 then it would say N. So really it's like nothing other
7 than the actual temple for the bill. But that still shows
8 the stage. It shows that the LC number is -- is getting
9 around to the time in which, in this case, Sonja was
10 assigned to start drafting, and so she uploaded the
11 template, more than likely contacted the sponsor and said,
12 It's time for you to work on this; I've basically the got
13 template ready to start filling things in.
14 And so you can see that the bill is absolutely
15 nothing.
16 Other times you don't see it at all until the bill
17 is done and there's a hearing, you know, a couple days
18 later. And that's just for the introduction of it. I
19 mean, obviously, through the session and conference
20 committees and everything else, when they go back before
21 the houses at times like that, then it's just a little bit
22 of a Wild West.
23 Q. Okay. And could you turn to the Bates 39550 at
24 the bottom, which is the attachment, Revised Draft Minor
25 Party Bill Package?

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1 A. Where is this one at? 9550.
2 Q. And so would a draft bill in this form be
3 accessible to the public?
4 A. Well, I guess this is -- I mean, I don't know.
5 Kate at Montana is definitely not a -- as you can see here,
6 it's at Gmail. So that's not a in-house, so she's a member
7 of the public, and obviously it was made available to her.
8 Q. And so other than the specific recipient of this
9 email, would a draft bill in this form be generally
10 available for anyone in the public to access?
11 MR. MCINTOSH: Objection; too broad.
12 Go ahead.
13 THE DEPONENT: Yeah. I'm not sure what you mean
14 here. Like if somebody said, Do you have a draft of, you
15 know, a bill that you just said you're going to carry, and
16 they -- and they ask for it and it's available, then, yeah,
17 you'd be able to provide it. I mean, there's obviously a
18 public records openness in Montana. We do the best we can
19 to provide that. So, yeah. I mean, that's -- in the
20 generic way that, you know, it was asked, there's certainly
21 possibilities where that is the case, for sure.
22 Q. (By Ms. Lee) And turning to the last page, which
23 is -- of the exhibit, which is the last attachment to the
24 email, and this is the attachment, "SOS election bills
25 2-9-21."

1 And is it fair to say that this appears to be the
2 Secretary's election bills top priorities as of February 9,
3 2021?
4 **A. Well, I see here that it says "elections bill as
5 of February 9, 2021." It has the list. Yeah.**
6 **Q. Okay. And was the Secretary's priority bill list
7 as of February 9, 2021, generally available to all members
8 of the public as of that date?**
9 **A. I mean, I don't know. You know, it was -- there's
10 a letterhead right there, so, yeah, obviously if somebody
11 would have asked what bills, then, sure, it would have been
12 provide. I mean, it's not like any of this stuff is, you
13 know -- is -- is too intense here, the same as any other
14 group that is on the commissioner's website that, you know,
15 has bills that they support or oppose. I mean, I think
16 that even amongst your -- your clients there were bills
17 that they were tracking, there was, you know, podcasts or
18 whatnot that talked about the ones that were their
19 priorities for that week. It's not that unfamiliar for
20 both public actors or anyone else to -- to talk about the
21 bills at various stages of the -- the session.**
22 **MR. MCINTOSH:** Counsel, could we go off the record
23 for a second?
24 **MS. LEE:** I -- perfect.
25 **THE VIDEOGRAPHER:** The time is 10:01. Going off

1 fact?
2 **A. No. There was actually a -- so as I was
3 testifying earlier that we got this list, I think -- I want
4 to say it was something like 140 at the time I first looked
5 at it, where -- where you go to Laws, and you can click on
6 filters. It's a really outdated system, but one of the
7 little filters is all unintroduced bills, and there's a
8 list that you're able to print out. And one of the
9 subcategories is elections, thankfully. Because, like, on
10 the business side and the administrative rules side it's a
11 lot harder for me to narrow down. But there's an elections
12 side, and obviously that includes some Title 7 and also
13 some COPP bills that you have to kind of filter out, but
14 it's still a real helpful tool for us to look at what bill
15 draft requests have been put in.**
16 **And in that particular situation, because most of
17 them were generally revised election laws, there was one
18 from -- from Greef that said revised registration
19 deadlines. And -- and we knew Greef because she was on the
20 SAVA committee, which is our overseeing committee, so we
21 see them pretty regularly, I think. And so we reached out
22 because, like you mentioned, sometimes you -- you don't see
23 the drafts quite yet. And -- and this was just so much
24 information. We were a new administration. We're trying
25 to learn and adapt as quick as possible. And so we were**

1 the record.
2 (Break taken from 10:01 a.m. until 10:10 a.m.)
3 **THE VIDEOGRAPHER:** The time is 10:10. Back on the
4 record.
5 **Q. (By Ms. Lee) And, Mr. James, you understand that
6 you're still under oath?**
7 **A. I do.**
8 **Q. Was HB176 drafted at the request of the Secretary
9 of State?**
10 **A. Yeah, so there's a process where you can have,
11 like, "by the request of" up on the top of the bill.
12 Public actors are allowed to do it. And -- and so Senate
13 Bill 169 was one of the ones that had "at the request of
14 the Secretary of State."**
15 **Q. Just for clarity, I was asking you about HB176,
16 not Senate Bill 169. So I don't know if you just misspoke
17 as to the bill number, or should we do the question again.**
18 **A. Honestly, I think that the answer is both, so I
19 suppose I can -- I misspoke. I heard -- I should probably
20 keep those numbers in line today. But -- but, yeah, I
21 believe House Bill 176 had "by the request of Secretary of
22 State" on the bill.**
23 **Q. Okay. And so putting aside the particular
24 language at the top of the bill, as you've described it,
25 did the Secretary seek that HB176 be drafted as a matter of**

1 **trying to inquire as to what topic, because that was -- it
2 was narrowed from generally revised election laws, but
3 still a very broad topic area, if you follow.**
4 **Q. And was the Secretary's aim in following up with
5 Representative Greef that the bill draft would be aimed at
6 ending election day registration?**
7 **A. I just told you. It's -- so the bill draft said
8 on the topic area that it was going to revise registration
9 deadlines, I believe. I mean, you could look at the record
10 to see what it was for the general topic. And then at that
11 point we're trying to figure out what the bill is. And
12 then after that it's trying to figure out what it's going
13 to look like and what we can do with it. We -- we want to
14 have good election law policy, and if somebody is going to
15 introduce it to the legislature, you know, that -- that's
16 their job. Then of course you're going to figure out what
17 it is and see if you can make it more workable or what you
18 can do with it. For an election office, it's important for
19 us to -- to do those types of thing, and, plus, you know,
20 just -- just like some of the advocacy groups or other
21 public actors that we had mentioned such as -- you know,
22 Western Native Voice or ACLU are two of them --
23 (Court reporter clarification.)
24 **THE DEPONENT:** Sorry. My apology.
25 **Is looking at bills that may be relevant to them, and****

<p style="text-align: right;">Page 48</p> <p>1 then trying to work on them. That was -- that was one of 2 those certainly. 3 Q. (By Ms. Lee) Okay. So specifically to my 4 question, when the Secretary reached out regarding the bill 5 draft we were just discussing from Representative Greef, 6 was it merely informational or did she want a bill ending 7 election day registration? 8 A. No. I mean, at that time it was merely 9 informational. We reached out to everyone that didn't have 10 an LC number that would have a narrowed-down category, and 11 probably continued to do that as generally revised election 12 laws were more narrowed down. 13 Q. Okay. Did individuals from the Secretary's office 14 testify in the legislature in support of HB176? 15 A. Yeah, I think -- yeah, I think there was a 16 proponent and also informational. I believe we did both. 17 I don't know if that was the case for both houses. It's 18 certainly on the Laws site and very publicly available for 19 you to retain the facts of that. 20 Q. Okay. I'm handing you what's been marked as 21 SOS 5. 22 (Exhibit SOS 5 marked for identification.) 23 Q. (By Ms. Lee) This is a document produced by the 24 Secretary that's titled "Lobbying Bill List;" is that a 25 fair description?</p>	<p style="text-align: right;">Page 50</p> <p>1 write what you are. Sometimes you write down that you're 2 something, and then the chair says, I'm going to designate 3 you as something else. And then you have to make sure that 4 your lobbying reports reflect what your position is. 5 And I know for us we were pretty -- we tried to 6 include absolutely everything because, as you can imagine, 7 having a public actor violate a lobbying act with the 8 Commissioner of Political Practices isn't exactly a -- a 9 goal. 10 Q. (By Ms. Lee) And so if a bill is included on the 11 lobbying bill list, does that mean someone from the 12 Secretary's office testified in the legislature on it? 13 A. Yeah, well, I believe it would be -- I mean, I'm 14 trying to remember what the -- the laws are for what you 15 categorize something as. I mean, it could be that you 16 spoke about it. It could be -- I think that there's a few 17 different things as to what constitutes lobbying activity. 18 But the purpose of this document was for us to comply and 19 create transparency. I mean, honestly, similar to the way 20 that your clients, Western Native Voice and ACLU, would do 21 for their reporting too. 22 Q. Okay. You can put that exhibit aside. 23 Outside of people from the office itself, did 24 anyone from the Secretary's office seek out other 25 individuals to testify in support of HB176?</p>
<p style="text-align: right;">Page 49</p> <p>1 A. Yeah. I see lobbying bill list there. 2 Q. Okay. What makes a bill qualified for inclusion 3 on the Secretary's lobbying bill list? 4 A. So I would like to see what -- how this was 5 produced in full, but based on what I'm looking at and 6 based on the categories here, this appears to be what is 7 required by the Commissioner of Political Practices to 8 satisfy Montana's lobbying act. 9 Q. And so what constitutes lobbying such that the 10 Secretary's office has to include it? 11 MR. MCINTOSH: Objection; calls for a legal 12 conclusion. 13 Go ahead. 14 THE DEPONENT: If I recall, it's like you are 15 allowed as a public citizen -- and this is all COPP law, 16 so, I mean, not -- not Secretary law. But if I recall, 17 it's, like, a public citizen can be a supporter -- you 18 know, put down their list as a supporter for a couple of -- 19 of bills. Once you hit a certain amount of activity as a 20 group, it requires registering as a principle for lobbying 21 activity, which -- which either through statute or 22 administrative rule or through court cases, was expanded to 23 public actors as well. And so once you -- you hit the 24 threshold, then you have to put whenever you go in and you 25 write down what you are -- for the most part whenever you</p>	<p style="text-align: right;">Page 51</p> <p>1 A. I believe we -- we communicated that there was 2 going to be the hearing. I know that -- that there was 3 communication in to us that -- for 176, that the -- that 4 the -- the clerk's association was not going to take a 5 position, which is pretty unique. And -- but that there 6 would be a urban -- Lewis and Clark County clerk testifying 7 in her personal capacity. And -- and so we reached out, I 8 believe, to the other neighboring county who's more of a 9 rural to have those two perspectives. If people had 10 contacted and asked, you know, about, well, we need to -- 11 you know, we need to do something about this, then we may 12 have very well said, Well, this is the time for the 13 hearing. So if that constitute what you're saying, then 14 yeah. But like I said, that's the -- that's absolutely no 15 different than -- than your clients, ACLU or Western Native 16 Voice, working on the legislative process. There's the 17 legislature. People advocate for bills. People oppose 18 bills. People work to -- to -- through that advocacy by -- 19 by trying to reach out to people, encouraging people to 20 reach out to the legislature. I mean, this is the 21 legislative process. This is how the sausage gets made 22 every 90 days every two years. 23 Q. Do you think that advocacy groups like Western 24 Native Voice and the ACLU have the same position towards 25 the Montana government as the Secretary's office?</p>

1 **MR. MCINTOSH:** Objection; vague, foundation.
2 **THE DEPONENT:** Yeah. I don't know what you mean.
3 I mean, obviously they do different things. But what I was
4 just referring to was supporting or opposing legislation.
5 So neither one of us -- us -- neither -- neither entity,
6 the public entities or advocacy groups, are members of the
7 legislature, and so there's the legislature and then
8 there's not the legislature. And if you're not the
9 legislature, you're involved in the legislative process,
10 then you're kind of that other category; right?
11 Q. (By Ms. Lee) Okay. And in your testimony in your
12 previous answer you had said the office communicated that
13 there would be a hearing.
14 Who was that communication to?
15 A. Well, I think in the record it shows the
16 communication; right? Or in the interrogatories that they
17 talked about contacting Doug Ellis because he reached out
18 or, you know, vice versa, so I know that one in particular.
19 When I testifying, that's what I was referencing.
20 Q. Okay. And other than Mr. Ellis, are you aware of
21 anyone else in particular that the Secretary's office
22 reached out to to testify in support of HB176?
23 A. Not right off the top of my head. I mean, I think
24 that anything that we emailed out or whatever would have
25 been produced. And we very could certainly -- in this

1 whole process we -- we -- as far as the public goes, I
2 mean, it -- we would have been directing people to, here's
3 the hearing for it. But it's not like we were running a
4 campaign, I don't think. But -- but this is all part of
5 the -- you know, the ordinary legislative process.
6 Q. (By Ms. Lee) Okay. I'm handing you what's been
7 marked SOS Exhibit 6.
8 (Exhibit SOS 6 marked for identification.)
9 **THE DEPONENT:** Okay.
10 Q. (By Ms. Lee) And this appears to be an email chain
11 between Representative Sharon Greef and Angela Nunn; is
12 that fair to say?
13 A. Let me read here.
14 (Reviews document.)
15 Yeah. Okay.
16 Q. Okay. And Representative Greef was the sponsor of
17 HB176; is that right?
18 A. I believe so, yeah.
19 Q. And so the second email down in this chain from
20 the top of the first page, Ms. Nunn writing to
21 Representative Greef, the third sentence says:
22 We reached out to several other people throughout
23 the afternoon and believe that several plan to attend in
24 person to testify.
25 Did I read that correctly?

1 A. You did.
2 Q. Who else did the Secretary's office reach out to
3 to testify throughout the afternoon of January 20th?
4 A. Like I said, I mentioned Doug Ellis, And he would
5 have been one of the clerks that had -- you know, through
6 the course of it had said we've got to figure out a way to
7 improve the election day registration process. This was
8 something that we'd been -- a need to figure out how to
9 make that policy shift for a while. So when was it was
10 reached out to us that there had been a coordinated effort
11 for the opponents, then we reached out to people that were
12 involved process. Like I said, it's pretty standard for
13 groups that support and opposes bill to reach out to
14 individuals.
15 Q. Oh, and so specifically to my question, sitting
16 here today do you know any other specific people other than
17 Mr. Ellis that the Secretary's office reached out to to
18 testify in support of HB176?
19 A. Well, like earlier you had an exhibit, and it
20 mentioned, you know, when the times were for stuff and said
21 here's the list of priority bills. I mean, is that
22 something that counts?
23 There were individuals that reached out that asked
24 about -- you know, we -- we really want to be involved in
25 the process, what are the bills? And then, of course, it's

1 like, well, here are the bills coming up.
2 I don't know if that says, you know, you should do
3 one way or another.
4 I provided you with some examples. I know that
5 we've -- have discussed this in discovery. And I'm not
6 sure -- I mean, you obviously have the legislative
7 transcript of who was there and who was not, so...
8 Q. Okay. And just specifically to my question,
9 sitting here today do you know any other specific
10 individuals other than Mr. Ellis, who you've mentioned, who
11 the Secretary's office reached out to to testify in support
12 of HB176?
13 A. Well, like I had testified before, to me, you
14 know, the clerk's names and counties and things like that
15 is kind of all a blur. But I do know that there was
16 election administrators that felt the opposite approach,
17 and that there were -- there was going to be an election
18 administrator from Lewis and Clark County that was going to
19 testify in opposition. And so it would only be fair to
20 have the other approach represented. So I know that --
21 that that -- that that was reached out to. That's -- a
22 specific individual is your question, and the one that came
23 to mind was the one that I named. And in addition to that,
24 I mean, earlier in this you had to help me remember the
25 last names of people that work in my office, so -- so it's

<p>Page 56</p> <p>1 not like that's my -- my forte. But I do know that we 2 reached out to individuals for clerks based on trying to 3 answer the discovery or the -- to prepare for this 4 deposition, as I was asked to, about any communications. 5 And I know that the story -- that facts that I was able to 6 gather from communication I was able to have was that MACR* 7 was going to not -- not take a position because there 8 was -- which is, again, like I said, highly unusual -- and 9 that there was going to be a position made, and in order 10 make it to where that that was not the position of the 11 clerks, because the real premise of trying to do this was 12 to improve the process for the election administrators, 13 that we reached out. I mean, it makes sense to me that the 14 two closest counties were the ones that attended. 15 Q. So I understand the general process. My question 16 is just specifically sitting here today do you know any 17 other specific individuals that the Secretary's office 18 reached out to to testify in support of HB176? 19 MR. MCINTOSH: Objection; asked and answered. 20 Go ahead. 21 THE DEPONENT: Yeah. As I -- as I said today, 22 like, you're asking me about the names, and what I'm 23 telling you is the specific individuals that were reached 24 out to were election administrators that, through the 25 course of experience, had expressed, we need to do</p>	<p>Page 58</p> <p>1 other election officials knew. And it's not like we said, 2 you know, You have to testify this way. It's based on 3 their lived experience. And -- and obviously they're in 4 communities much far and wide, but Broadwater was close and 5 they were able to attend. It's pretty simple. 6 Q. So further down the email chain at the top of the 7 second page in the first email at the top there 8 Representative Greef writes to Ms. Nunn informing her that 9 all of the people signed up to speak beforehand on Zoom in 10 the hearing on HB176 are opponents. 11 Do you see that? 12 A. The one in all capital letters? Is that the one 13 you're talking about? 14 Q. No. On the back page -- 15 A. Oh, okay -- 16 Q. 522 at the bottom. 17 A. Okay. The bottom one? Yeah. 18 Q. No. The first one at the top -- 19 A. Okay. Angela, here's the list? 20 Q. Yes. 21 A. Yeah. 22 Q. And Representative Greef write: 23 Darn, ellipses, all opponents -- all opponents, 24 but your team will knock them dead, exclamation point. 25 Did I read that correctly?</p>
<p>Page 57</p> <p>1 something about this, this is overwhelming, it's too 2 challenging, and -- and -- and reached out in response to 3 the commitment to oppose and to let us know that even 4 though there would be opposition, that was certainly not 5 the position of the clerks as an entity or a larger 6 collective group; right? 7 Q. (By Ms. Lee) And why did the Secretary take on the 8 task of reaching out to those other elections officials? 9 A. Well, because -- it's simple; right? This was -- 10 we were -- we would hear of -- that something needs to be 11 done, we need to figure out how we can do this properly. 12 It was task that -- that was a tall one, and we wanted to 13 do it right. And so when they reached out and said we 14 weren't going to be giving a position, the clerks -- 15 because usually it's -- you know, MACR offers it for the 16 clerks. And as I told you, it's unusual when there's 17 enough rural clerks that reach out and response to their 18 communications other than the urban ones to kind of negate 19 and and make the -- what I'd call the central power of the 20 group -- feel that they had to be informational. And so 21 when -- when there's going to be a perspective offered 22 that's not based on the experience that we understand of 23 election officials and offered and maybe utilized to 24 advocate, Well, election officials feel this way, and 25 that's not the basis, then we wanted to make sure that</p>	<p>Page 59</p> <p>1 A. Yeah, you read that correctly. 2 Q. Okay. Why was the Secretary's team the ones that 3 would be doing the work on HB176 that would knock opponents 4 of the bill dead? 5 MR. MCINTOSH: Objection; foundation, misstates 6 the evidence. 7 Go ahead. 8 THE DEPONENT: Yeah. I mean, I think that you're 9 making it out to be something that it's not; right? I 10 mean, it says here's the list of people that signed up on 11 Zoom. The people on Zoom are not all the people. It's who 12 can attend by Zoom or in person to testify of their 13 opinion. You have to sign up in advance, which meant that 14 if people said, oh, I want to participate, and it was that 15 cutoff or they didn't know how to sign up, then -- then 16 they wouldn't with be able to. 17 So I think that it was like, here's who went through 18 the process. It was all opponents. And as you can see 19 from the capital letters on -- on the next page, I mean, 20 this is a representative that is more of a -- a nervous 21 person, and -- and there were trying make a good change 22 here, and so it was trying to explain that we are trying to 23 make the most minuscule change we can to improve the 24 process to make it to where the most amount of people can 25 participate, and the system can be administered in the best</p>

<p>Page 60</p> <p>1 way, and to not have any accusations otherwise, so -- so 2 yeah, it's like, here's the report, I was hoping to see 3 people signed up, you're -- you promised you'd testify and 4 explain that, so I'm sure you will -- you'll do well. I 5 mean, she could have said "break a leg," and it's not like 6 she was literally saying to go break the leg. It's kind of 7 like "knock them dead" wasn't to go knock people dead. 8 Q. (By Ms. Lee) And so was -- so was Representative 9 Greef the sponsor of the bill relying upon the Secretary's 10 office to present support for HB176? 11 MR. MCINTOSH: Objection; foundation. 12 THE DEPONENT: Yeah, I mean, I think "relying" is 13 kind of a weird way to put it. When you're introducing a 14 bill in the legislature and there's -- and you get the list 15 of who's going to testify, and you're kind of nervous as a 16 general matter of person, and you know somebody's going to 17 be there on your behalf, I mean, it makes sense that they 18 reach out. But, no, I think "relying" is kind of a weird 19 way to put it. This is just, again, part of -- part of the 20 process. And it's, again, related to the Zoom speakers. 21 So, you know, some -- some -- and if you look at it, I mean 22 you can see that there was obviously a large effort that -- 23 by -- by groups to recruit Zoom signups, and so I think -- 24 that would be the same as saying that those that opposed 25 were relying upon the groups to oppose it. I mean, this is</p>	<p>Page 62</p> <p>1 A. Uh-huh. 2 Q. -- in the third sentence, the commenter writes: 3 With all due respect, only lazy, irresponsible 4 individuals will wait until the last minute just to 5 overload the system. 6 Do you see that? 7 A. All right. At this point, let me read it. 8 (Reviews document.) 9 Okay. So, yeah, you're asking me to see this text 10 and this general inquiry. Okay. Yeah. 11 Q. And then -- all right. Turning back to the email 12 from Ms. Nunn to the Secretary on the first page, Ms. Nunn 13 writes in her second sentence: 14 Maybe this person would be willing to testify next 15 time, question mark. 16 And asks the Secretary what she'd like in response 17 to the commenter. 18 Is that fair to say? 19 A. Yeah, it's -- I mean, I see where it says that. I 20 mean, it's pretty clear for me that it says that House 21 Bill 176 had been tabled, so at that point it would be next 22 time in the legislative cycle. We already talked about 23 where there was the list of opponents. We talked about how 24 people would contact us, and there was really nothing that 25 we do about it because it wouldn't be past record</p>
<p>Page 61</p> <p>1 just, again, part of having an civic dialogue for 2 legislation. 3 Q. (By Ms. Lee) I'm going to hand you what's been 4 marked as SOS Exhibit 7. 5 (Exhibit SOS 7 marked for identification.) 6 Q. (By Ms. Lee) And this appears to be email from 7 Ms. Nunn to Secretary Jacobsen forwarding a comment 8 received through the SOS website; is that right? 9 A. It looks like contact Montana Secretary of State, 10 and then a forward. Yeah. 11 Q. Okay. And looking at the submitted comment 12 beginning at the bottom of Page 1 -- 13 A. Uh-huh. 14 Q. -- it appears to be about HB176; is that right? 15 A. I don't know. Let me -- let me read it here. 16 (Reviews document.) General inquiry. Okay. 17 (Court reporter clarification.) 18 THE DEPONENT: Sorry. I see a general inquiry, 19 and I see that House Bill 176 is in the first sentence. I 20 haven't read this, so, I mean, if you're going to ask about 21 anything outside of that it mentions House Bill 176, I'd 22 like to do that, but... 23 Q. (By Ms. Lee) Sure. Certainly. Okay. And on the 24 second page in the second paragraph that begins with the 25 word "note" --</p>	<p>Page 63</p> <p>1 retention. And we talked about, you know, who is going to 2 testify to things like I've discussed with, you know, 3 election employees and election volunteers and -- over the 4 last 70 years and they all agree that waiting to register 5 puts undue stress on the county employees. We hear about 6 the undue stress that is put on county employees over and 7 over. We wanted to make a small change to try to make the 8 system better so that way the undue stress on election 9 employees and those in line and everything else. It was a 10 needed change that needed to happen, and so we want to be 11 able to testify to that. 12 And so it says, do you want me to, like, figure 13 out whether we should let them know, or do you want me to 14 even respond to it. It's a general inquiry. 15 Q. Okay. And Ms. Nunn wrote, quote, maybe this 16 person would be willing to testify next time, question 17 mark; is that right? 18 A. Well, yeah, I see where it says the text, but, I 19 mean, obviously this person has an opinion on it, and she's 20 emailing the Secretary of State's office. But the 21 Secretary of State's office doesn't adopt or pass 22 legislation. So in order to convey these views to anyone, 23 the best place to convey these views would be to the 24 legislature. So it would be maybe this person is willing 25 to convey these views to the legislature.</p>

<p style="text-align: right;">Page 64</p> <p>1 We already mentioned the Secretary of State 2 testified on behalf of the learned experience of people who 3 had contacted the Secretary of State's office over the 4 years, and this was one type of that. But it's not really 5 effective, because then you asked me to provide examples of 6 people that have contacted us over the years. So the best 7 thing to do would be for them to testify in front of the 8 legislature. 9 (Court reporter clarification.) 10 Q. Okay. Why was the office interested in having 11 someone who thinks that only lazy, irresponsible 12 individuals use election day registration testify in 13 support of HB176? 14 MR. MCINTOSH: Objection; misstates the evidence. 15 THE DEPONENT: Yeah, that's -- that's -- come on. 16 If you look at the entire comment that was made and you 17 look at what Angela is saying, you completely misconstrued 18 that, and I think I answered that in your last question. 19 Where this -- where this is is they're asking and 20 talking about a bill, and they're asking the Secretary of 21 State to support or oppose a bill. And the Secretary of 22 State has no ability to adopt or not adopt legislation. 23 That's the legislature's job. So if somebody is saying, 24 you know, here's how I feel about legislation, the most 25 effective thing would be to do -- would be to point them</p>	<p style="text-align: right;">Page 66</p> <p>1 It's nothing more than that. 2 Q. Did the Secretary's office draft materials for 3 legislators to use in support of HB176? 4 A. I'm sure that we, like, worked on different 5 talking points. I mean, I mentioned earlier that Sharon 6 Greef, she's a nice lady, but she's a nervous person. So 7 probably to help that out, we are -- we try to be helpful 8 in certain ways. And like I said, I mean, it's no 9 different than when -- when the ACLU or Western Native 10 Voice has a bill that they support that is being sponsored 11 and they are helping provide talking points in the same 12 exact manner. 13 At the end of the day, like, these are -- these 14 are suggestions to a legislator. It is up to them to speak 15 the words that they believe is best to speak. And no 16 matter what is said, there is then is a vote. After that 17 vote, it goes to the floor. After that, there's two more 18 votes. Then it goes over to another committee. There's 19 different testimony. There's a different opening 20 statement. There's a different committee vote. There's 21 more votes on the house floor. There could be potentially 22 more amendments through the process. There's a -- there's 23 a gubernatorial process. 24 So helping out someone -- you know, giving ideas 25 or suggestions for a legislator to open a bill that then</p>
<p style="text-align: right;">Page 65</p> <p>1 towards legislation. And it looks like what she was 2 talking about here is different testimony or different 3 opinions about previous legislation, which was outside of 4 House Bill 176. It's her personal opinion. And it's 5 certainly not Angela Nunn's statement right here that she's 6 staying anything to do with that sentence. What she's 7 instead will to do -- instead doing is saying, Maybe I 8 should direct this person to convey their political 9 perspective or their perspective to the relevant body, the 10 legislature. 11 Q. Does the Secretary's office direct everyone who 12 contacts the Secretary's office about legislation to convey 13 their opinion to the legislature? 14 A. Well, I think there was a bit of learning through 15 this legislative process, as we talked about; right? So 16 it's a brand new administration. We have heard from 17 election administrators and the public over time, and all 18 of a sudden we get to a hearing, as you noted, and there 19 was a list of opponents. There was newspaper articles 20 about, you know, who testified or not. There's different 21 pressures. There's a brand new person that -- that this 22 is -- on February 1st she's literally less than one month 23 into the job, and she's asking about, What do I do with 24 this general communication pertaining to a legislation that 25 was tabled?</p>	<p style="text-align: right;">Page 67</p> <p>1 someone reads the text of that bill and votes on it -- 2 sure. 3 Q. Okay. And so I was wasn't interested in hearing 4 about the entire legislative process. It was just a simple 5 question as whether the Secretary's office drafts materials 6 for legislators to use in support of HB176. 7 A. I definitely answered that question. 8 Q. Okay. And so is your answer to that question yes? 9 A. The answer to that question was, of course, like 10 other groups that have bills that they support or oppose, 11 they would provide suggested talking points. They also, 12 when -- when, if asked, you know, could you help -- help 13 with this, they do so. Just like we might for a business 14 bill. And I don't know that -- you know, in this 15 particular situation you can look at where we support or 16 oppose a bill, but I don't know that whether we helped 17 someone speak about their bill would even convey that. I 18 mean, these are -- these are -- these are members of the 19 legislature that work in the capitol. We work in the 20 capitol. We have a citizen legislature. Not all members 21 of the citizen legislature are -- you know, are comfortable 22 with public speaking. 23 And that's one thing that makes the Montana 24 legislature cool. It's made up of teachers and ranchers 25 and farmers and people that work in mines and people that</p>

1 own car lots. And we are a citizen legislature. Bills can
2 be technical. We work around laws on a daily basis. Of
3 course we help people, just like other people that do.
4 Q. And so do you think that a constitutional officer
5 has the same relationship to an another branch of the state
6 legislature as advocacy groups do?
7 **MR. MCINTOSH:** Objection; vague, speculation.
8 **THE DEPONENT:** Yeah, so I'm -- I'm trying to think
9 through your question there. I mean, obviously we had --
10 you know, my wife, for example, was called by Justice Baker
11 to testify on behalf of the reform to the Probate Act. So
12 there's a constitutional officer in the judiciary that
13 called my wife to come testify about a judicial act.
14 There's Department of Transportation folks that may call
15 MDV for license plates portions to come testify. The
16 attorney general is obviously a constitution officer. The
17 motor vehicles is under the attorney general's office.
18 When a person from the motor vehicles reaches out to
19 someone to talk about license plates, that would
20 technically be a constitutional officer reaching out to
21 testify on legislation. So there's a lot of examples of
22 that. I think it's fairly normal. I'm not really sure
23 what it relates to, but sure.
24 Q. Okay. So my question was referencing your
25 testimony that the Secretary reaching out to people was

1 A. Yeah. Let me have a chance to read this. This is
2 from January 9, 2021.
3 Q. Just looking to identify the document at this
4 point.
5 A. Yeah.
6 (Reviews document.)
7 Okay. Yeah.
8 Q. Why is Mr. Corson writing talking points for
9 Representative Greef?
10 A. Well, again, like we -- we've already mentioned,
11 Representative Greef, to my knowledge, the reason she put
12 in a bill was because she had heard from -- she had either
13 worked as a poll official or her husband did -- she had
14 heard from other officials about needing -- the need for
15 reform in that area. People didn't really know how to do
16 it. She's -- but she's not a full-time person. And when
17 you are a sponsor, you're going to be asked questions.
18 There are times that people will tee up situations where
19 that question is, like -- like hardball, and you can be put
20 on the spot and not really know how to answer it.
21 So the -- the purpose of this bill was one thing,
22 and -- and Dana is an election official, and she was trying
23 to provide examples of it. This -- you know, same way
24 that -- that other groups will -- will do the same type of
25 thing. And so that was it. Probably was something as

1 just like groups like Western Native Voice and the ACLU
2 reaching out to people.
3 Is that your testimony?
4 A. I think you're -- so what I said was is that
5 people who support and oppose bills look to advocate on
6 behalf of bills. And there are obviously times where those
7 who support and oppose bills reach out to individuals about
8 hearings. They try to help facilitate the public process.
9 And so just like -- I mean, yes, they -- I don't know that
10 two things are identical. I guess in a way the difference
11 between when Dana reached out to an election clerk was that
12 they were both government officers. And in the situation
13 of Justice Baker, it would be when my wife is an officer of
14 the court, and she's a justice. But -- so the reaching out
15 is the same. The type of person they are may be different.
16 The concept of call is the same. It's a vague question.
17 There's similarities. There's differences.
18 Q. I'm handing you what's been marked as SOS
19 Exhibit 8.
20 (Exhibit SOS 8 marked for identification.)
21 **MR. MCINTOSH:** Thank you.
22 Q. (By Ms. Lee) This appears to be an email from
23 Dana Corson to Angela Nunn, on which you are cc'ed with the
24 subject line "Rep. Greef talking points."
25 Do you see that?

1 simple as, Hey, can you provide me examples of -- of
2 election official situations or common problems. I mean,
3 it's just to keep it -- it's just something as simple as
4 that.
5 Q. Okay. Let me hand you the next exhibit, which I'm
6 marking as SOS 9.
7 (Exhibit SOS 9 marked for identification.)
8 **MR. MCINTOSH:** Done with 8?
9 **MS. LEE:** For now anyway.
10 Q. (By Ms. Lee) This appears to be an email from
11 Representative Greef to Mr. Corson with subject line "HB176
12 information;" is that right?
13 A. I see the subject line there. Yeah.
14 Q. Okay. And in the last two lines of this top email
15 before Representative Greef's signature, she writes:
16 The committee has been barraged with negative
17 messages not wanting 176, ellipses, we really need to hear
18 from your office.
19 Did I read that correctly?
20 A. I believe you read that correctly. Yeah.
21 Q. Is it fair to say that the public was pushing back
22 against HB176?
23 **MR. MCINTOSH:** Objection; vague.
24 **THE DEPONENT:** Yeah. I think you're trying to put
25 something in a box here. So you'll see that up at the top

<p>Page 72</p> <p>1 there it's January 28th, and as you well are aware, at this 2 point House Bill 176 was for the Friday before, which is a 3 completely different situation as to whether somebody would 4 support or oppose. Doesn't necessarily reflect the opinion 5 as to all the changes that were made to address a lot of 6 those concerns. So it's fair to say that that -- that 7 there were people who signed up on Zoom to oppose it in the 8 form it was at, where it was introduced, which is different 9 than it was when it was passed.</p> <p>10 Q. (By Ms. Lee) Okay. And at the time of this email 11 is the fair to say that the public was pushing back against 12 HB176?</p> <p>13 MR. MCINTOSH: Same objection; vague, overbroad.</p> <p>14 THE DEPONENT: Yeah, we -- we already went through 15 where she had sent an email that said that people were 16 signing up on Zoom, and I had already communicated to you 17 that she's a bit of a nervous person. When a person is 18 about to have a bill and they're feeling this pressure, 19 which at some times is like, you know, there's 14 people on 20 the opposing side amongst the million people in Montana 21 that feel a certain way. I don't think that that 22 necessarily reflects the larger populus.</p> <p>23 But all it says here is that she's feeling -- you 24 know, what I see is, My hearing is coming up, there's a 25 list of people that are going to testify against -- they're</p>	<p>Page 74</p> <p>1 Montana decreased since the time of the referendum? 2 MR. MCINTOSH: Objection; foundation. 3 THE DEPONENT: Yeah. I mean, I don't know that 4 there's, like, a daily poll on the popularity of election 5 day registration, but -- but what we do know is that the 6 legislative referendum was a specific policy proposal in a 7 specific form. There's been a lot of different specific 8 policy proposals. Some pass, don't -- some don't. I don't 9 know how that relates to the popularity.</p> <p>10 Q. (By Ms. Lee) Are you aware of what the public 11 opinion polling on election day registration in Montana is? 12 A. You know, I think that there's a variety of 13 different attempts to look at it in certain ways, but -- 14 but I don't know what today's basis is. And I guess it 15 depends on how it's asked, whether it's all registration 16 activities or certain types or what -- you know, what it 17 is, but...</p> <p>18 Q. And why did the committee considering HB176 really 19 need to hear from the Secretary's office? 20 A. Well, that was -- that completely mischaracterized 21 what it says. It's her opinion that the other members 22 really need to hear from them. That's not why -- why 23 generally it's important. It's -- it's -- why does she 24 think that? Well, I think she says why she thinks that at 25 that instance in that form of the bill right in the email.</p>
<p>Page 73</p> <p>1 hearing from people. The advocacy groups are doing a good 2 job, on one hand. We need to be able to hear multiple 3 perspectives, and it would be great if you'd reach out.</p> <p>4 Q. Was there a referendum seeking to get rid of 5 election day registration in Montana in 2014? 6 A. In 2014 there was a referendum that related to 7 registration deadlines, and I believe it walked it back 8 before election day. It may have been a week before. It 9 could have been the Friday before. But there was a -- 10 there was one of some type of form.</p> <p>11 Q. Okay. And Montana voters voted to preserve 12 election day registration; is that right? 13 A. No, they didn't vote to preserve election day 14 registration. They -- they didn't vote in favor of the 15 legislative referendum that was proposed, which was a 16 specific set. It wasn't, do support or not election day 17 registration. It was, do you support this legislative 18 referendum.</p> <p>19 Q. And, functionally, that vote kept election day 20 registration in place in Montana in 2014; is that fair to 21 say? 22 A. It's fair to say that the legislative 23 referendum failed. I think it was, like, 60 or 40. And so 24 the law wasn't changed by legislative referendum.</p> <p>25 Q. Has the popularity of election day registration in</p>	<p>Page 75</p> <p>1 Q. And did the Secretary's office then communicate 2 with members of the committee regarding support for HB176? 3 A. Oh, we may have sent out a note to the different 4 committee members, sure. I mean, like, that's pretty -- 5 you know, when people support or oppose bills, they'll 6 reach out to committee members. You see all the time where 7 advocacy groups -- I know for a fact I've seen where even 8 members of your client have said, You should definitely 9 reach out to this committee for this purpose; tell them to 10 vote this way.</p> <p>11 I mean, that's standard process in the legislative 12 arena.</p> <p>13 Q. Okay. And so in making that communication to the 14 committee that -- that you just described, is it fair to 15 say then that the Secretary's office agreed with 16 Representative Greef that the committee needed to hear from 17 the office? 18 A. I think it's fair to say that we reached out and 19 that we -- I mean, she said that you need to hear -- we -- 20 we -- I mean, we're saying that we're agreeing with her 21 opinion because we did her something now? I mean, 22 that's -- this is silly.</p> <p>23 MS. LEE: Let's go off, if we could. Let's take a 24 10-minute break.</p> <p>25 THE VIDEOGRAPHER: The time is 10:54. Going off</p>

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1 the record.
2 (Break taken from 10:54 a.m. until 11:19 a.m.)
3 **THE VIDEOGRAPHER:** The time is 11:19. Back on the
4 record.
5 Q. (By Ms. Lee) Okay, Mr. James, and you understand
6 you're still under oath?
7 **A. I do.**
8 Q. Okay. And so before we broke I was asking you
9 some questions, and sometimes they seemed to me like yes
10 and no questions, and we ended up a little bit at sea. But
11 I don't want to interrupt you at all when you're answering,
12 but we're trying to get through this deposition
13 expeditiously. And I'm not trying to be rude, but I'm
14 going suggest that when I raise my hand I maybe asking you
15 to pause or stop, and we can refocus on the question, as I
16 feel like your not -- not answering the question.
17 Is that okay with you?
18 **A. Yeah, that's fine. I'm just --**
19 **MR. MCINTOSH:** Hold on. I'm going to object to
20 counsel instructing the witness how to answer, but go
21 ahead.
22 **THE DEPONENT:** I'm just trying to do the best I
23 can to provide you as much information as I can.
24 Sorry if I'm --
25 Q. (By Ms. Lee) No, no --

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1 **A. -- I got a bloody nose over the break, so --**
2 Q. That's okay. Do you need time with it now?
3 **A. No, no. It's Montana in the spring --**
4 Q. Gotcha. Gotcha. Sure, no problem.
5 So prior to the passage and effective date of
6 HB176 where could someone register to vote on election day
7 in Montana?
8 **A. At the county office or the central location**
9 **designated by the clerk, I believe the statute reads.**
10 Q. Okay. And so it's the case that a new registrant
11 could not register to vote on election day at a polling
12 location?
13 **A. Well, that's not necessarily the case.**
14 Q. And in what instances is that not the case?
15 **A. Well, if the polling location is the central**
16 **location designated by the election administrator.**
17 Q. Okay. If someone meets the eligibility
18 requirements to be voter in a Montana but is not yet
19 registered on election day, will they will unable to vote
20 with HB176 in effect?
21 **A. Meet the requirements --**
22 **MR. MCINTOSH:** Objection; calls for a legal
23 conclusion.
24 Go ahead.
25 **THE DEPONENT:** Meets the requirements on election

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1 day but hasn't registered on election day?
2 Q. (By Ms. Lee) Is not yet registered.
3 **A. Yeah, you'd have to be registered in order to**
4 **vote.**
5 Q. How does an election official determine if a voter
6 should have been on voter registration rolls but was not
7 included on the rolls due to an administrative error?
8 **A. Oh, man, I thought -- I mean, like I was**
9 **testifying on Tuesday, I think, multiple -- a couple of**
10 **times, there's the certificate of erroneous omission**
11 **process.**
12 Q. Okay. And what steps does that process entail?
13 **A. Well, it depends on how the -- how the -- how it's**
14 **brought to the attention; right? I mean, it could be that**
15 **they email Secretary of State's office and say, I checked**
16 **my My Voter page and not up there, and my husband is -- we**
17 **went to the DMV at the same time.**
18 **So that would be a little different than if they,**
19 **you know, were at the central location on election day, for**
20 **example.**
21 Q. So if a voter presents themselves at the polling
22 location intending to vote, and they don't appear on the
23 registration roll due to an administrative error, what then
24 is the process to determine if that voter who's presented
25 themselves at the poll on election day will be able to

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1 vote?
2 **A. So hopefully I don't miss anything, and, like,**
3 **also to be short, but I believe it's first that they**
4 **contact to see whether the reason that they were omitted**
5 **was because the clerk's office, by some administrative**
6 **error within that office, was the cause; for instance, like**
7 **the registration wasn't processed all the way or -- or the**
8 **form is still sitting there type of thing. Could be some**
9 **more.**
10 **And then if it's pertinent to the DMV, for**
11 **example, or, you know, whatever else, they would contact**
12 **the -- the DMV -- on election day would be the DMV team**
13 **dedicated to that -- and they would look for that form**
14 **and -- and try to -- you know, to then go through that**
15 **process from there.**
16 Q. Okay. And does that process take time?
17 **A. I mean, I suppose everything takes time. It's**
18 **relatively efficient at that point, and it just would**
19 **depend on the circumstances of the voter. Could be**
20 **different depending on those circumstances, like most**
21 **things.**
22 Q. So what happens if the elections office cannot
23 find an underlying document or DMV record where the --
24 that -- where the voter had then not been entered into the
25 registration rolls due to administrative error?

1 **MR. MCINTOSH:** Objection; speculation.
2 **THE DEPONENT:** I feel like I answered this exact
3 question twice on Tuesday. The -- it's -- I'm a little
4 perplexed by it because, for one, the DMV as the records
5 for -- for, like, the voter registration with drivers
6 license, so it's all part of that kind of process, you
7 know, as part of administrative error. There could be
8 other circumstances. But I believe that, you know, if it's
9 resolved quick, then they would vote a provisional ballot
10 so they're ensured to be able to vote. And then depending
11 on, you know, factors from there, there would be, you know,
12 an if-A-then-B-type thing.
13 Q. Okay. And for a provisional ballot cast by a
14 voter in the situation that we were just talking about,
15 does the elections office have to confirm that the voter
16 should have been on the voter registration rolls in order
17 for that provisional ballot to be counted?
18 A. I mean, I'm doing it purely out of memory. I can
19 say that we spoke about this at length with the election
20 judge handbook, I believe, in front of me on Tuesday. And
21 I know that it's in the materials that we produced. Right
22 off the top of my head, I'm trying -- I'm trying to think
23 through. So they -- they've cast a provisional ballot. I
24 don't know that I could add any more facts to what I've
25 already testified on this topic to.

1 Q. Elections -- prior to HB176 election day
2 registration was available to Montana voters since 2006; is
3 that right?
4 A. So say that -- prior to --
5 Q. -- HB176 --
6 A. -- HB276 it was available to them. Yeah. So, I
7 mean, the initial legislation from 2006. There may have
8 been some modifications in between, but the larger premise
9 would have been that duration during that segment of
10 Montana election law history. Yeah.
11 Q. In any given election is this Secretary able to
12 identify what percentage of late registrants on election
13 day are new registrations?
14 A. I'd have to look at the rate registration report.
15 I believe that there is a new category, and there is an
16 election day category, but the split between those is
17 county to county, precinct to precinct, and other, which
18 would mean that it's batched together. So it would only be
19 brand new. And I -- I do recall going through the process
20 of trying to identify these. You'd think it would be
21 relatively easy, but it turns out that it's not because you
22 have to look at -- at that voter, and then you have to look
23 and see whether that person had previously had a voter ID
24 assigned -- other aliases, things like that. And so it's,
25 I guess -- I guess to make it short, I think that it's

1 really difficult to try to find that precise circumstance
2 under that precise registration activity, from my
3 knowledge.
4 Q. And you testified in your declaration and on
5 Tuesday that the number of late registration activities on
6 election day published by the Secretary of State, that
7 total number includes more than just new voter
8 registrations; is that right?
9 A. Well, as I had testified that -- that on the
10 report there's a category for "other" and it has a bunch of
11 different circumstances that that "other" includes. It's
12 right there on the report as we produced and we talked
13 about on Tuesday.
14 Q. And the Secretary had -- presents some information
15 on its website regarding late registration statistics; is
16 that right?
17 A. Well, what the Secretary of State does is produces
18 a late registration report. It's been going on for a
19 number of years, and really it's just what the system
20 allows to extrapolate.
21 Q. Okay. And is there a late register report
22 available for purchase that provides some more detail
23 beyond what's included on the Secretary's website?
24 A. Yeah, I believe there is. One of the vendor
25 options is a late registration report that would have a few

1 more options. Yep.
2 Q. Prior to HB176, after an election concluded how
3 soon were the number of late registration activities on
4 election day reflected in statewide voter databases?
5 A. That would just depend on -- on the election,
6 whether the material was complete, whether the staffer had
7 the opportunity to do so. I think that it varied a bit.
8 Probably sooner when things were more of, you know,
9 automated and understood.
10 Q. For the statewide elections between 2016 and 2018
11 do you have an estimate of how long that process would have
12 taken?
13 A. I mean, I -- I -- I don't know if I have an
14 estimate. I don't think there was any extended look at
15 that data at the time. I obviously wasn't there, but my
16 recollection from when I was talking to folks and when
17 we -- when we looked at this year's report was that it was
18 kind of one of those things where it was relatively
19 extrapolated quickly or automated and assumed, and part of
20 that was just that no one had really looked into what the
21 underlying data was, or even if what was being reported
22 accurately described the data as it was extrapolated. And
23 so to try to make sure that there was an accurate picture,
24 it took more time to try to see if we could -- to make the
25 data reflect, you know, its entirety. Because something

<p>Page 84</p> <p>1 like "other" or whatnot doesn't necessarily indicate 2 everything. 3 Q. Okay. Let's look at what's been marked as SOS 4 Exhibit 10. 5 (Exhibit SOS 10 marked for identification.) 6 Q. (By Ms. Lee) This appears to be an email setting a 7 meeting from Angela Nunn to the Secretary, you, Mr. Corson, 8 and Julie Lake regarding the late registration report; is 9 that right? 10 A. Yeah. I see where it says "discuss registration 11 report" and those on there, along with the conference room 12 as a -- as an inclusion. 13 Q. Okay. And who is Ms. Lake? What's her role in 14 the office? 15 A. Like internal affairs or something. I mean, she 16 supervises, oh, HR, and I believe business and I believe -- 17 I think coms reports to her. She used to have accounting, 18 but I think that's over with Ms. Nunn. She's -- I think -- 19 I think -- yeah, she's on the executive staff. Kind of 20 more of an internal focus-type of, you know, role. 21 Q. Okay. And the third item down in the body of the 22 document says "determine when we are going to publish the 23 2020 data." 24 Do you see that? 25 A. I do. Yeah.</p>	<p>Page 86</p> <p>1 out the best way to make a minor adjustment, and so we 2 wanted to look at numbers and get an accurate picture. And 3 then the more we dug into, like, what was extrapolated, 4 what it included, how -- is there a way for us to -- to 5 get, you know, more categories, how -- you know, how could 6 we provide more data than these lump sums so that we could 7 really get an accurate picture. And then -- and then, you 8 know, people trying to work on it. And so, you know, it 9 was -- it was trying to come up with a goal because the -- 10 the -- what usually is a fairly simple thing if it's just 11 taken as it is more complicated when we realized that the 12 public really wasn't getting an accurate picture of -- of 13 the information. So trying to make that into it. And 14 realizing it was more complicated, we needed to start 15 setting some deadlines. 16 Q. Did the Secretary's office consider releasing the 17 data in the form that it had for previous elections so the 18 public had access to it, and then continue the process of 19 potentially offering different cuts of the data as you've 20 just described? 21 MR. MCINTOSH: Objection; compound. 22 THE DEPONENT: Well, you know, I think -- I think 23 there was some discussion there. The thing is is that the 24 last thing you'd want to do is have something come out, and 25 then -- and then something different come out, and people</p>
<p>Page 85</p> <p>1 Q. And then the last item of the these four items is 2 "determine when the data of the late registrants -- name, 3 voter ID, county, et cetera -- will be made available for 4 purchase on app.mt.gov/voterfile. 5 Did I read that correctly? 6 A. You did. Yeah. 7 Q. And this meeting is scheduled for May 17, 2021; do 8 you see that? 9 A. Uh-huh. 10 Q. And that is over five months after the 2020 11 general election; is that right? 12 A. Well, the general election would have been in 13 November -- yep. Uh-huh. 14 Q. Okay. Why had the 2020 late registration 15 information not have been publicly available for the course 16 of the 2021 legislative session? 17 A. I mean, it's -- it's relatively straightforward. 18 After the election, which was, you know, a large one, and 19 we were resource thin, and you go to December, and you've 20 got to prepare for the session. We begin with the first 21 legislative cycle. So there was -- this is coming right 22 after the legislature. And as I was just testifying to 23 earlier, when -- when -- at some point during the session 24 there was, you know, asking about various registration 25 activities, because, like I said, we were trying to figure</p>	<p>Page 87</p> <p>1 say, Well, why is this -- is this changing? You're just 2 trying to do it right the first time. It's just really as 3 simple as that. 4 And also, like -- like I said, it was one of those -- 5 it was really interesting. It was one of the those things 6 where -- where the -- you'd say, Well, can you figure this 7 out? And it was like, yeah, it should be pretty easy. And 8 then all of a sudden it's like, that was not very easy; we 9 can't figure that out. 10 Q. (By Ms. Lee) Was the 2020 data then published in 11 May 2021? 12 A. Oh, I remember -- I remember working on it or 13 going through that process -- I remember when -- when it 14 was -- came out, and -- but, and I -- so, yeah, I think it 15 was right around this time. I'm sure you -- yeah, probably 16 the next exhibit. 17 Q. And you can put 10 aside for now, if you want, and 18 here is what's been marked as SOS Exhibit 11. 19 (Exhibit SOS 11 marked for identification.) 20 Q. (By Ms. Lee) This is another calendar invitation, 21 and this one, again, is from Ms. Nunn, but it's to a 22 slightly larger group: The Secretary, Mr. Corson, Jake 23 Burton, Keely English -- if I pronounced that correctly -- 24 Ms. Lake and Susan -- Susan Ames, and then yourself, on 25 June 4th for a meeting on followup on late registration</p>

<p>Page 88</p> <p>1 report.</p> <p>2 Is that right?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And had the late registration information</p> <p>5 for the 2020 election been made public yet at that point?</p> <p>6 A. I don't think so. I mean, like this is whole --</p> <p>7 this is the -- this shows the continuation of -- of trying</p> <p>8 to -- to work on this to make it publishable and right. I</p> <p>9 mean, that's told right by who's attending and the time.</p> <p>10 Q. Okay. Do you think having the most recent late</p> <p>11 registration information would have been useful for the</p> <p>12 public when the legislature was considering getting rid of</p> <p>13 election day registration?</p> <p>14 MR. MCINTOSH: Objection; speculation.</p> <p>15 THE DEPONENT: Well, for one, I think the most</p> <p>16 useful is accurate information. And, for -- for two, like</p> <p>17 we just said, we were -- we were working on making that</p> <p>18 accurate information through the course. And part of the</p> <p>19 legislation was what made us trying to, you know, really</p> <p>20 figure this out so that we can -- we can provide this with</p> <p>21 the public and include it in the public discussion. And</p> <p>22 you could see that the legislature session had ended. And</p> <p>23 after -- I mean, we talked at length on Tuesday about the</p> <p>24 amount of time that was required at that time. And -- and</p> <p>25 you can see the press of being like, we want to make sure</p>	<p>Page 90</p> <p>1 registration report; is that right?</p> <p>2 A. Yeah, it does.</p> <p>3 Q. Okay. And Ms. Nunn writes:</p> <p>4 Do you think you will have the new late reg report</p> <p>5 ready to go to MI by the end of the day as was our goal?</p> <p>6 Did I read that correctly?</p> <p>7 A. Yeah, you read that correctly.</p> <p>8 Q. What is "MI"?</p> <p>9 A. MI is one of the vendors that is utilized with the</p> <p>10 registration report. I think at that time it was the one</p> <p>11 that provided, like, the purchasing process, like the</p> <p>12 transaction aspect of it, so that that way it was more</p> <p>13 automated. We had a contract, and the state had -- had a</p> <p>14 contract with MI, which required us to -- it's part of the</p> <p>15 Montana Technology Act, I believe.</p> <p>16 Q. Was the late registration report with the 2020</p> <p>17 election date released to public on July 16, 2021?</p> <p>18 A. I would imagine you probably have the exhibit or</p> <p>19 more information than I do. I -- I see here that the end</p> <p>20 of the day was the goal, and I can see the urgency by</p> <p>21 Angela, and you can clearly see the train of, like, high</p> <p>22 priority trying to complete this process. But I don't know</p> <p>23 whether that was finally the resolution to the laborious</p> <p>24 process that it was.</p> <p>25 Q. Okay. And I don't have another document for you</p>
<p>Page 89</p> <p>1 we get this done, including which resources were brought in</p> <p>2 to do it. So...</p> <p>3 Q. And when the 2020 late registration data was</p> <p>4 released did it include new categories?</p> <p>5 A. That's the thing is eventually it was -- you --</p> <p>6 you can't -- you can't -- we can't -- we would have to</p> <p>7 rewrite the complete script as to how the information was</p> <p>8 inputted, so there was no way to extrapolate it out. So</p> <p>9 literally the best case scenario was to try to create</p> <p>10 visuals for more information, but more importantly to</p> <p>11 specify what that information was and contained. And it</p> <p>12 turned out that that too required a lot of time to try and</p> <p>13 extrapolate and figure out.</p> <p>14 Q. And so the late registration data with the current</p> <p>15 categories was accurate; is that fair to say?</p> <p>16 A. I mean, to the -- to the best of our abilities we</p> <p>17 tried to paint the picture of -- of this is what occurred</p> <p>18 on this day. I think that we were able to do -- I mean,</p> <p>19 any type of thing that we were able to provide, we provided</p> <p>20 in there.</p> <p>21 Q. Okay. And you can put that exhibit aside, and I'm</p> <p>22 handing you what's been marked as SOS Exhibit 12.</p> <p>23 (Exhibit SOS 12 marked for identification.)</p> <p>24 Q. (By Ms. Lee) This appears to be an email from</p> <p>25 Angela Nunn to Dana Corson on July 16, 2021, about the late</p>	<p>Page 91</p> <p>1 on this, so did you know when the late registration data</p> <p>2 ended up getting release available to the public?</p> <p>3 A. There's a good chance that in the production it</p> <p>4 included that, you know, release to the public. And if</p> <p>5 not, you would be able to see that on the -- like, the</p> <p>6 media releases or whatever on the Secretary of State's</p> <p>7 website.</p> <p>8 Q. Okay. If someone needs to drive five hours one</p> <p>9 way in order to vote, is that a burden on the voter?</p> <p>10 MR. MCINTOSH: Objection; vague, calls for</p> <p>11 opinion.</p> <p>12 THE DEPONENT: Well, I mean, I guess that depends</p> <p>13 on the voter. I mean, obviously five hours is the time</p> <p>14 that it takes. I guess depends on whether you value the</p> <p>15 vote or -- it's probably less of a burden than driving six</p> <p>16 hours.</p> <p>17 Q. (By Ms. Lee) Are there any changes to Montana's</p> <p>18 voter registration form due to HB176?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay.</p> <p>21 (Exhibit SOS 13 marked for identification.)</p> <p>22 Q. (By Ms. Lee) And so I'm handing you what I've</p> <p>23 marked as SOS Exhibit 13.</p> <p>24 And what is this document?</p> <p>25 A. Well, this is the voter registration application.</p>

<p>Page 92</p> <p>1 Q. Okay. And on this application is there anything 2 that was added or changed due to HB176 specifically? 3 A. I guess to amend what I just said earlier, I was 4 just thinking voter registration updates from the 5 post-legislature. I -- I don't know that it was like 6 this -- I mean, the end of the session required -- updated 7 the voter registration application. I don't know if 8 there's anything in that specifically references one bill. 9 I mean, obviously I see the ID, so it would needed to be 10 updated based on implementation of the laws. 11 Q. But sitting here today you don't identify anything 12 specific that HB176 caused as opposed to the ID changes 13 that you just referenced. 14 Is that fair to say? 15 A. Well, I mean, you know, 176 is relevant to whether 16 it's a new registration or a name change or an address 17 change, for example. So I don't know whether that was on 18 the form or not, but I do know that it's pretty relevant to 19 House Bill 176 and more relevant than it was prior to House 20 Bill 176. Pretty directly pertinent. 21 Q. Okay. And so this -- truly just to clarify, 22 are -- is your testimony that the Section 1 is a new 23 section on the Montana voter registration application due 24 to HB176? 25 A. No, that's not what I said --</p>	<p>Page 94</p> <p>1 A. Yeah. 2 Q. And what were those changes? 3 A. Well, I know that there was a portion of House 4 Bill 176 that changed, like, when a ballot was allowed to 5 be mailed or given in person based on whether it was 6 election day or, like, the week before. And there was 7 also, like -- for instance, statute prescribes certain 8 things but doesn't speak to other things, and it needs to 9 be supplemented. And so the administrative rules served 10 their function to clarify those types of things also. 11 Q. Okay. And so that -- that second piece you just 12 said about clarifying those types of things, is there a 13 specific supplementation that you had in mind in relation 14 to 176? 15 A. Yeah. I can give you an example. So, like, 16 statute would say, You may vote at this location. But 17 statute doesn't necessarily say which ballot you may vote 18 at that location. And I know we had that discussion on 19 Tuesday too. So administrative rule supplements the 20 statute to help facilitate, which was necessary because -- 21 for instance, in that particular example, the election 22 administrators reached out and said statute provides where 23 they're at, but it doesn't let us know which ballot, so 24 which ballots can they do? 25 It's like, oh, it's probably a pretty good idea to</p>
<p>Page 93</p> <p>1 Q. Okay. 2 A. -- what I said was that there's very well that 3 that could be one because it's more pertinent after 176. I 4 don't have the old voter registration application in front 5 of me, so I can't tell you whether it was there or not. 6 But I can say that that information would have been 7 obviously less relevant prior to 176 as it is after 176. 8 So the voter registration form and the way that it's laid 9 out is pretty important following House Bill 176. 10 Q. And you can put that exhibit aside. 11 Other than changing the date and time of the end 12 of the late registration period, what other changes to 13 administrative rules were required by HB176 specifically? 14 A. So addition -- so anything -- wait a minute. So 15 House Bill 176 required administrative rules updates. 16 You're asking me what rules were required by House Bill 176 17 that weren't made because of House Bill 176? 18 Q. No. No. I'm saying putting aside the change of 19 the date and the time of the end of late registration, 20 which we all agree had to be changed due to House Bill 21 176 -- 22 A. Yeah. Okay. I gotcha now, I think. Yeah. 23 Q. -- were there any other changes that were needed 24 because just specifically of House Bill 176 as opposed to 25 any of the other laws?</p>	<p>Page 95</p> <p>1 supplement statute and administrative rule to clarify that 2 for our elections officials. 3 Q. Prior to HB176, other than access to late 4 registration activity, why did voters come into the 5 election office rather than their -- their precinct-based 6 polling location on election day? 7 MR. MCINTOSH: Sorry. Could you read that back 8 please? 9 THE DEPONENT: I think I got it. 10 (Record read.) 11 MR. MCINTOSH: Objection; speculation. 12 THE DEPONENT: Well, to record a deed. 13 Q. (By Ms. Lee) Prior to HB176, other than access to 14 late registration activity, were there any reasons voters 15 come into the elections office for voting-related activity 16 on election day? 17 MR. MCINTOSH: Same objection. 18 THE DEPONENT: So why would they come into the 19 office other than voting activity? 20 Q. (By Ms. Lee) Other than late registration 21 activity. 22 A. Other than late -- 23 MR. MCINTOSH: Same objection. 24 THE DEPONENT: Sure. Pick up their ballot, get a 25 replacement ballot. Let's see. Find out where their</p>

1 polling place is. Get a form so that they can assist a
2 voter that just got in a car crash. They -- there's a lot
3 of different things. The things that go on on election
4 day. In fact, that -- that person may come in instead
5 of -- to not do voter registration activity for the purpose
6 of volunteering with the county procedures which are going
7 on at that time.
8 Q. (By Ms. Lee) Prior to HB176 were there rural
9 counties in Montana that had less than five people
10 accessing late registration activity on election day?
11 **A. Less than five people accessing voter registration**
12 **activity on election day in rural counties? What do you**
13 **define as a rural county? I mean, you get -- I mean, I'm**
14 **from Montana. My definition of rural is a lot different**
15 **than -- than yours might be.**
16 Q. Sure. Let me rephrase for you.
17 Prior to HB176 were there any counties in Montana
18 that routinely had less than five people accessing late
19 registration on election day?
20 **A. You know, I -- I'm sure there's information out**
21 **there. I definitely don't have the database in my head.**
22 Q. Prior to HB176 are you aware whether there are
23 counties in Montana that had no one accessing late
24 registration activities on election day?
25 **A. I mean, I'm not sure that I would could say either**

1 **way. I'm sure that there's a way for you to identify that**
2 **in what's been produced, but, no, I don't -- I guess I**
3 **don't understand.**
4 Q. In places that only had a few late registrants on
5 election day, would the ability for them to undertake late
6 registration activities lead to long wait times?
7 **A. So repeat that question.**
8 Q. In places that had very few late registrants on
9 election day, would such activity lead to long wait times?
10 **MR. MCINTOSH:** Vague, speculation.
11 **THE DEPONENT:** I mean, that could depend; right?
12 Like there's been testimony in this case that was talked
13 about where five people in a line, if they're -- depending
14 on what each person needed to do, if those activities were,
15 like, 20 minutes a piece, you're talking an hour wait time.
16 There's five people there, but that's an hour-plus wait
17 time. Could be one person in line, but the person in front
18 of you has to do a county-to-county switch, and the county
19 takes 45 minutes to answer. So, yeah, it can be a long
20 wait time regardless of how many people are in line.
21 Q. By how much will HB176 reduce the workload for
22 elections officials?
23 **MR. MCINTOSH:** Objection; vague.
24 **THE DEPONENT:** Yeah. I mean, you're -- you're --
25 you would be entirely speculating based on how many people

1 come in and what they need. It could be different on each
2 thing. But it certainly is going to help.
3 Q. (By Ms. Lee) Does every additional voter in an
4 election necessarily cause some additional work for county
5 elections officials and elections judges?
6 **A. Does every voter cause some additional work? I**
7 **mean, I -- I -- I mean, it depends on how you're**
8 **classifying it; right? Because, for example, I'm -- I'm**
9 **registered, I sent in my ballot. A person has to open my**
10 **envelope, they have to feed it in the machine. So if**
11 **you're -- if you're talking about that they pick up the**
12 **stack, and then they -- then they pick up the stack after**
13 **it's gone through, that that picking up that I contribute**
14 **to the 1/100 of the time it took to pick up the stack, then**
15 **I guess that's something.**
16 Q. Would any enactment that caused fewer people to
17 vote reduce the workload for counties related to running
18 elections?
19 **MR. MCINTOSH:** Objection; speculation.
20 **THE DEPONENT:** I'm sorry. I'm really trying to
21 listen to you, but can you just say that one more time?
22 Q. (By Ms. Lee) Yeah. No problem. Would any
23 enactment that caused fewer people to vote reduce the
24 workload for counties related to running elections?
25 **MR. MCINTOSH:** Same objection.

1 **THE DEPONENT:** Yeah. I mean, I don't -- not
2 necessarily.
3 Q. (By Ms. Lee) And what are you thinking of when you
4 say "not necessarily"?
5 **A. Well, I mean, that's just such a vague,**
6 **speculative question. It could -- it depends on a lot of**
7 **different factors, so it certainly could be, certainly**
8 **could not be.**
9 Q. Will HB176 just shift the workload to the day
10 before the election?
11 **MR. MCINTOSH:** Same objection; speculation.
12 **THE DEPONENT:** No. I mean -- no. It's not like
13 that's the -- it's not like the only day you can register
14 is election day, and now the only day you can register is
15 the day before the election. That's silly.
16 Q. (By Ms. Lee) Prior to HB176 was election day the
17 day that -- the single day that had the most late
18 registration activity?
19 **A. I think it depends on the election. We're talking**
20 **about all activities, including ones that are affected,**
21 **includes ones that are not. You have the reports. You**
22 **guys have got the back end reports. You've got a lot of**
23 **different data. So I'm sure that you have far more facts**
24 **to that that I do in terms of breaking it down as long as**
25 **it's broken down accurately.**

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<p>1 Q. Prior to HB176 did registration close for a period 2 from noon on the day before the election until the next 3 morning in order to give elections workers time to process 4 ballots received by mail in that afternoon? 5 A. No. No, that's not -- that's not the reason that 6 it was closed. 7 Q. Okay. Why was it closed for that period of time? 8 A. The reason that it was closed at that period of 9 time was so that they could print the final list of 10 registered voters. 11 Q. Okay. Is the day before the election the only day 12 that places with tabulating machines can start tabulating 13 mail ballots that have already been received? 14 A. Just the beginning part. Sorry. 15 Q. Oh, sure. So is the day before the election the 16 first day that places that use tabulating machines can 17 start tabulating mail ballots that have already been 18 received? 19 A. So I think what your question's asking is about 20 the newer provision where you can start tabulating three 21 days before. I believe that's the Friday before. There's 22 some qualifications as to which counties and which 23 precincts are allowed to do that before you even get to 24 that step, and then also whether the county elects to do it 25 at that step. But certainly it can -- goes beyond, can</p>	<p>1 THE DEPONENT: Yeah. I mean, I'd have to be 2 guessing throughout a variety of things. I mean, there's 3 times when the peak of the election is well in advance, 4 months in advance of the election. Depends on which race 5 you're talking about, if you're talking about -- which type 6 of election you're talking about. You know, what type of 7 societal factors. I mean, there's a lot of different 8 things that I think -- that go into that. 9 Q. (By Ms. Lee) Are you familiar with the declaration 10 submitted on behalf of Janelle Twocheck*, Doug Ellis, and 11 Monica Eisenzimmer* in this case? 12 A. I mean, I'm familiar that they submitted 13 declarations, for sure. 14 Q. Okay. In the Secretary's brief opposing the 15 preliminary injunctions and in support of summary judgment, 16 the Secretary's office stated it heard similar concerns to 17 those voiced by Twocheck, Eisenzimmer, and Ellis from 18 others. 19 Who voiced similar concerns to the Secretary of 20 State's office, if you know? 21 A. I mean, we've talked about this earlier. I'm 22 really bad with names, so I don't have that. But I can 23 certainly attest to the fact that's true. Obviously when 24 they -- when they were looking at House Bill 176, there 25 was, you know, less than a majority, so you could look at</p>
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<p>1 begin there at the Friday where they start opening, and 2 then there's a certain different time when they process 3 through the machines. I think that's what you're referring 4 to. 5 Q. Okay. And so is the day they can begin processing 6 through the machines the day before election day? 7 A. I think -- I guess -- yeah, I think maybe they 8 open the envelopes Friday -- I mean, they start the 9 counting three days before. I know the statute is specific 10 on that. And I'm -- it's slipping my mind as to whether 11 you can start sending them through, but -- but it's sounds 12 right. I just don't want to -- I'm guessing on statute 13 right now, so... 14 Q. No, that's -- that's fine. And in small counties 15 with fewer than 8,000 registered voters, they cannot open 16 the secrecy envelopes to get ballots ready before counting 17 until the day before the election; is that right? 18 A. Well, it's -- there's the option to do it, you 19 know, in the first place, so just because you qualify 20 doesn't mean you do. But, yeah, there's a threshold on the 21 number as to whether you're -- have the discretion to 22 participate in that process under the counter -- recent 23 provision. 24 Q. Does interest in elections peak on election day? 25 MR. MCINTOSH: Objection; vague, speculation.</p>	<p>1 that list perhaps. But I don't have a specific name that 2 comes to mind to give to you. I can just say that there's 3 over the time -- or even if I did, that's not to say that 4 they're still an election administrator now, so... 5 MS. LEE: Let's go ahead and take a break. It's 6 almost noon anyway. My next line of questions was, I 7 think, going to take us -- like, to get those would take us 8 longer past noon, so if this works for you guys -- 9 MR. MCINTOSH: Sure. How long do you guys need? 10 THE VIDEOGRAPHER: The time is 11:57. Going off 11 the record. 12 (Break taken from 11:57 a.m. until 12:47 p.m.) 13 THE VIDEOGRAPHER: The time is 12:47. Back on the 14 record. 15 Q. (By Ms. Lee) Good afternoon, Mr. James. You know 16 that you're still under oath, as before? 17 A. I do. 18 Q. The Secretary's office has contended that rural 19 counties have fewer resources than urban counties; is that 20 right? 21 A. I mean, I suppose it depends on every county; 22 right? But generally speaking, the urban counties 23 typically have more resources. 24 Q. Do rural counties have fewer individuals to serve 25 than urban counties?</p>

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<p>1 A. Well, yeah, right? Right. So they do -- their --</p> <p>2 their government is typically smaller, and thus people have</p> <p>3 more overlap in roles. You know, the hardware store is</p> <p>4 sometimes your grocery store.</p> <p>5 Q. Would providing counties with funding to hire</p> <p>6 additional elections staff alleviate administrative burdens</p> <p>7 on county election officials?</p> <p>8 MR. MCINTOSH: Objection; speculation.</p> <p>9 THE DEPONENT: Yeah. That depends. I mean, for</p> <p>10 one, people have to be available even if they can get paid.</p> <p>11 And, for two, even if they're available on a day, that</p> <p>12 doesn't necessarily mean that they're trained on Montana</p> <p>13 Votes or a variety of other things. I mean, it just</p> <p>14 depends. So not necessarily. Could be helpful, could not</p> <p>15 be. Depends.</p> <p>16 Q. (By Ms. Lee) And we've discussed that the</p> <p>17 Secretary's office was responsible for drafting and</p> <p>18 implementing the the administrative rules for HB176; is</p> <p>19 that right?</p> <p>20 A. The administrative rules portion after? Yeah, I</p> <p>21 mean, as we discussed Tuesday and today, yep.</p> <p>22 Q. What is the purpose of administrative rules?</p> <p>23 A. I mean, it seems to me to fill in the gaps; right?</p> <p>24 To -- to help carry out the law.</p> <p>25 Q. Okay. And do administrative rules bind Montanans</p>	<p>1 in the Administrative Rules of Montana, ARM, and have the</p> <p>2 force of law.</p> <p>3 Did I read that correctly?</p> <p>4 A. You read that correctly.</p> <p>5 Q. And so if an administrative rule has been</p> <p>6 published in the Administrative Rules of Montana and has</p> <p>7 not be repealed from the administrative rules, is it</p> <p>8 binding on Montanans?</p> <p>9 MR. MCINTOSH: Objection; calls for a legal</p> <p>10 conclusion.</p> <p>11 THE DEPONENT: Again, that -- again, it depends.</p> <p>12 So, like, the force of law; right? So one example would</p> <p>13 be -- let's see here. There's -- there's -- well, how</p> <p>14 about the Ballot Interference Act; right? It's still on</p> <p>15 the books, still has the force of law, which means that</p> <p>16 it's not enforced based on a judicial interpretation. I</p> <p>17 mean, there's -- there's laws on the books about a variety</p> <p>18 of things -- about what you can do on Sundays -- and that</p> <p>19 doesn't mean that they're enforced. So it has the force of</p> <p>20 law, meaning how law is enforced. And just because it's in</p> <p>21 the administrative register certainly doesn't mean that it</p> <p>22 is.</p> <p>23 Q. (By Ms. Lee) Okay. And you can put that exhibit</p> <p>24 aside.</p> <p>25 Does the office consider HB176 and SB169 to be</p>
Page 105	Page 107
<p>1 just the same as statute?</p> <p>2 MR. MCINTOSH: Objection; calls for a legal</p> <p>3 conclusion.</p> <p>4 THE DEPONENT: Yeah. I mean, that's -- that --</p> <p>5 not necessarily; right? I mean, if an administrative rule</p> <p>6 conflicts with statute, then statute binds. I mean, but at</p> <p>7 the same time, if it supplements statute, it's kind of the</p> <p>8 same way as, you know, a directive can be binding, but if a</p> <p>9 directive is -- directly conflicts with an administrative</p> <p>10 rule, which is comporting with statute, then obviously that</p> <p>11 would be rendered moot too. I mean, it's...</p> <p>12 Q. Okay. I'm handing you what's been marked at SOS</p> <p>13 Exhibit 14.</p> <p>14 (Exhibit SOS 14 marked for identification.)</p> <p>15 Q. (By Ms. Lee) And this is a screen capture of the</p> <p>16 administrative rules services section of the website of the</p> <p>17 Secretary of State.</p> <p>18 Is this familiar to you?</p> <p>19 A. Well, I mean, the website is familiar to me. I</p> <p>20 probably have clicked on a couple of these things. Yeah.</p> <p>21 Q. All right. And in the -- the text paragraph</p> <p>22 towards the bottom of -- of the -- the capture, in</p> <p>23 describing the ARM, the Secretary's website states in that</p> <p>24 last sentence there:</p> <p>25 Once adopted, administrative rules are published</p>	<p>1 linked together?</p> <p>2 A. Well, that's -- so, I mean, it's not like they're</p> <p>3 linked together as a matter of being linked together. But</p> <p>4 at the same time, both of them come out of the same</p> <p>5 session, along with other ones. They both had similar</p> <p>6 effective dates. They both were implemented similar -- you</p> <p>7 know, along similar timelines. So they're -- the work and</p> <p>8 the lived experience in a way is linked together, but it's</p> <p>9 not like the bills are linked together. Hopefully that</p> <p>10 answers your -- your question.</p> <p>11 Q. And I'm -- okay. I'm going to mark the next</p> <p>12 exhibit.</p> <p>13 (Exhibit SOS 15 marked for identification.)</p> <p>14 Q. (By Ms. Lee) I'm handing you what's been marked as</p> <p>15 SOS Exhibit 15. This appears to be an email from</p> <p>16 Ms. Nunn to Ray Dagnall regarding the rules for SB169 and</p> <p>17 HB176; is that right?</p> <p>18 A. Hang on one second. I'm just trying to read it</p> <p>19 here.</p> <p>20 Q. Sure.</p> <p>21 A. (Reviews document.)</p> <p>22 Okay.</p> <p>23 Q. And Mr. Dagnall is in the records department of</p> <p>24 the Secretary's office; is that right?</p> <p>25 A. Can you repeat the --</p>

<p>Page 108</p> <p>1 Q. Oh, sure. Sorry --</p> <p>2 A. -- no, I was just trying to look --</p> <p>3 Q. -- no, no my apologies.</p> <p>4 This appears to be an email from Mr. Nunn to Ray</p> <p>5 Dagnall regarding the rules for SB169 and HB176; is that</p> <p>6 right?</p> <p>7 A. Yeah. It looks like it was forwarded -- an email</p> <p>8 forwarded to Ray from Angela. Yeah.</p> <p>9 Q. Okay. And Mr. Dagnall is the records department</p> <p>10 of the Secretary's office; is that right?</p> <p>11 A. Well, as I was saying, he's -- he's a records</p> <p>12 specialist, and he's been kind of helping out on the</p> <p>13 backfill with how busy we are in elections. But he still</p> <p>14 does his -- his records portion. And, you know, he used to</p> <p>15 oversee -- was the supervisor of the administrative rule</p> <p>16 portion. So in that role he had some tasks, and in his</p> <p>17 current role some of those tasks are overlapping, if that</p> <p>18 makes sense.</p> <p>19 Q. Sure. And in the first email Ms. Nunn writes in</p> <p>20 the second full sentence:</p> <p>21 This isn't -- excuse me.</p> <p>22 This one isn't exactly following our normal</p> <p>23 procedures, but I am just trying to make sure I</p> <p>24 over-communicate, if anything.</p> <p>25 Did I read that correctly?</p>	<p>Page 110</p> <p>1 I'm handing you what's been marked as SOS</p> <p>2 Exhibit 16.</p> <p>3 (Exhibit SOS 16 marked for identification.)</p> <p>4 THE DEPONENT: Okay.</p> <p>5 Q. (By Ms. Lee) Do you recognize this document?</p> <p>6 A. Yeah. Yeah.</p> <p>7 Q. Okay. And what is it?</p> <p>8 A. Looks to be a press release. One of the ones that</p> <p>9 we do. It's got the Helena, Montana, double-dash, which is</p> <p>10 usually a good indication. It's got the "for immediate</p> <p>11 release, and of course it references the coms director.</p> <p>12 Q. And in the second paragraph of this release</p> <p>13 Secretary Jacobsen is quoted, saying:</p> <p>14 Reporter ID and voter registration deadlines are</p> <p>15 best practices in protecting the integrity of elections.</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. Okay. What is the basis for the Secretary's</p> <p>19 assertion that voter registration deadlines are a best</p> <p>20 practice?</p> <p>21 A. Well, I mean, there's probably a lot of things;</p> <p>22 right? I mean, obviously the National Association of</p> <p>23 Secretary of State discusses various things that are</p> <p>24 important for election. You've got, like, the Carter-Baker</p> <p>25 report that would have talked about best practices. But</p>
<p>Page 109</p> <p>1 A. You read that correctly.</p> <p>2 Q. Okay. And in what way did the administrative</p> <p>3 rulemaking discussed here not exactly follow the office's</p> <p>4 normal procedures, if you know?</p> <p>5 A. Well, in reading the chain here it shows that this</p> <p>6 is -- that this is a copy of the administrative rule</p> <p>7 proposal, which would include Senate Bill 169. Senator</p> <p>8 Cuffe was the sponsor for Senate Bill 169. The Montana</p> <p>9 Administrative Procedure Act requires to send notification</p> <p>10 to the sponsor of the bill that administrative rules are</p> <p>11 being promulgated on behalf of, and the notification also</p> <p>12 requires the agency to put as one of those subparts when</p> <p>13 they contacted the sponsor and the form, and then usually</p> <p>14 it will be, like, a green slip, right, for -- I forget what</p> <p>15 that's called -- the green slip that goes through the post</p> <p>16 office -- to confirm that they received the rule package.</p> <p>17 And in this situation it's attached. And she's</p> <p>18 says, Can you confirm that you got it, or otherwise I'll</p> <p>19 send you a hard copy. Which would be the normal process.</p> <p>20 So since she sent the electronic copy, which is not the</p> <p>21 normal process, and he responded with, Got it; will read</p> <p>22 later, then that's confirmation of receipt, which is</p> <p>23 different than the normal process, which is a green slip to</p> <p>24 confirm receipt.</p> <p>25 Q. Okay. You can put that one aside.</p>	<p>Page 111</p> <p>1 more importantly than that, I mean, you've got federal</p> <p>2 legislation, such as the MVRA and HEVA, that -- that</p> <p>3 requires the -- the state to institute certain ID</p> <p>4 requirements and also certain registration requirements,</p> <p>5 including databases and registration deadlines. So I think</p> <p>6 it's pretty common to understand that they're best</p> <p>7 practices.</p> <p>8 Q. And is it a best practice for voter</p> <p>9 registration -- excuse me, I'll rephrase.</p> <p>10 Is having election day registration considered a</p> <p>11 voter registration deadline in the areas that you were just</p> <p>12 talking about?</p> <p>13 MR. MCINTOSH: Objection; vague.</p> <p>14 THE DEPONENT: Yeah. I mean, I think I lost you a</p> <p>15 little, but I think I can answer there. So it says that</p> <p>16 voter ID and voter registration deadlines are best</p> <p>17 practices. Those are the categories of laws that are best</p> <p>18 practices, generally, and those categories of law are best</p> <p>19 practices in my opinion and in the office's opinion and in</p> <p>20 people such as the Carter-Baker report's opinion, and</p> <p>21 obviously was adopted as a best practice by the federal</p> <p>22 government in passing that down to the states.</p> <p>23 Q. (By Ms. Lee) Is it your understanding that there's</p> <p>24 a federal law requiring a specific voter registration</p> <p>25 deadline?</p>

<p>Page 112</p> <p>1 A. No. I didn't say that.</p> <p>2 Q. Okay. Were there any updates -- you can put that</p> <p>3 exhibit aside.</p> <p>4 Were there any updates to MT Votes due to HB176?</p> <p>5 A. House Bill 176. So to Montana Votes? There could</p> <p>6 have been. I mean, obviously the hope at that time was</p> <p>7 that we were going to go live with the new system</p> <p>8 January 1st, so it would make sense that the focus would be</p> <p>9 on the new system. It would make sense also that when the</p> <p>10 delay of the new system took place, that -- that there</p> <p>11 could have been changes to the old system in some</p> <p>12 capacities. Maybe -- I'm -- I'm familiar with the new</p> <p>13 system.</p> <p>14 Q. Okay. Sitting here today do you have any specific</p> <p>15 knowledge of changes to -- to MT Votes due to HB176</p> <p>16 specifically?</p> <p>17 A. Let me think here. To Montana Votes. I hate to</p> <p>18 say no and then -- then that bind the agency, because it</p> <p>19 very well could be. I'm just trying to remember, because</p> <p>20 there's two systems. And there very well could be. I</p> <p>21 guess I don't have an example right now, but if I -- if I</p> <p>22 think of one -- well, I shouldn't say that I'll tell you</p> <p>23 because I'll probably be focused on your next question.</p> <p>24 But there very well could have been, I just don't think of</p> <p>25 an example.</p>	<p>Page 114</p> <p>1 Q. Okay. Let me --</p> <p>2 A. Maybe -- go ahead.</p> <p>3 Q. I can -- I can try and rephrase.</p> <p>4 A. Uh-huh.</p> <p>5 Q. So was work done on Elect MT prior to HB176 that</p> <p>6 then had to be changed after HB176?</p> <p>7 A. Work done before House Bill 176 that had to be</p> <p>8 change after -- well, like I said, I can't quite remember</p> <p>9 if there's something specific to House Bill 176. There was</p> <p>10 certainly changes that would have been made over the</p> <p>11 course. I mean, I think that that system launched when I</p> <p>12 was 90 pounds and five feet tall as a sophomore in high</p> <p>13 school.</p> <p>14 Q. The Elect MT system?</p> <p>15 A. No, the Montana Votes system. Sorry.</p> <p>16 Q. Okay. --</p> <p>17 A. So you're asking about the Elect MT?</p> <p>18 Q. Yes.</p> <p>19 A. I mean, the timeline in development was such that</p> <p>20 current law post-session was able to be developed in the</p> <p>21 scripts. And so then as you got closer to the end of the</p> <p>22 year was where we were at with testing capabilities, still</p> <p>23 with no launch date, it was based on making the system</p> <p>24 responsive to certain different triggers. So we were</p> <p>25 beyond that user story stage, to my knowledge.</p>
<p>Page 113</p> <p>1 There was aspects to the new system, and, like I</p> <p>2 said, I know we were focused on the new system up until the</p> <p>3 deadline, so could be. You know -- well, 169. Yeah.</p> <p>4 I'm -- I'm not thinking of an example of 176 in particular.</p> <p>5 Q. Okay. And were there any updates to Elect MT,</p> <p>6 which I believe is the new system that you referenced, due</p> <p>7 to HB176?</p> <p>8 A. Yeah. So -- so, like, there's -- from -- and I'm</p> <p>9 going to do this layman's terms because I'm not -- I'm not</p> <p>10 on the tech side. But there's something related to</p> <p>11 overriding different processes with election day because</p> <p>12 you finalize your registration; right? So it's like, this</p> <p>13 is the final list of voters on the -- on the new. And so</p> <p>14 you have to do various customized-type things to backdate</p> <p>15 the eligibility and things like that, whereas the new</p> <p>16 system was kind of set up to where the finalization process</p> <p>17 and how you do those different steps was compliant with the</p> <p>18 current law, much like many of the other parts were</p> <p>19 developed compliant with current law.</p> <p>20 Q. Okay. And you had mentioned that the new system,</p> <p>21 the deadline that it was hoped to be launched at, was</p> <p>22 pushed back some. And so were the -- the programming that</p> <p>23 you just spoke to regarding HB176 something that had to be</p> <p>24 done twice within Elect MT?</p> <p>25 A. I'm a little confused by the question.</p>	<p>Page 115</p> <p>1 Q. Okay. Was HB530 drafted at the request of the</p> <p>2 Secretary of State?</p> <p>3 A. 530 would be the security one?</p> <p>4 Q. Yes.</p> <p>5 A. Yeah, I believe that was -- had the "by the</p> <p>6 request of." And really it was -- it was a request by the</p> <p>7 legislative audit division that then made a request by the</p> <p>8 Secretary of State in its original form. Yeah.</p> <p>9 Q. Okay. And when HB530 was introduced it was in the</p> <p>10 form the Secretary requested?</p> <p>11 A. When it was introduced it was in the form that the</p> <p>12 Secretary requested. You know, and like I said when we</p> <p>13 talked about with and testified on Tuesday, it was, you</p> <p>14 know, confirmed that it met the request requirements from</p> <p>15 the audit division.</p> <p>16 Q. Did the Secretary's office begin the drafting</p> <p>17 process for HB530 with legislative services?</p> <p>18 A. You mean, like, did we talk to legislative</p> <p>19 services when the drafting started?</p> <p>20 Q. I guess I mean did the Secretary seek to have</p> <p>21 HB530 drafted or did a legislator seek to have HB530</p> <p>22 drafted?</p> <p>23 A. I'm sure that -- that we -- so for -- you have to</p> <p>24 have a legislator to -- to -- to start drafting on that LC</p> <p>25 number. It could be that the LC number was changed, you</p>

<p>Page 116</p> <p>1 know, but the Secretary of State's office was -- was</p> <p>2 obviously helping legislative services draft it for whoever</p> <p>3 the ultimate carrier would be.</p> <p>4 Q. Okay. And I'm handing you what's been marked as</p> <p>5 SOS Exhibit 17.</p> <p>6 A. Okay.</p> <p>7 (Exhibit SOS 17 marked for identification.)</p> <p>8 Q. (By Ms. Lee) And this appears to be an email chain</p> <p>9 between Sonja Nowakowski and Angela Nunn; is that right?</p> <p>10 A. Looks like -- yeah. Beginning -- I'm just looking</p> <p>11 at the beginning portion. It looks like that's Sonja and</p> <p>12 Angela Nunn, and then the back and forth between them.</p> <p>13 Yeah. Okay. Looks like the whole thing is between them.</p> <p>14 Q. Okay. And -- and who is Ms. Nowakowski?</p> <p>15 A. I think we talked about this on Tuesday.</p> <p>16 Ms. Nowakowski is someone that works at legislative</p> <p>17 services.</p> <p>18 Q. Okay. And in the second email down Ms. Nunn</p> <p>19 writes that the Secretary's office plans to use LC316 for</p> <p>20 the election security bill.</p> <p>21 Do you see that in the first paragraph of that</p> <p>22 email?</p> <p>23 A. I see a sentence that says "plan to use for</p> <p>24 election security bill." Addresses the legislative audit</p> <p>25 recommendation.</p>	<p>Page 118</p> <p>1 language in the email from Ms. Nunn, the second email down,</p> <p>2 did that draft language originate in the Secretary's</p> <p>3 office?</p> <p>4 A. It could have been Dana or Stewart in the</p> <p>5 Secretary of State's office. It could have been Angela.</p> <p>6 It certainly could have been Deb Butler downstairs or</p> <p>7 Angus. But, yeah, you know, obviously this was to get</p> <p>8 something started, and then the -- the -- the first draft</p> <p>9 was done by Sonja here. Yeah.</p> <p>10 Q. And you can put that exhibit aside.</p> <p>11 Did the office testify in the legislature in</p> <p>12 support of HB530?</p> <p>13 A. Well, I would -- I'd sure imagine so. I mean, I</p> <p>14 guess I could look at the exhibit we had earlier where it</p> <p>15 showed that -- what we did for each one. Could have been</p> <p>16 informational. I can find out for you real quick.</p> <p>17 Q. Sure.</p> <p>18 A. Yeah. Looks like here we're a proponent. Yep.</p> <p>19 Q. Okay. I'm handing you what is marked as SOS</p> <p>20 Exhibit 18?</p> <p>21 (Exhibit SOS 18 marked for identification.)</p> <p>22 THE DEPONENT: Okay.</p> <p>23 Q. (By Ms. Lee) And I'll represent to you that the</p> <p>24 final document title for this document was -- that we</p> <p>25 received from the Secretary's office was "10 HB530</p>
<p>Page 117</p> <p>1 Q. Okay. And then in the third paragraph down in</p> <p>2 that email Ms. Nunn provides a draft that can be used to</p> <p>3 start the drafting process.</p> <p>4 Do you see that?</p> <p>5 A. I see that sentence. Yeah.</p> <p>6 Q. And then is it your understanding that that fourth</p> <p>7 paragraph is then the draft that Ms. Nunn referenced?</p> <p>8 A. So it says... yeah. I mean, it looks like they're</p> <p>9 kind of almost generic. You know, you've got the Xs about</p> <p>10 statutes, which maybe for new statutes. So, yeah, it looks</p> <p>11 like something to start the drafting process. I mean,</p> <p>12 obviously, as you can tell from -- it looks pretty early on</p> <p>13 for her to a beginning portion of the -- of satisfying what</p> <p>14 the LAC and SOS is trying to accomplish on the beginning</p> <p>15 intended goal of how it started in the draft.</p> <p>16 Q. Okay. Who drafted this initial language?</p> <p>17 A. Well, I mean, it looks like here that it's showing</p> <p>18 that -- that Sonja was asked to do a draft based on this</p> <p>19 language, and then it says that this is what was given to</p> <p>20 somebody else to start it. I don't know -- so I would</p> <p>21 guess it would be Sonja that made the first draft, and then</p> <p>22 it looks like one the top -- the top it says -- Sonja says,</p> <p>23 Here's the LC for your review, which would be that she had</p> <p>24 obviously done the first draft.</p> <p>25 Q. Okay. And so specifically as to the initial draft</p>	<p>Page 119</p> <p>1 Testify."</p> <p>2 Have you seen this document before?</p> <p>3 A. I probably saw it when I was reviewing, you know,</p> <p>4 documents to prepare for the deposition. Just reading</p> <p>5 through here quick, but --</p> <p>6 Q. Sure.</p> <p>7 A. I've got it. Yeah.</p> <p>8 Q. Was this the testimony that the Secretary's office</p> <p>9 offered in support of HB530?</p> <p>10 A. Ooh. Well, I can imagine that -- that Dana would</p> <p>11 have testified on this one as a proponent. And I'm not</p> <p>12 sure, but just based on the writing style and my experience</p> <p>13 working, it looks like this is a Dana author. And I don't</p> <p>14 know whether that would have been a Dana author for -- to</p> <p>15 help the sponsor or whether it would have been for someone</p> <p>16 else to give, you know, informational, proponent testimony.</p> <p>17 But it looks like this is talking about House Bill 530, so</p> <p>18 at some point after the exhibit we had just talked about in</p> <p>19 the LC stage and when it had got to the house bill side.</p> <p>20 Q. Okay. And did the Secretary's office ever --</p> <p>21 excuse me -- testify about regulating ballot collection</p> <p>22 with respect to HB530?</p> <p>23 A. I don't think so.</p> <p>24 Q. Okay. And you can put that exhibit to the side.</p> <p>25 Outside of testimony on behalf of the office</p>

<p>Page 120</p> <p>1 itself, did anyone from the office seek out other 2 individuals to testify in support of HB530? 3 A. Oh, I think that we did reach out to the -- the 4 audit division to talk about the -- you know, the dual 5 aspect there. So I think we did reach out. Those would 6 have been the parties that are relevant to do so. Yeah. 7 Q. Did anyone in the office reach out to anyone to 8 testify in support of HB530 as related to ballot 9 collection? 10 A. Well, like we just said, like, House Bill 530, in 11 the form that it was at, was talking about some of the 12 security aspects for -- for making rules for federal 13 election security portion. I think it was NIS* standards. 14 So that seems like an odd thing to do would be to testify 15 about a bill prior to when future developed through the 16 present. 17 Q. So at any time during the legislative session did 18 the Secretary's office reach out to anyone to testify in 19 support of HB530 as related to ballot collection? 20 A. Well, like I said, to my understanding the -- we 21 reached out to the legislative audit division to discuss 22 the portion about NIS standards, and so that's the only 23 communication, to my knowledge, that would have been 24 reaching out in terms of testimony and for the house 25 hearing yeah.</p>	<p>Page 122</p> <p>1 A. I don't have any idea. 2 Q. Okay. What was the position of the Montana 3 Association of Clerk and Records on HB530? 4 A. I would sure imagine that they would support it. 5 I mean, the ones that had worked with the National Guard 6 had really -- really enjoyed that portion. I think there 7 was some discussion as to, you know, the additional work 8 from reporting, because we had talked about the rules that 9 we had -- that we were looking at. Might have been, you 10 know, how -- what other things would look like. But I 11 really don't remember what their official position was. I 12 do kind of remember someone talking about that the 13 assessments would be a good thing, but that's about the 14 extent that I think I remember in the time of the hearing 15 dates. 16 Q. Okay. Were there any changes to Montana's voter 17 registration form due to HB530? 18 A. Well, I sure don't think so. I mean, yeah, I -- I 19 don't -- I don't think that there would be any reason to do 20 that. 21 Q. Okay. 22 A. I know we -- we updated it post-session; right? 23 But I don't think -- nothing that links that to my -- right 24 now. 25 Q. Okay. Are you familiar with HB406 from the 2021</p>
<p>Page 121</p> <p>1 Q. Okay. And is that the same testimony for any 2 other hearings, not necessarily the one that the testimony 3 in Exhibit 18 was given at? 4 A. You know, I -- I remember on the house side going 5 with Angus -- the -- once there was transmittal the bills 6 became to where, you know, you can only have one guy in one 7 place at one time, so -- so I don't actually recall whether 8 we were there during the senate side or anyone from the 9 office was, whether LAD took the lead or -- but we very 10 well could have been, because obviously it was one of the 11 ones, you know. Seems like we went to both sides for most 12 of those. 13 Q. Sitting here today are you aware if the office 14 sought out individuals to testify in support of HB530 as 15 relates to ballot collection at any time during the 16 legislative session on either side of the legislature? 17 A. I just -- like I said, the only communication that 18 I know of reaching out was to make sure that there was the 19 legislative audit division there. 20 Q. Okay. Did the Secretary seek the amendment to 21 HB530 that added Section 2, which relates to ballot 22 collection? 23 A. No. 24 Q. How did that amendment come to be offered, if you 25 know?</p>	<p>Page 123</p> <p>1 legislative session? 2 A. Only in minorly, and obviously it kind of helps 3 when something is numbered 406. You remember that one 4 usually every session. 5 Q. What would that law have done had it been passed, 6 do you know? 7 A. Yeah. I think it was, like, an eight or nine-page 8 version of -- of trying to look at the court case and then 9 looking at the previous ballot, the legislative referendum, 10 and trying to consolidate those two to an extent. We 11 had -- it was -- yeah. That's good. 12 Q. Did this Secretary support a renewed ban on ballot 13 collection? 14 A. Like I said, I mean, we talked about the 15 priorities that we were focusing on, and -- and we talked 16 about our testimony in favor of House Bill 530, the 17 Section 2, was something that was -- that we, you know, 18 found out after the fact. So, no, I didn't know it was 19 going to occur, and I don't think that there was a -- 20 wasn't any type of statements like that. No. 21 Q. Okay. Do you know if the Secretary's office had a 22 position at all regarding ballot collection during the 2021 23 legislative session? 24 A. I mean, is there a -- all the positions we have 25 are up on here, so looks like we're informational.</p>

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1 **MR. MCINTOSH:** Just for the record, can you --
2 what exhibit were you referring to?
3 **THE DEPONENT:** This is Exhibit SOS 5.
4 **MR. MCINTOSH:** Thank you.
5 (Exhibit SOS 19 marked for identification.)
6 Q. (By Ms. Lee) I'm handing you the exhibit marked
7 SOS 19. This is one -- oh, sorry.
8 **A. You might want that one.**
9 Q. This is another one of our printer flipping on the
10 short edge.
11 **A. Okay.**
12 **MR. MCINTOSH:** I think this one got turned around
13 though.
14 Q. (By Ms. Lee) Do you recognize this document?
15 **A. You know, I -- I mean, I recognize that it's a**
16 **rule review report. I recognize rule review reports. I'm**
17 **not sure whether I read this one or not. Oh, April 6.**
18 **Yeah. Last couple months have been a doozy. I've had to**
19 **be fairly selective of what I can do --**
20 Q. Sure.
21 **A. I have a lot of things I'd love to do, but...**
22 Q. So looking at -- in the first paragraph under the
23 header "Summary of Rules" --
24 **A. Uh-huh.**
25 Q. -- it says HB530 was originally brought in

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1 response to recommendations stemming from a 2020
2 legislative audit by the legislative audit division.
3 Did I read that correctly?
4 **A. I think you read that correctly.**
5 Q. Okay. And did the legislative audit division make
6 any recommendations regarding ballot collection?
7 **A. I think the audit pertained to security. I don't**
8 **know how many different areas of security it encompassed.**
9 Q. And you can put that exhibit to the side.
10 I'm handing you what's been marked as SOS
11 Exhibit 20?
12 (Exhibit SOS 20 marked for identification.)
13 Q. (By Ms. Lee) This appears to be an email from Dana
14 Corson to Angela Nunn providing notes related to the
15 starting -- excuse me -- to starting the rulemaking for
16 HB530; is that fair to say?
17 **A. Yeah. I see that it says 530 notes. I'm just --**
18 **let me -- let me quickly read it real quick.**
19 (Reviews document.)
20 **Okay. I think I'm there. Looks like we've got**
21 **some notes, and then some pound signs almost -- usually**
22 **those things are at the bottom of a press release, but it**
23 **looks like that -- to separate two parts. And then -- then**
24 **it talks about the statutes a little bit here, and then**
25 **about looping Stewart in when he starts to have some free**

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1 **time, because, like I said, September 8th, we're talking**
2 **about moving up towards an election and also right after**
3 **that we had to update the system, and Stewart was**
4 **definitely big there.**
5 Q. Okay. And taking a look at this document, is it
6 fair to say that Mr. Corson provides notes on the upcoming
7 rulemaking for both sections -- Section 1 and Section 2 or
8 HB530?
9 **A. Looks like he's -- he's talking about two notes on**
10 **the areas. I do see a couple of things here. And then it**
11 **looks like on the second part it says develop rules. And I**
12 **would have to look at the bill, but it looks like -- looks**
13 **like it's got Section 2 there where it says second part.**
14 Q. And do you agree that the notes for Section 1 that
15 Mr. Corson has shared here provide a fair amount of detail
16 not specifically laid out in statute?
17 **MR. MCINTOSH:** Objection; vague.
18 **THE DEPONENT:** Yeah. I think that's a -- kind of
19 a vague thing to say. It looks like it's got some more
20 text when it comes to Section 1, but obviously that's going
21 first. And then -- and then obviously it references
22 Austin L. that has some ideas. So it very well could be
23 just kind of a recap. I mean, it look like we're going to
24 Angela Nunn, and I think when I testified -- well, both
25 days, Monday and Tuesday -- that she's kind of was one of

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1 the ones to help keep organized so we just know where we're
2 at on -- at each stage.
3 Q. Okay. You can put that exhibit to the side.
4 How was it determined what days and hours are
5 available for on-reservation satellite elections offices?
6 **A. Okay. So we're -- on-reservation satellite**
7 **election offices. Well, there would be two parts that come**
8 **to mind. One part would be things that are, you know,**
9 **clearly defined, like in a settlement. And then another**
10 **part would be how it's agreed upon in conjunction, you**
11 **know, with what's available and those types of things.**
12 **But -- pursuant to the directive. I think that would be a**
13 **short synopsis.**
14 Q. Did counties and tribes work together to determine
15 what days and hours on-reservation satellite election
16 offices are open?
17 **A. Did they? They have.**
18 Q. What happens if a county refuses a tribe's request
19 for satellite location?
20 **A. Well, see that's kind of a generic thing, right,**
21 **because -- because there's one type of circumstance where**
22 **it's under the directive where -- where someone says under**
23 **the directive by the date that's required says we want**
24 **something, and then they say no. And then there's a**
25 **different kind of circumstances where under the directive,**

<p>Page 128</p> <p>1 like, for instance, in the last cycle, they say we don't 2 want any offices. Absolutely. Like, literally, they're -- 3 we do not want offices. And then October comes around, and 4 it says, We now want an office under these requirements. 5 And so one is much different than the other. So I 6 don't know how to answer your question in such a way that 7 would be absolute. 8 Q. Okay. Does the Secretary's office play any role 9 in the setting of the days and hours for on-reservation 10 satellite elections offices? 11 A. I mean, that kind of gets at abroad range; right? 12 Because I know at times we've encouraged working 13 collaboratively, so in a way we're encouraging that 14 collaborative process to set the hours. We certainly are 15 not authoritarian to any degree. We've -- we're certainly 16 involved in a framework that has been utilized to an extent 17 and involved as a state office. I think that probably 18 provides some good context in answering the question. 19 Q. How long does the office suggest voters mail their 20 ballots back in advance of an election in order for it to 21 be counted? 22 A. Well, I suppose that would probably be based on 23 the county, but I think that the general rule of thumb is a 24 week before. I mean, obviously we try to go way over 25 amount to consider, you know, all different types of</p>	<p>Page 130</p> <p>1 know if I want to say conclusively yes if there's a chance 2 there's no, but I sure know there's a lot of them. 3 Q. Are there drop boxes for the return of absentee or 4 mail ballots located on any Indian reservations? 5 A. Drop boxes, yeah. Yeah, of course. And some of 6 them have voter reg apps attached. Yep. Uh-huh. 7 Q. I'm sorry. Voter reg? 8 A. Apps. Applications. Yeah. 9 Q. And in saying "of course," are those related to 10 the satellite elections offices, or is there some other 11 reason that you said "of course" in that answer? 12 A. Well, I mean, I know for a fact that -- you said 13 any reservation. I know for a fact there are. So, I mean, 14 that was just pretty conclusive to me that the answer is 15 yes and of course. 16 Q. Does the return of absentee ballots by voters who 17 have requested them improve voter turnout? 18 A. That seems like a -- a -- something that was based 19 on who the person is and a lot of different circumstances. 20 I mean, it's certainly helpful for some. It doesn't make 21 too -- doesn't make any difference for others. 22 Q. Are you familiar with Western Native Voice's 23 ballot assistance activities? 24 A. Well, I mean, I've got to know some a bit from the 25 case in preparing for the deposition. And, you know, I try</p>
<p>Page 129</p> <p>1 factors and also just to encourage early activity is kind 2 of a better thing. But that's sort of a rule of thumb, 3 just to make sure that there's no -- you know, if you rely 4 on us for a week before, it seems to catch the most amount 5 of -- of people to where there wouldn't be any accidental 6 delays; right? It's just -- it's the best to that degree. 7 Q. Is postage required to return an absentee ballot 8 in Montana? 9 A. You know, it's -- that's actually a pretty 10 interesting policy question. So I believe that the true 11 answer is that the USPS doesn't require it, or they will 12 continue to process it even if it doesn't have a stamp. 13 And so there is situations where -- where, from a matter of 14 policy, it's been asked, Well, why don't you just put "no 15 stamp required," but I believe technically you're required 16 to put a stamp. So we don't want to have that process, but 17 we have talked with USPS and asked them about it, and they 18 have said that even if it's lacking the stamp, they'll 19 continue to process it. 20 Q. Do all counties have drop boxes for the return of 21 absentee or mail ballots? 22 A. Gee, all counties? I don't know about all 23 counties. I certainly know there's a lot. I could get -- 24 I'm sure that information is available, probably was 25 produced. But -- but all counties, hmm. Yeah. I don't</p>	<p>Page 131</p> <p>1 to pay attention to the news, but it's -- I've not 2 participated so far anyway. 3 Q. Are you aware of any other groups' ballot 4 assistance activities in Montana? 5 A. I mean, I'm aware that there's been activities in 6 the past. I don't know that that means that it's 7 consistent. You know, so I'm aware that -- like I said, 8 from the newspaper article that I've read about the 9 intimidation that mentioned a group. Stuff like that. 10 Q. When groups like Western Native Voice collect and 11 return absentee ballots, is that helpful to voters? 12 MR. MCINTOSH: Objection; speculation. 13 THE DEPONENT: Yeah, I mean, that -- that's 14 entirely based on the voter and depending on the 15 circumstance. I mean, it could make -- again, it wouldn't 16 help at all for some voters, could help for others. 17 It's -- and, you know, that's just completely speculating, 18 and I'm sure that one circumstances doesn't mean that it's 19 routine for every, and even if it is at certain points, 20 that there's other available opportunities and other ways. 21 So it just depends. 22 Q. (By Ms. Lee) Do you have any sense of the 23 demographics of voters who have relied on ballot collection 24 in the past in Montana? 25 A. Any sense? I mean -- I mean, you read about a</p>

<p style="text-align: right;">Page 132</p> <p>1 pretty broad range. I mean, like I said, I think the</p> <p>2 article was about Livingston. Livingston has a much</p> <p>3 demographic than Missoula, which has a much different</p> <p>4 demographic than Lame Deer, which has a much different</p> <p>5 demographic than Billings. So, I mean, I think it's pretty</p> <p>6 wide-ranging.</p> <p>7 Q. Okay. Do you have any knowledge of people doing</p> <p>8 ballot collection in Montana and then not returning the</p> <p>9 ballot as voted to the appropriate election office?</p> <p>10 A. Well, I mean, in the last election there was</p> <p>11 obviously a bunch of absentee ballots that were together</p> <p>12 and torn up in a neighborhood, so those wouldn't have been</p> <p>13 returned. They don't tell the story when you find the torn</p> <p>14 up ballots. So I don't know the full story.</p> <p>15 Q. Okay. So do you know if those ballots were</p> <p>16 actually torn up by people doing ballot collection?</p> <p>17 A. Well, I mean, I know that someone collected all of</p> <p>18 them because -- unless somebody tore up the ballots one by</p> <p>19 one and dropped them in the same spot.</p> <p>20 Q. Do you have -- what is the scope of the</p> <p>21 Secretary's discretion in creating the rule called for in</p> <p>22 Section 2 of HB530?</p> <p>23 A. What the Secretary's discretion?</p> <p>24 Q. What is the scope of her discretion in creating</p> <p>25 the creating rule?</p>	<p style="text-align: right;">Page 134</p> <p>1 pecuniary benefit?</p> <p>2 A. Well, again, that would depend on how the</p> <p>3 administrative rule process would define a pecuniary</p> <p>4 benefit. It would be an important part of supplementing</p> <p>5 the statute to carry it out. Certainly we would like to</p> <p>6 hear from the people of Montana and have that civic</p> <p>7 dialogue in the rulemaking process, which is precisely what</p> <p>8 MAPA provides for.</p> <p>9 Q. Under Section 2 of HB530 can the Secretary make a</p> <p>10 rule that allows individuals to be paid a flat salary for</p> <p>11 delivering absentee ballots?</p> <p>12 MR. MCINTOSH: Objection; calls for a legal</p> <p>13 conclusion.</p> <p>14 THE DEPONENT: Yeah. I mean the statute obviously</p> <p>15 has direction that if they -- defined by administrative</p> <p>16 rule -- could make that one way and simultaneously could</p> <p>17 make another way, depending on how the things that are</p> <p>18 clearly necessary to be fleshed out by administrative rule</p> <p>19 in the legislature's conference of that lawmaking process</p> <p>20 through to the administrative rule process would define.</p> <p>21 So that's clearly dependent. And the answer maybe made,</p> <p>22 but it was enjoined before the answer could be provided to</p> <p>23 you prior to starting. If we're able to begin the</p> <p>24 administrative rule process, I would sure hope your clients</p> <p>25 would participate in it so that we can consider their</p>
<p style="text-align: right;">Page 133</p> <p>1 A. Well, I mean, it looks to me like it is creating</p> <p>2 the rule that would be within the confines of statute. So</p> <p>3 it would be within the limitation of the implementation and</p> <p>4 authorization of a statute, much like any other rule is,</p> <p>5 where you can't go beyond scope of that statute and you</p> <p>6 carry out the statute and provide the function and purpose</p> <p>7 of an administrative rule.</p> <p>8 Q. Are tribal governments a government entity under</p> <p>9 HB530?</p> <p>10 A. Well, I mean, so as we've talked about before,</p> <p>11 we've got House Bill 530. I don't think House Bill 530</p> <p>12 answers your question. I believe rules would answer your</p> <p>13 question, and the administrative rule process was enjoined</p> <p>14 before it was at that stage. So it could and it could not</p> <p>15 depending on how those rules were developed.</p> <p>16 Q. What do you understand a pecuniary benefit to be?</p> <p>17 A. I understand it as a term that would definitely</p> <p>18 need to be clarified in the administrative rule process. I</p> <p>19 mean, I have my own opinion. I'm sure other people in the</p> <p>20 office would have theirs. But I'm certain that the public</p> <p>21 would, including your clients, and we would definitely need</p> <p>22 to listen to them in the promulgation of the administrative</p> <p>23 rules.</p> <p>24 Q. If someone received a gift card from an</p> <p>25 organization for returning other folks' ballots, is that a</p>	<p style="text-align: right;">Page 135</p> <p>1 aspects in defining it.</p> <p>2 Q. (By Ms. Lee) Has the Secretary's office ever</p> <p>3 issued guidance regarding organized ballot return</p> <p>4 assistance or other ballot assistance?</p> <p>5 A. Ever? Well, I mean, I would -- seems like a topic</p> <p>6 that may have been considered over, you know, previous</p> <p>7 statutes or something like that. I don't have directives</p> <p>8 instantaneously on, like, oh, that one? Certainly</p> <p>9 there's -- there's directive, if you will, or guidance, if</p> <p>10 you will, in the terms of communication that may not be one</p> <p>11 of those formal policy-type of documents that could answer</p> <p>12 your question, yes. So I would sure think that that would</p> <p>13 be the case, but I'm entirely guessing, and I would imagine</p> <p>14 you guys probably would have that facts available to you</p> <p>15 already.</p> <p>16 Q. Independent of the preliminary injunction were</p> <p>17 individuals in Montana allowed to conduct any sort of paid</p> <p>18 ballot collection at -- before the final rule from the</p> <p>19 Secretary implementing Section 2 of HB530 had been</p> <p>20 implemented?</p> <p>21 MR. MCINTOSH: Objection; compound, calls for a</p> <p>22 legal conclusion.</p> <p>23 THE DEPONENT: Yeah. I mean, like I said, I think</p> <p>24 that that -- it's one of those things where something can</p> <p>25 be on the books and not enforced. You know, there's --</p>

<p>Page 136</p> <p>1 there's laws on what you can do on Sundays in certain 2 states. That doesn't mean that they're enforced that way. 3 So, I mean, technically there's a law on the books that -- 4 but at the same time, could you do that? Yeah. 5 Q. (By Ms. Lee) And if someone did it, would it be in 6 violation of HB530 prior to the issuance of the rule? 7 MR. MCINTOSH: Objection; calls for a legal 8 conclusion. 9 THE DEPONENT: Yeah. I mean, the -- so the answer 10 to your question would be, like, does it conform to the 11 literal conformance of statute. But I think that there's a 12 huge difference between -- between those two scenarios. So 13 does the -- could it be? Yes. Could it not be? Obviously 14 the rules are going to define those types of things, and so 15 the same activity could be different. You're asking for me 16 to completely speculate, and I believe that what they're 17 doing also could impact how the scenario is regardless of 18 those factors. So depends. 19 Q. (By Ms. Lee) Were there any updates to MT Votes 20 due to HB 3530? 21 A. I don't know of any. 22 Q. Were there any updates or programming needed to 23 Elect MT, the new system, due to HB530? 24 A. You know, I should amend that first one -- well, 25 it wouldn't have been because rules for Section 1 were just</p>	<p>Page 138</p> <p>1 Julie Lake regarding PSA scripts; is that fair to say? 2 A. Yeah. It looks like, you know, subject, scripts. 3 Attachment, PSA scripts. Contents relate to scripts. 4 Q. And looking at the attachment to this email, which 5 is on the second and third page of the document, is it fair 6 to say that the first script doesn't mention anything 7 specific about the -- the changes caused by new legislation 8 in 2021? 9 MR. MCINTOSH: For the record, when you say the 10 first one, are we talking about the combined one -- the 11 combined or SB169 12 MS. LEE: Combined question mark 30 seconds at the 13 top. 14 THE DEPONENT: That is doesn't pertain to anything 15 that was in the legislature? 16 Q. (By Ms. Lee) No. I said is it fair to say the 17 first script doesn't mention any specific about the changes 18 caused by the laws passed during the 2021 legislative 19 session? 20 A. I mean, it says that we're making sure that 21 everyone is up to date and set to vote, and so to be up to 22 date, it would be up to date with the law. So, yeah, I 23 think that this is -- I mean, it's clearly in response to 24 making sure that voters were informed of changes. And 25 obviously as it shows how busy our office was, as we</p>
<p>Page 137</p> <p>1 in play. There's a chance that the new system could have 2 some components of Section 1 at this time now that the 3 rules have been finalized. And obviously they were 4 enjoined after the first injunction and then revised in the 5 second injunction with the revision to only apply to 6 Section 2. Our office had continued with that portion of 7 530. So the drafting of 530, and there's a chance on 8 Section 1, then the answer could be yes, but I don't have 9 any specific examples rights now. I don't know of anything 10 for Section 2. If the rulemaking process had not began or 11 completed because of the injunction and its timing. 12 Q. Does the office of the Secretary of State respond 13 to all inquiries from reporters about the application of 14 election laws? 15 A. Man, I can't imagine we would. I mean, we get 16 inquiries a lot, and there are certain times where those 17 inquiries are at really pressing moments. We do our best 18 to try to provide as much public knowledge as possible, 19 that's for dang sure. 20 Q. Okay. I'd like to -- I'm going to hand you what 21 is being marked as SOS Exhibit 21. 22 (Exhibit SOS 21 marked for identification.) 23 Q. (By Ms. Lee) And this email appears -- excuse me. 24 This document appears to be an email from Richie Melby to 25 Secretary Jacobsen, yourself, Angela Nunn, Dana Corson, and</p>	<p>Page 139</p> <p>1 discussed at length on Tuesday. It also says how murky how 2 those thoughts became, I'm not sure. Because, again, we're 3 doing a ton of stuff. A ton of stuff. And especially at 4 this time. 5 Q. And the next script down on that same page is to 6 inform voters about SB169; is that fair to say? 7 A. I see where it says Senate Bill 169, yeah, and 8 then I see voter ID is popping off at me and a couple 9 links, which is probably looking at other states to try to 10 get good ideas to make sure that we do great voter 11 education. 12 Q. Okay. And then the third script is to inform 13 voters about HB176; is that fair -- 14 A. Yeah, again, House Bill 176 scripts. So it looks 15 like that was an initial draft. Here's some three first 16 ideas. And obviously with the disclosure that these could 17 be murky. 18 Q. Has the Secretary advertised at all to inform 19 voters about HB530 at any point? 20 A. Well, I mean House Bill 530, Section 1, as I told 21 you, when the injunction came out, we were stopped from -- 22 right, literally, like, what was it, like, two days or so 23 after we had submitted the final adoption notice of 24 Section 1. So -- so there would be no way to do a PSA at 25 that point. Then we got the injunction clarified to</p>

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1 **Section 2. There was obviously not on the other portion.**
2 **But as we talked about at length on Tuesday and I also**
3 **mentioned Monday, we're talking about in this exhibit,**
4 **Exhibit 21, two bills that had immediate effective dates**
5 **after the legislature, and another one that says on or**
6 **before July 1st of 2022. That's a long time after. And if**
7 **somebody's thoughts are jumbled from Monday to Wednesday,**
8 **you can imagine that they're not getting 14 months ahead of**
9 **themselves.**
10 Q. Sure. And so completely putting side the exhibit,
11 just in general as the Secretary's office advertised at all
12 to inform voters about Section 2 of HB530?
13 A. No. I don't think we had any PSAs about Section 2
14 of 530.
15 (Exhibit SOS 22 marked for identification.)
16 Q. (By Ms. Lee) I'm handing you what is marked as
17 Exhibit SOS 22.
18 A. Okay.
19 Q. Okay. And this appears to be an email from Connor
20 Gagnon to Vince Agtarap, if I said that correctly,
21 requesting SOS website update, quote, due to the new late
22 registration law HB5 -- excuse me, HB176; is that correct?
23 A. Yeah. I see -- I see that. Yep. Uh-huh.
24 Q. And who is Mr. Agtarap?
25 A. So he would be -- what's his -- he's got a cool

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1 title, like website specialist or something like that. But
2 he's a computer guru that -- that's one of the ones that
3 codes on the website.
4 Q. And this -- this email is sent on July 13, 2021;
5 is that right?
6 A. Yeah. It appears so. Yeah. Right there at
7 almost 9:00 o'clock p.m.
8 Q. Okay. And July 13th is approximately three months
9 after the effective date of HB176; is that right?
10 A. Yeah. So the effective date would have been in
11 April. Yep.
12 Q. Do you know when the next election following July
13 13, 2021, would have been?
14 A. No. I mean, it could have -- I don't know if
15 there's some in August. There may have been in July. But
16 obviously there weren't big groups of times of elections.
17 But off the top of my head, I don't have the precise next
18 one, no.
19 Q. And is there a municipal primary in September of
20 2021?
21 A. You know, I do know of a municipality, probably a
22 couple, that had them at that time. I don't know if it was
23 a primary or general for their type of race, but I
24 definitely know that there were elections in September.
25 Yep.

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1 Q. So this update for the public's benefit due to the
2 new late registration law, HB176, was about two months
3 before the September elections; is that fair to say?
4 A. Well, yeah, I guess it would be, you know, the
5 date -- it would be July 13th to that date. There's, you
6 know, a ton of things that we have to do, as we
7 discovered -- as we discuss on -- like I was saying
8 Tuesday. I mean, it was a process that began in April
9 from, like, the last exhibit, Exhibit 21, that went all the
10 way -- went all they way through, you know, all the way
11 into the beginning of 2022 to make sure everything was
12 taken care of. You would never believe the things that it
13 touches when a law like this goes into play.
14 Q. And those two months were sufficient time to
15 inform the public about the conduct of the September 2021
16 election under HB176?
17 A. No. Like I said, we were -- we were catching
18 things that we needed to update throughout the whole --
19 whole year. I mean, that's -- absolutely not. But I can
20 tell you one thing, we felt pretty dang good about going
21 into 2022's primary.
22 MR. MCINTOSH: Maybe can we break? Could we take
23 a --
24 MS. LEE: Oh, yeah --
25 MR. MCINTOSH: -- short one?

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1 MS. LEE: Yeah. We can go off right now.
2 MR. MCINTOSH: Okay. Just like five minutes.
3 THE VIDEOGRAPHER: The time is 1:45. Going off
4 the record.
5 (Break taken from 1:45 p.m. until 1:53 p.m.)
6 THE VIDEOGRAPHER: The time is 1:53. Back on the
7 record.
8 Q. (By Ms. Lee) Hi, Mr. James. You realize you're
9 still under oath, as before?
10 A. Yeah. It feels like I've been under oath since
11 Sunday.
12 Q. I'm handing you what's been marked as SOS Exhibit
13 23.
14 (Exhibit SOS 23 marked for identification.)
15 Q. (By Ms. Lee) And this appears to be an email chain
16 from where Angela Nunn is forwarding a different email to
17 Dana Corson and Stewart Fuller, flagging them a document on
18 the website had not been updated to reflect the SB169
19 changes; is that right?
20 A. Yeah. I see here where -- I see here where
21 there's the exhibit. Appears the one we had before that's
22 Exhibit 22, and then the followup was a forward from Angela
23 to Stewart and Dana.
24 Q. And this is on September 13, 2021; is that right?
25 A. Yeah, which -- let's see. Okay. Yeah. Yes. It

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<p>1 would have been 9/13/2021. Uh-huh.</p> <p>2 Q. Okay. So just for clarity's sake, it's not a</p> <p>3 follow-on to Exhibit 22, is that fair to say, which was on</p> <p>4 July 13, 2021?</p> <p>5 A. Yeah. Okay. Yeah. I see what you're saying</p> <p>6 that's coincidental, huh? Looks like something from the</p> <p>7 Monday, September -- but also dealing with th municipal</p> <p>8 calendar.</p> <p>9 Q. Okay.</p> <p>10 A. Print screen looks very similar; right? So --</p> <p>11 Q. Yeah, that was just -- just wanted to provide</p> <p>12 clarity for the record.</p> <p>13 A. Yeah.</p> <p>14 Q. Okay. You can set that exhibit aside.</p> <p>15 The Secretary sent a mailing to registered voters</p> <p>16 regarding the change in voter registration that we</p> <p>17 previously talked about the other day; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Did that mailing include voters who were in</p> <p>20 inactive status?</p> <p>21 A. You know, I testified the other day that I</p> <p>22 couldn't remember whether it was active and inactive or</p> <p>23 not. I know we tried to provide a comprehensive mailing</p> <p>24 list. I don't have an update from my previous testimony.</p> <p>25 I did try to get as many questions as I could that I</p>	<p>1 says "draft saved." I know we were trying to, from a</p> <p>2 conservative manner, get as absolute much production as we</p> <p>3 could. Requests were vague, and I think, as you remember,</p> <p>4 they -- they mentioned, you know, all draft forms and stuff</p> <p>5 like that. So when somebody saved a draft, I think we</p> <p>6 tried to do absolutely as much as we could to provide as</p> <p>7 much relevant material in this case as we possibly could.</p> <p>8 Q. (By Ms. Lee) Did the Secretary's office make</p> <p>9 contact with Montana reporters in advance of the municipal</p> <p>10 2021 primary to inform them about the changes of the law as</p> <p>11 reflected in this draft?</p> <p>12 A. You know, Montana is a pretty small media market.</p> <p>13 I know we speak to reporters all the time. I don't have</p> <p>14 the exact amount of instances in which we have. I think</p> <p>15 you'd see that in production or on the news publicly</p> <p>16 available. I see this draft. I'm not sure how else to</p> <p>17 expand upon that.</p> <p>18 Q. Okay. You can put that exhibit to the side.</p> <p>19 What is the average wait time for a voter in</p> <p>20 Montana, if you know?</p> <p>21 A. That -- I mean, that's average amongst averages</p> <p>22 amongst averages; right? Like it would be -- depends on</p> <p>23 who's in front, where -- what county they're at, what --</p> <p>24 whether there's people in front. Whether there's two</p> <p>25 people in front and what those two people are doing. Could</p>
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<p>1 couldn't remember from that one in between here in</p> <p>2 preparing for this deposition, but that one was not one</p> <p>3 that I am able to expand upon in my testimony. Sorry.</p> <p>4 Q. Okay. Following the 2021 legislative session did</p> <p>5 the Secretary undertake any outreach directly aimed at</p> <p>6 Montanans who are not yet registered to vote to inform them</p> <p>7 about the changes to the election laws?</p> <p>8 A. You know, we do -- we do outreach-type things</p> <p>9 regularly, so I would sure be willing to put my bet as yes.</p> <p>10 I don't have a specific example, but, I mean, we're</p> <p>11 regularly trying to include that in a lot of different</p> <p>12 types of communication and outreach that we do all the</p> <p>13 time, including today. So...</p> <p>14 Q. Okay. And I'm going to hand you what's been</p> <p>15 marked as SOS Exhibit 24.</p> <p>16 (Exhibit SOS 24 marked for identification.)</p> <p>17 THE DEPONENT: Okay.</p> <p>18 Q. (By Ms. Lee) This appears to be a draft email from</p> <p>19 Richie Melby to numerous Montana reporters; is that fair?</p> <p>20 A. Yeah. Looks like -- looks like a draft saved.</p> <p>21 Yep. Uh-huh.</p> <p>22 Q. Was this email ever sent?</p> <p>23 MR. MCINTOSH: Objection; foundation.</p> <p>24 THE DEPONENT: Yeah. I don't -- it doesn't like</p> <p>25 like it was sent here; right? I mean, it looks like it</p>	<p>1 be where the average is five minutes, and then all of a</p> <p>2 sudden there's a couple situations where the people are 90</p> <p>3 minutes, and those 90-minute people are -- have a higher</p> <p>4 propensity of a certain status --</p> <p>5 (Court reporter clarification.)</p> <p>6 THE DEPONENT: It varies on a lot of things.</p> <p>7 I apologize. I'm trying to slow it down.</p> <p>8 Q. (By Ms. Lee) And so just sitting here today do you</p> <p>9 specifically know what the average wait time for a voter is</p> <p>10 across voters in Montana?</p> <p>11 A. I mean, like I said, I don't know that there is</p> <p>12 such a thing where they calculate the average time for</p> <p>13 every, single thing for every, single county and then make</p> <p>14 an aggregate of that. I do know that if they did, it would</p> <p>15 be pretty statistically flawed; right?</p> <p>16 Q. Were there fewer polling places open during the</p> <p>17 2020 general election because of the COVID-19 pandemic?</p> <p>18 A. I mean, obviously there were some counties that</p> <p>19 were all mail, did Chapter 19 elections. So I'd imagine</p> <p>20 that they would have less. A lot of those would be urban,</p> <p>21 which would have more polling sites, so that would make</p> <p>22 sense. There was obviously a lot less workers. People</p> <p>23 concerned, you know, the older population that usually</p> <p>24 works polling places, so that could have played into a</p> <p>25 factor. Very well possibly could have been. I don't have</p>

1 the list in front of me, but I do know it's available to
2 get.
3 Q. Does the Secretary's of State's office have
4 specific information regarding wait times during Montana
5 elections?
6 A. I mean, we've got -- we've got specific
7 information in when we're called from -- I mean, here.
8 Here's my specific information: I'm the attorney in the
9 office. I don't answer the phone very often. On election
10 day all the business staff people were answering the phone
11 to a point where -- it actually got to where I answered a
12 customer service call. I haven't answered a customer
13 service call since I was a kid at Greenfield Printers in
14 Butte, Montana. And it was lady who was a single mom in
15 Billings at the Metra who was yelling at me because she was
16 leaving and was not voting, and she had been there with her
17 kids, and it was my fault, and I better do something about
18 it. So I know that there's that kind of information.
19 I know that there's clerks that are quitting
20 because there's too much work. I know there's a lot of
21 type of information that way. But as far as us having
22 statistics of how long we wait, I don't know that I'd want
23 the clerks to write down how long each person stands there
24 because they're already overwhelmed, let alone add any more
25 tasks.

1 Q. And that example of the phone call you just
2 describes -- and apologies, I just missed it -- was that in
3 the most recent statewide election, the 2020 general
4 election?
5 A. That could have been -- let's see. I started
6 2019, so that sounds about right. I know it was at the
7 Metra. Also remember -- oh, we -- there was a couple
8 individuals from Flathead County, so that would have
9 definitely been in 2020 because it was during the pandemic,
10 and they didn't do the all mail, so they still had a lot of
11 people at the office. And they would literally not even
12 include a subject line; they would just have a picture of
13 the line going down the block. And it would be like, to
14 SOS Elections, line down the block.
15 Q. Okay. And would emails like that with
16 photographs, are those outside the retention -- document
17 retention policy? Is what you testified to on Tuesday?
18 A. I mean, you know, it depends on what type of email
19 correspondence it is. That one would obviously be
20 something that is just, like, routine or whatnot, so, yeah,
21 it would certainly be outside. I don't know why we
22 would -- you know, the response back would be like, you
23 know, thank you for voting; here's resources. You know,
24 trying to just do customer service. Like I said, we're --
25 to -- at a certain point we try to bring in customer

1 service staff to make -- make the process feel good.
2 Sometimes people just need to vent.
3 Q. Before HB176 did election day registration
4 ordinarily take place as precinct-based polling places?
5 A. Well, yeah, I mean, I -- it depends on which
6 county and which timing. But I certainly know that growing
7 up we went to the Blaine school two blocks down, and when I
8 was 16 when we did election day registration it was moved
9 to the civic center, and they had a central location
10 instead. So I can personally attest to my parents' polling
11 place being closed.
12 Q. Sorry. I think I lost track of what you were
13 saying in your answer there.
14 The -- so did election day registration take place
15 at the precinct-base polling location --
16 A. So, again, what I said was is that I know pre-2006
17 we went to the Blaine school, which was a couple blocks
18 from my house. And I know that starting when I was senior
19 we went to the -- which would be after election day
20 registration put in place -- it was moved to a central
21 location, which was the civic center, which is -- let's
22 see. Got to be about four miles from Park Street -- you
23 know up to Park Street, and then probably another two from
24 there. So five or six miles instead of two blocks. So I
25 know that the timing was such that that is when we moved to

1 the civic center. I know that there's -- that that's the
2 case with a lot of different places when they went to a
3 central locations because of the way the statute reads.
4 And that's the best I can provide you with information to
5 answer your question, which I think is right on.
6 Q. When did HB176 go into effect?
7 A. I think the exact words is "immediate upon
8 passage." I think in the exhibits here, we had a press
9 release, so that probably would have been a pretty good
10 timeline here. I'll find it here. We've got a lot of
11 exhibits so far. Looks like April 19th is when this is
12 dated, so I would imagine it was right around that time.
13 Q. Okay. And we've -- we discussed this on Tuesday.
14 There were school elections on the first week in May 2021;
15 is that right?
16 A. Yeah. I remember there being elections, you know,
17 right away.
18 Q. Okay. And those May 2021 elections took place
19 under the laws as amended by HB176; is that right?
20 A. Yeah. I mean, it would have been -- elections
21 took place under current law. Obviously there wasn't the
22 full course of administrative rules and everything else,
23 but the law said effective upon passage, its date, and then
24 the things after that effective upon passage would be after
25 that date, so...

<p>Page 152</p> <p>1 Q. And HB176 changed practices that had been in 2 effect for over a decade; is that right? 3 A. I mean, I can't say that there hasn't been 4 amendments along the way in some form or another, but I 5 understand your question as far as the general scheme of 6 things in terms of no activity to -- to all activity to 7 some activity, as far as I can tell. 8 Q. And the May 2021 election occurred just a little 9 over two weeks between the passage of HB176 and the 10 election; is that right? 11 A. I mean, the timeline would be what they are; 12 right? Yeah. I mean, I think so. I know that there 13 was -- you know, we had talked about this on Tuesday, that 14 it was -- the work was right away and continued on. 15 Q. Okay. And those May 2021 elections took place 16 without updates to the election judge handbook; is that 17 right? 18 A. Well, they occurred. I mean, that's -- that part 19 is true. It occurred. That doesn't mean that it -- that 20 they would have been a lot better if all those things were 21 in place. 22 Q. Okay. And the May 2021 elections occurred without 23 the administrative rules that we've previously discussed 24 being in place; is that right? 25 A. I mean, I sure wish that those things could have</p>	<p>Page 154</p> <p>1 A. Yeah. I mean, we had talked about this earlier, 2 about some of the administrative rule portions of it where 3 we had got feedback from election clerks that was specified 4 in administrative rule. So, I don't know. You know, 5 "problem" is a tough word to use. What I would say is that 6 there were situations that the clerk didn't know what to 7 do. And when the clerk doesn't know what to do at that 8 point, then that's problematic because that takes time. 9 And they have to reach out to the Secretary of State. And 10 the Secretary of State could be handling a lot of other 11 different questions. So it takes time for us to get back 12 to them. And in the meanwhile that interrupts all the 13 other processes. So a well-trained machine operates much 14 more smoothly. 15 Q. Okay. And in your answer just now you referenced 16 specific feedback from county elections officials. 17 What is that specific feedback that you're 18 thinking of? 19 A. So that one that I was thinking of would have been 20 right here in Lewis and Clark County, and I know that's in 21 the production. And it would have been related to a person 22 who -- from York, I believe. I lived out on Hauser in a 23 shack, so York Road flags me. And there wasn't an election 24 in that area, but there was an election in a different 25 area, and so they had conformed with being able to update</p>
<p>Page 153</p> <p>1 been in place at that time. That's for sure. 2 Q. Okay. And -- but did the May 2021 election take 3 place before those administrative rules were in place? 4 A. Yeah. I mean, there was no choice. The election 5 was going to go either way, and so we had to basically do 6 as much as we could to control the firehose. 7 Q. Okay. And the May 2021 elections occurred without 8 the vote ready mailer being sent to all the voters as it 9 was later in the implementation process; is that right? 10 A. Yeah. There was -- there was some -- you know, 11 the one -- there was a lot of elections, and certainly some 12 elections were at the beginning of May. 13 Q. And election officials were able to run their May 14 2021 election under the governing law; is that right? 15 A. I mean -- 16 MR. MCINTOSH: Objection; vague. 17 THE DEPONENT: No. I don't -- I don't know that 18 that would necessarily be true because I -- we had constant 19 reach out, as you guys know from production. There was 20 questions, all of which was -- was fulfilled through the 21 process of going from start to finish of the current law. 22 Q. (By Ms. Lee) Are there specific problems with the 23 May 2021 elections that you have in mind that you think 24 occurred because the implementation steps had not been 25 taken yet at that time?</p>	<p>Page 155</p> <p>1 at a central location, but there was a question as to which 2 ballot. So like I said, we were able to fulfill that 3 administrative rule purpose and clarify the statute in a 4 supplementary manner to the best implementation of a 5 statute through the administrative rule process. 6 Q. Okay. So in addition to that one set of voters 7 you identified in Lewis and Clark County, do you have any 8 other specific examples in mind as you sit here today 9 regarding that specific feedback from county elections 10 officials? 11 A. I'm sure I can give you examples. Hang on. Let 12 me do here... 13 Yes. So I mentioned in 176, I think it's 14 Section 3 or 4 where it made some changes to Chapter 19 15 regarding when a person comes in, whether the ballot can be 16 mailed or whether they have to -- whether they can take it 17 or whether they have to vote it at that location. That was 18 a change that was made. And so that was different. The 19 ones that were only trained on 176 were able to handle that 20 efficiently. But the ones that had known it before and 21 were reading the law were wanting to make sure that they 22 were able to carry it out in full. So there's another 23 example. 24 I can think of more, but, like I said, they were 25 all incorporated into an exhaustive administrative rule</p>

1 **process and the lengthy implementation that we did.**
2 Q. Was there widespread voter confusion during the
3 May 2021 elections?
4 **MR. MCINTOSH:** Objection; vague.
5 **THE DEPONENT:** Yeah. I mean, I don't have any
6 examples for me. I know that the -- you know, I don't
7 remember how many elections were going on in May there. I
8 don't know that it was widespread because I don't know that
9 there were widespread elections. I know that there was a
10 lot, but not widespread elections in the first place. So I
11 don't know how we'd have widespread voter anything if
12 there's not a widespread amount of voters participating in
13 the first place.
14 Q. Are you aware of any examples in particular of
15 voter confusion during the May 2021 election?
16 **A. Not -- none come to mind right now. I mean, like**
17 **I said, we did the best we could to help confused voters**
18 **through the process as we implemented the brand new laws.**
19 **And we certainly know that there's going to be -- you know,**
20 **the goal was to make sure that no was was confused and**
21 **everyone understood current law to be current law as the**
22 **elections continue to go -- get bigger and bigger and**
23 **bigger leading up until this fall.**
24 Q. The implementing regulations for HB176 and SB169
25 went into effect in early 2022; is that right?

1 **A. Yes. So the effective date would have been,**
2 **right, early 2022. It would have been January. There's a**
3 **date in which you have to send to the register, and then a**
4 **couple-week period before it's published. And the**
5 **effective date is when they're published. So we sent it a**
6 **couple weeks before. And obviously that submission date at**
7 **the end of December falls around Christmas, so I think even**
8 **though we submitted it -- we could have been -- we could**
9 **have been finally done as far as our office is concern in**
10 **2021, but they were effective in 2022. Otherwise our**
11 **office would have been done, like, right after New Years,**
12 **somewhere around there. Yeah.**
13 Q. And so all of the elections during 2021 took place
14 without the implementing regulations in place; is that
15 right?
16 **A. Yeah. I sure wish that they could have -- you**
17 **know, that that process could have been completed at the**
18 **same time as the legislative process. But on the other**
19 **hand, you know, we learned a lot of valuable information**
20 **through the course of implementation that was able to be**
21 **included in the administrative rule. And that's why I**
22 **think it was so well done by the time we completed over the**
23 **almost year process.**
24 Q. And, sorry, just for clarity on that specific
25 question, all the elections during 2021 took place without

1 those implementing regulations in place; is that right?
2 **A. Well, I guess, yes. So, yeah, the -- the**
3 **election -- as I said earlier, the administrative rules**
4 **were not effective until -- until January 2022. I know**
5 **some counties operated, you know, based on the**
6 **administrative rules kind of as a supplementation because**
7 **statute was kind of unclear. But as far as the publication**
8 **and finalization, that -- they were published in early --**
9 **early January.**
10 Q. Does the Secretary of State's office have a duty
11 to foster voter confidence?
12 **MR. MCINTOSH:** Objection; calls for a legal
13 conclusion.
14 **THE DEPONENT:** I don't know that that's specified
15 in the duties section. I mean, I think the duties are kind
16 or statutorily prescribed. Maybe encompassed in some
17 portion; right? But -- so I'm not really sure how to
18 answer the question. I think we try to do the best we can
19 with a servant's heart to run great elections and make
20 Montana proud.
21 Q. (By Ms. Lee) Is it an aim of the Secretary of
22 State's office to foster voter confidence?
23 **A. I mean, it's an aim for us to run great elections.**
24 **And so I guess, as we said multiple times, voter confidence**
25 **is a huge, important part of that because if people are**

1 **not -- not confident in the system, then they're not going**
2 **to participate. And if the -- if they're -- you know, if**
3 **they're confident in their experience, they're more likely**
4 **to participate. In addition to the fact that without --**
5 **withough confidence in elections, then -- then I think the**
6 **system of elections falls apart, and hence our duties in**
7 **itself would be no longer relevant. So of course, like,**
8 **our job it to -- to make, again, Montana's elections the**
9 **greatest possible. And, you know, a lot of the ways that**
10 **elections are great starts with confidence.**
11 Q. Do you think it is important for the office of the
12 Secretary of State to convey accurate, factual information
13 to voters?
14 **A. I mean, I think it's important to have accurate**
15 **information in all cases. I don't know of a good example**
16 **of where inaccurate information is good. But that seems**
17 **like a -- you know, are you asking me about something in**
18 **particular?**
19 Q. No, I'm just asking if you think that's important
20 for the office of the Secretary of State to convey
21 accurate, factual information to voters.
22 **A. I mean, I think that the Secretary of State does**
23 **the best job that we can to convey the laws that are on the**
24 **books, provide factual information the best we can. I**
25 **mean, I think that a great example of that was when we had**

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<p>1 testimony earlier at length that we spent months trying</p> <p>2 look at the voter registration report that had normally</p> <p>3 been automated to make sure that it was accurately</p> <p>4 reflecting accurate information because the automated</p> <p>5 process before was not doing that, and it was creating</p> <p>6 confusing, even amongst you guys in your complaint.</p> <p>7 (Court reporter clarification.)</p> <p>8 Q. (By Ms. Lee) Okay. And so just back to just my</p> <p>9 specific question, do you think it's important for the</p> <p>10 office of the Secretary of State to convey accurate,</p> <p>11 factual information?</p> <p>12 A. Yeah. And, like I said, I think it's important to</p> <p>13 convey accurate information, and one example of that would</p> <p>14 be all the work that we did on the voter registration</p> <p>15 report to show exactly what the information contains with</p> <p>16 it so that way there wasn't inaccurate information such as</p> <p>17 that we were suppressing all voter registration activities</p> <p>18 on election day.</p> <p>19 Q. Do you -- was the 2020 June primary an all mail</p> <p>20 ballot election in certain counties because of the COVID-19</p> <p>21 pandemic?</p> <p>22 A. Well, so the statute said that -- that you can't</p> <p>23 use a Chapter 19 for -- for -- for state and federal</p> <p>24 primary or for federal elections, and so, yeah, there was</p> <p>25 an executive order that allowed to do that. And -- and</p>	<p>1 email up the chain, Ms. McLarnon writes in the first</p> <p>2 sentence:</p> <p>3 We take election misconduct seriously.</p> <p>4 Do you see that?</p> <p>5 A. I do see that.</p> <p>6 Q. Okay. Does that response suggest that what the</p> <p>7 voter has described is election misconduct?</p> <p>8 A. No. So, I mean, look at it. So in here it says:</p> <p>9 I feel my vote was stolen.</p> <p>10 Right? And so they're concerned. And so</p> <p>11 traditionally when somebody says something like that, we</p> <p>12 try to respond back with, Thank you for letting us know; we</p> <p>13 take election misconduct seriously as a general portion.</p> <p>14 The reason being is that, again, people need to feel</p> <p>15 confident that if their -- if in their opinion it's</p> <p>16 misconduct that they are reporting, that we at least convey</p> <p>17 to them that we take it seriously. Does that mean that</p> <p>18 what they're reporting is serious misconduct? Not</p> <p>19 necessarily. But it does confer that we take these types</p> <p>20 of allegations seriously so that voters are at least able</p> <p>21 to have some fresh, you know, breath of confidence. And</p> <p>22 it's a standard response that is -- that is used for those</p> <p>23 types of things. And it looks like Missy sent it along.</p> <p>24 And I think that that's also reflected with the</p> <p>25 clerk and the recorder here in the county at top of one</p>
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<p>1 so there -- and so it would have been -- so, 2020, yeah,</p> <p>2 there was some that conducted under Chapter 19.</p> <p>3 Q. Okay. I'm handing you what's been marked as SOS</p> <p>4 Exhibit 25.</p> <p>5 (Exhibit SOS 25 marked for identification.)</p> <p>6 THE DEPONENT: Okay.</p> <p>7 Q. (By Ms. Lee) And so this appears to be an email</p> <p>8 chain between Melissa McLarnon and Nichol Scribner, which</p> <p>9 began with Ms. McLarnon forwarding an email the Secretary's</p> <p>10 office had received from a voter; is that right?</p> <p>11 A. Let me take a quick chance to -- I don't remember</p> <p>12 this preparing, but I might have seen it. But --</p> <p>13 Q. Sure.</p> <p>14 A. (Reviews document.)</p> <p>15 Okay. What's your question?</p> <p>16 Q. And so -- so flipping to the second page, that</p> <p>17 earliest email on the chain, a voter reports that the</p> <p>18 polling location -- the election officials at the polling</p> <p>19 location said that they were -- they could only take</p> <p>20 absentee ballots in the June 2020 election; is that -- is</p> <p>21 that a fair summation?</p> <p>22 A. Yeah. I think it says what it says. But it says</p> <p>23 that they didn't have any ballots and they didn't ask for</p> <p>24 an absentee ballot.</p> <p>25 Q. And then in the responsive email, just the next</p>	<p>1 that says, you know, it's important to let them know that</p> <p>2 it wasn't misconduct.</p> <p>3 Q. Yeah. So flipping back to the front page of the</p> <p>4 document and that email you were just referencing --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- Ms. Nichol writes:</p> <p>7 It would have been great if you would have let the</p> <p>8 voter know that this was a mail ballot election in every</p> <p>9 county instead of election misconduct.</p> <p>10 Do you see that?</p> <p>11 A. I do see that.</p> <p>12 Q. Does that response suggest that this clerk and</p> <p>13 recorder took Ms. McLarnon's email to be suggesting to the</p> <p>14 voter that the situation described was, in fact, election</p> <p>15 misconduct?</p> <p>16 MR. MCINTOSH: Objection; speculation.</p> <p>17 THE DEPONENT: Yeah, I mean, I -- if you look</p> <p>18 here, Missy is a business analyst. She's not an election</p> <p>19 specialist at this time. What she's doing is she's getting</p> <p>20 something in where somebody said something. Looks like</p> <p>21 it's June 2nd. We are -- I've told you that we -- during</p> <p>22 election time we have to cover for the amount of stuff</p> <p>23 that's coming in. So it's not like the most -- the person</p> <p>24 that would have the skill sets to be able to address it in</p> <p>25 the most perfect manner are able to do it because we're</p>

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1 trying to cover as many bases as possible at a time. So
2 what they did do is they sent it to the clerk, and the
3 clerk was able to explain the situation. The situation is
4 not fully explained over here. The clerk has more
5 information than Missy was able to have. And then of
6 course she said that. She said what she said. I think
7 that answers question.
8 Q. Okay. And you can set that exhibit aside.
9 Has voter confidence on -- in Montana increased
10 since the passage of these laws in Spring 2021?
11 A. You know, there's a lot of different things that
12 people are confident about and not confident about. And
13 certainly voter -- you know, voter ID, for example, is
14 something that people -- that have expressed it. I've, you
15 know, heard myself. So to that level, there's increased
16 confidence.
17 And then at the same time there's people that are
18 not confident for other reasons or whatnot. So it's kind
19 of this thing that goes all over. I hope that they are --
20 that they're confident in the current law, and I hope that
21 we can maintain confidence. I hope we maintain good laws.
22 And -- and we'll do our best to, like I said, make Montana
23 elections great and continue to serve with a servant's
24 heart.
25 Q. Are you aware that voter confidence is stable in

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1 Montana over the past decades?
2 MR. MCINTOSH: Objection; counsel's testifying.
3 THE DEPONENT: Yeah. Umm -- am I -- aware -- are
4 you going to give me an exhibit or something?
5 Q. (By Ms. Lee) That's -- the question is, are you
6 aware of that?
7 MR. MCINTOSH: Same objection.
8 THE DEPONENT: Is it like a true or false
9 statement or something? I mean, I don't -- I don't know
10 what study you're talking about or -- I don't know what
11 you're talking about.
12 Q. (By Ms. Lee) Okay. Are you aware that whether
13 someone's preferred candidate wins or loses is one of the
14 largest drivers of voter confidence?
15 MR. MCINTOSH: Same objection.
16 THE DEPONENT: I mean, I think that my voter
17 confidence in the system doesn't make any difference as to
18 who wins or loses as far as I know. I guess it could be a
19 certain circumstance where it does. Seems like a pretty
20 generic reason to able on the voter confidence. I think
21 there's a lot of things that go into it. I think maybe the
22 reason why, it seems like an awfully generic thing to say.
23 And I guess if we're doing the true-false game, I just --
24 again, I don't know what to say other than you're making a
25 statement and saying "are you aware." I'm aware of what?

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1 I mean, give it to me, and I'll look over it and see if
2 I've seen that before. But as far as this blanket thing, I
3 don't know what to say to that.
4 Q. Okay. Are you aware of any instances of voter
5 fraud in Montana in involving election day registration?
6 A. I mean, to a degree, sure.
7 Q. What are -- what are you aware of?
8 A. Well, I mean, I think we'd start with, like --
9 what do they call it -- the Woolly Ranch votes. It was --
10 let's see, the election where there was 4,000 registered on
11 election day, and then people were nowhere to be found or
12 unable to be located. So I guess that would constitute as
13 a fraud, as an example. I think they call them Woolly Ranch
14 votes.
15 Q. When is this Woolly Ranch example that you're
16 referencing from?
17 A. That one would have been 1887, I believe. And
18 then they -- they talk about the Woolly Ranch votes there.
19 And I think it was 1893 when they set the registration for,
20 like, an hour at time each county could do -- could set it.
21 And there's, you know, different things like that. But you
22 asked me for an example, there's -- that would be one right
23 off the get-go.
24 Q. Are you aware of any instances of voter fraud
25 involving election day registration in Montana since 2006?

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1 A. Well, I mean, I don't -- I don't know how I'd look
2 for some type of laws or anything like that, but I can say,
3 like, one of the examples where we produced would have been
4 where a county -- I believe it was in Anaconda -- had a
5 person that tried to register that was -- had already
6 registered and voted in Great Falls, and they were trying
7 to do so in Anaconda. And there was this duration of time
8 to where she was able to call the Secretary of State's
9 office to ask whether they canceled the vote and give them
10 a new ballot or whether they're just supposed to say
11 registration is reject. So it predates those different
12 nuances. If that same thing would have been on election
13 day, that could have constituted as a fraud. You know,
14 it's speculation there, but you're asking me about a highly
15 specific type of thing and I'm trying to provide you with
16 examples.
17 Q. So that example that you just described is not an
18 example that occurred on election day; is that right?
19 A. No, that one was not. No.
20 Q. Okay. And so sitting here today are you aware of
21 any specific examples of fraud involving registration on
22 election day in Montana since 2006?
23 A. Since 2006. I mean, obviously there's -- you
24 know, when I went to the historical -- you asked these
25 questions, and in preparing for today, so I tried to get

1 prepared, because we've got a lot of different documents,
2 and we tried to give you what was in the office. And then
3 when I -- sorry.
4 Q. Just specifically just that question. Sitting
5 here today are you aware of any examples of fraud involving
6 registration on election day in Montana since 2006?
7 A. Yeah. And I'm speaking on behalf of the Secretary
8 of State's office. And there's stuff on behalf of the
9 Secretary of State's office, like 2000 square feet of
10 files, that I was not able to go through. So there could
11 be and there could not be. I got through a few boxes,
12 including the Wooly Ranch-type stuff where they were able
13 to get back at me. So I don't have any examples to give
14 you, but that doesn't mean that there wasn't anything. I
15 also don't know what type of -- you know, how things would
16 be detected or not, or even if there were, there was
17 reports -- that doesn't mean that it was. And even if
18 there was, then that doesn't mean it was intentional. I
19 mean, that's kind of a -- that's kind of a runaround that I
20 don't think really is relevant.
21 Q. Are you aware of any instances of fraud involving
22 paid ballot collectors in Montana since 2000?
23 A. Fraud?
24 Q. Yes.
25 A. Well, fraud is kind of an amorphous thing; right?

1 Like we had the testimony in this case where they were
2 talking about it didn't matter whether somebody was
3 actually a resident of Montana, it was only whether they
4 had been there for 30 days. So that would be collecting a
5 person's ballot that wasn't actually a resident. That's a
6 fraud. Whether they were doing that intentionally, that
7 would, you know, alter whether they would be subject to
8 statutes. And even if they were, I don't know who had have
9 the time to prosecute that type of stuff.
10 So there's instances, you know, that are a
11 violation of election law that we see, but it's not like --
12 it's not like I have this -- this amorphous, you know,
13 example-type thing to be able to provide for you. But we
14 do know that we have things were people feel intimidated,
15 we do where people called the cops, we do know where, you
16 know, people were doing things that made people concerned.
17 And we also have stuff where the people that were doing it
18 clearly didn't understand Montana law, and so maybe that's
19 a fraud in itself. But I guess that's up to your
20 definition of fraud.
21 Q. Are you familiar with the case brought against two
22 non-citizens in Philips County who are alleged to have
23 registered to vote there?
24 A. I'm familiar with the -- you know, yeah, the --
25 the -- it. Yeah.

1 Q. Did the Secretary tell the press that those
2 individuals had pleaded guilty?
3 A. Yeah. Initially the Secretary of State had
4 reported what we were told, and then as soon as that was
5 clarified, we clarified too. Yep.
6 Q. The incident in Phillips County took place while
7 the laws challenged in these consolidated cases were in
8 effect; is that right?
9 A. The time period would have been when they were in
10 effect. Yeah.
11 Q. Okay. Do you agree that the laws that are being
12 challenged in these consolidated cases wouldn't have
13 addressed the type of conduct at issue in Phillips County?
14 A. I don't really -- I mean, there's a lot of things
15 there that you would be speculating one way or another;
16 right? I mean, part of the reason that they were detected
17 was because of the laws that are approved right now. So, I
18 mean, in a weird way it furthers it. On another hand,
19 there's a hypothetical where it couldn't be. It could go
20 both ways there depending upon. But thankfully they
21 produced, you know, what is now a primary ID, and that is
22 how they were able to be located. So that's helpful.
23 Q. HB176 does not -- excuse me.
24 Does HB176 address the type of conduct that was at
25 issue in Phillips County?

1 A. Well, these individuals had registered in the end
2 of October, and so in a weird way it addresses it because
3 they had -- they had registered in October, and another
4 citizen had challenged their registration. That challenge
5 took three or four weeks to process, and so -- but they had
6 actually -- the reason that it was was because in the
7 leading days to the election they were trying to contact
8 the individuals based on that challenge. And if that would
9 have all occurred on election day, there's no way it would
10 have happened. So those circumstances are precisely types
11 of things that are furthered by the state interest in
12 passing House Bill 176.
13 Q. And does House Bill 150 [150] address the type of
14 conduct at issue in Phillips County?
15 A. I don't know House Bill 150.
16 Q. Apologies. Does House Bill 530 address the type
17 of conduct at issue in Phillips County?
18 A. You know, I -- I -- I don't think that 530
19 would -- would address that type of thing. I don't know.
20 The security rules may help to identify certain
21 circumstances maybe. I don't know how their ballots were
22 turned in, so maybe it could be there. I don't know that I
23 have the facts to answer that completely, but I don't know
24 of any facts that would give me a reason to say yes either.
25 (Exhibit SOS 26 marked for identification.)

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<p>1 Q. (By Ms. Lee) All right. I'm handing you what's 2 been marked as SOS 26. 3 A. Okay. 4 Q. Have you seen this document before? 5 A. Yep. 6 Q. And what is it? 7 A. Well, it -- it was included in your notice of 8 deposition today, so that's... 9 Q. Okay. And so is this a letter from the State 10 Administration and Veteran Affairs interim committee to 11 Secretary Stapleton? 12 A. It ccs them. Looks like it's from Sue Malek. Oh, 13 and then up at the top it says -- oh, yeah, that they just 14 appreciate -- I don't know if it's on her behalf. It says 15 that they cc -- I don't know if it's on the full 16 committee's behalf. 17 Q. Okay. 18 A. It looks like up on the letterhead it doesn't say 19 the committee's name, and I think they have their own 20 letterhead. It just says hers, so it looks like it's from 21 Sue Malek in Missoula. 22 Q. Okay. So Senator Sue Malek is the chair of that 23 committee; is that right? 24 A. Looks like chair, yeah. 25 Q. Okay.</p>	<p>1 Q. You can put that exhibit aside. 2 When the district court issued the preliminary -- 3 the initial preliminary injunction on April 6, 2022, what 4 steps did the office take to inform county elections 5 officials about the preliminary injunction? 6 A. I think we talked about this on Monday and 7 Tuesday. We -- we sent out a note about the injunction and 8 that we planned on staying to keep current law. And we -- 9 let's see. We posted publicly, I believe. And -- let's 10 see. What else did we do? I don't know if anyone called, 11 but -- but -- as far as election administrators go. And as 12 we talked about, this is a pretty chaotic time, so trying 13 to respond to additional things out of left field. 14 Q. When you -- in your answer just know when you said 15 "posted publicly," to what were you referring? 16 A. Well, I think in your notice of deposition you had 17 like a -- a Facebook thing or -- or press thing or 18 something like that that talked about the injunction. So, 19 I mean, I know that that was something that related to it. 20 I believe after that one could have been the other one. 21 But I know for sure we emailed out a copy of the injunction 22 and let them know. I think we went over that as an exhibit 23 on Tuesday. 24 Q. Was anything posted on the Secretary's website 25 indicating the laws were enjoined?</p>
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<p>1 A. Yeah. It has her address up here. 2 Q. Okay. And are you familiar with the -- the -- the 3 reference to the 360 cases of voter fraud that are 4 discussed in this letter? 5 A. I mean, so to prepare for it, since you included 6 it in the notice of deposition, I, you know, went to and 7 asked people about it. So I'm familiar as much as to 8 prepare to try to figure out what I can convey and -- and 9 answer questions on it. 10 Q. Did the Secretary's office ever respond to this 11 letter providing more information about those supposed 12 incidents? 13 A. I wish I could answer yes or no. I did try to ask 14 for a copy -- Dana looked for it for me, and so did 15 Stewart. I asked Christie about it, and she didn't know. 16 I tried to find it in the files, and I couldn't find it. I 17 did look at Laws to try to find if there was any documents 18 attached to the committee, but I didn't really know which 19 committee, and it was taking a long time. So the best I 20 can say is that I've learned information about the process 21 but wasn't able to find a response in my locating. You may 22 have it or not. I tried -- I did learn as much as I could 23 about the instance to -- to respond to questions the best I 24 could to the extent that it's helpful for you to gather 25 facts.</p>	<p>1 A. Yeah. 2 Q. And I'm going to hand you what's marked as SOS 3 Exhibit 27. 4 (Exhibit SOS 27 marked for identification.) 5 THE DEPONENT: Okay. 6 Q. (By Ms. Lee) This appears to be an email from Dana 7 Corson to election officials regarding the preliminary 8 injunction in these three consolidated cases; is that fair 9 to say? 10 A. Yeah. I think this is the exhibit we went over on 11 Tuesday because I remember noting that it's from 5:21 p.m., 12 after hours, trying to catch up with all the things going 13 on 14 Q. Okay. And so this was sent to elections officials 15 on April 8, 2022; is that right? 16 A. Yeah. It says April 8th right here. 17 Q. Okay. And as you noted yesterday, it's at 18 5:21 p.m., so after businesses hour -- 19 A. Yeah. 20 Q. -- is that right? Okay. 21 And this is two days after the preliminary 22 injunction came down; is that right? 23 A. I guess you just told me it was April 6th. I 24 don't remember the timing. Obviously, with it being after 25 hours, they're trying to get it out as quick as possible.</p>

<p>Page 176</p> <p>1 But so I don't know the exact amount of times. I know that 2 whatever date that that was, that this is April 8th and 3 it's at 5:21 p.m. 4 Q. Okay. Was this the first communication to county 5 elections officials about the preliminary injunction? 6 A. Well, it says that, you know, like to make sure 7 that they're aware. I mean, obviously the news covered it. 8 I think that one of the clerks during this case had 9 testified that she had -- they had talked about it in, 10 like, a Snapchat group or something, which is independent 11 of SOS. So I think this is kind of a catchup saying, Hey, 12 in case you didn't learn from all the other ways, here's 13 another way. 14 Q. Okay. And so -- so just to clarify, as far as you 15 know, was this the first communication from the Secretary's 16 office specifically to county election officials about the 17 preliminary injunction? 18 A. I mean, I remember it from us talking about it on 19 Tuesday. And I don't remember us talking about any one 20 before this, but after the injunction. So this is the one 21 that comes to mind at this point. There could be, could 22 not be. But obviously this is what it is. 23 Q. Did the Secretary's office consider this 24 communication sufficient information for county election 25 officials to be able to conduct upcoming elections under</p>	<p>Page 178</p> <p>1 injunction on April 22, '22; does that sound right? 2 A. That sounds about right. 3 Q. Okay. At that time what steps did the office take 4 to inform county election officials about the scope of the 5 injunction? 6 A. Well, I think that there's an email. It might 7 have already come up. I think Matt -- Mr. Gordon had asked 8 me questions about it. Maybe I'm mistaking something from 9 something else. I know that we were able to continue on 10 with Section 1 Austen Lindsay in particular was very happy 11 about that, about House Bill 530, because he -- you know, 12 that's the employee that was working on that kind of full 13 time. I think we also had -- had more questions about, you 14 know, 169, and to take care of that, we obviously mentioned 15 the stay up to the Supreme Court as well. I think we've 16 been providing you with information. There could be more. 17 Feel free to ask me about any of those. But -- but I know 18 that we're trying to keep people as informed as we can with 19 these things that go outside of the -- the preplanned 20 election operation agenda. 21 Q. And so other than the email that you referenced 22 and we'll talk about in a bit, are you aware sitting here 23 today of any other steps the office took to inform county 24 election officials about the scope of the injunction after 25 the April 22nd clarification?</p>
<p>Page 177</p> <p>1 the terms of the injunction? 2 A. I don't know that that's fair to say at all. I 3 mean, I think that this is exactly what it is, which is 4 making sure that they're aware of a recent ruling. I think 5 that it also says that we're going to be filing a stay as 6 soon as possible so they could know that they would be able 7 to hopefully ideally and actually, know that we know, 8 operate on the current laws and the laws that they're 9 trained and understand. 10 Q. And so prior to the district court's clarification 11 of the preliminary injunction on April 22nd, other than 12 this email in Exhibit 27, did the Secretary's office make 13 any other communication to election officials regarding the 14 preliminary injunction? 15 A. You know, we very well could have. Nothing comes 16 to mind. I mean, like it says right here in this exhibit, 17 the order was issued at a very poor time, considering that 18 we're in the election cycle. I mean, everyone is very 19 busy. It also says that we will comply as we work to 20 clarify. It says we're going to updating stuff effected. 21 Being prepared to resolve the confusion. I mean, 22 there's -- it clearly doesn't say, Here's your conclusive 23 guide. 24 Q. The state was denied by the district court and 25 then that court clarified the scope of the preliminary</p>	<p>Page 179</p> <p>1 A. I think we had the website, you know, tailored to 2 make sure that it was relevant to Section 2 versus 3 Section 1 on 169 as to the applicable IDs. I know that -- 4 that -- that Mr. Corson and Mr. Fuller had sought legal 5 advice from me several times on answering questions. I 6 know there was questions and responses that way. Doing as 7 much as we can to prepare the best that we can based on the 8 circumstances. 9 Q. Okay. And I'm handing you what's been marked as 10 SOS Exhibit 28. 11 (Exhibit SOS 28 marked for identification.) 12 Q. (By Ms. Lee) This appears to be an email from 13 Davin Buffington, the election administrator in Liberty 14 County, responding to an email from Dana Corson that he 15 sent out to county election officials; is that fair to say? 16 A. Yeah, that's fair to say. Thank you for reminding 17 me about that step taken after April 20 -- whatever. 18 Q. And looking at the second email down in this email 19 chain from Mr. Corson out to the county election officials, 20 that's dated April 28th; is that correct? 21 A. Yeah. April 28th. I see here. Yep. 22 Q. And is that the first communication from the 23 Secretary's office to the county election officials 24 providing them information on the clarification to the 25 preliminary injunction after the April 22nd ruling?</p>

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1 **A. Very well could be. I mean, if you look at**
2 **April 28th, that being a Thursday. April 22nd, what day**
3 **would that have been? So we've got some days there where**
4 **we're not in the office. And as you can also see, it's**
5 **pretty comprehensive here, so, I mean, something like that**
6 **doesn't whip up itself in an hour. It clearly took some**
7 **comprehensive time for Dana to go through it for, you know,**
8 **technical writing type time, obviously legal. We want to**
9 **make sure we can provide a good picture. So, you know, I**
10 **think that's pretty prompt in all things considered.**
11 **Q. And sitting here today you're not aware of an**
12 **earlier communication from the Secretary's office to county**
13 **election officials regarding the April 22nd ruling; is that**
14 **fair to say?**
15 **A. I know that we provided this as part of the**
16 **production request. Anything that would be relevant. So**
17 **you probably already have it, and you can ask me. I know**
18 **that this -- I find it highly unlikely that between**
19 **April 22nd and April 28th there would be as comprehensive**
20 **and detailed communication. Whether or not there's any**
21 **communication, it's -- I'm jogging my noggin here.**
22 **Q. And so if this is the first communication from the**
23 **Secretary's office to the counties following the April 22nd**
24 **ruling, is it fair to say it took six days for the**
25 **Secretary's office to provide this update to county**

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1 election officials?
2 **A. I mean, I guess four working days.**
3 **Q. And six calendar days; is that right?**
4 **A. Well, I mean, yeah. If you're wanting to say that**
5 **somehow our office is delayed because we weren't working**
6 **over the weekend, which we very well could have been -- and**
7 **like I said, this is pretty comprehensive. It's a better**
8 **thing to have good detail than it is to -- to rush things**
9 **out. But we're trying to do the best that we can. Also,**
10 **some of these questions are, you know, not as**
11 **straightforward or not because, as you know, it created a**
12 **brand new situation when we were in the revised injunction**
13 **to an injunction law scheme that we've never seen before.**
14 **Q. Okay. And turning to the -- flipping to the next**
15 **page, about a third of the way down the page, do you see**
16 **the bullet for HB176?**
17 **A. Yeah, I do.**
18 **Q. Okay. And -- and the square bullet point**
19 **describing what happens with the injunction in relation to**
20 **HB176, it says:**
21 **Under this injunction a person may register and**
22 **vote on election day.**
23 **Do you see that?**
24 **A. Yeah, I see that.**
25 **Q. Okay. Is any further guidance needed for election**

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1 officials to run an election with respect to election day
2 registration under the injunction?
3 **A. I mean, maybe. As you can tell, there's a lot of**
4 **flesh here where the -- the injunction was limited down to**
5 **different sections where some apply and some don't, which**
6 **is by far, you know, more confusing than one where it's**
7 **wholesome or not. Could more material be provided?**
8 **Potentially. You can clearly see here we're doing the best**
9 **that we can.**
10 **Q. Okay. And if you flip back to the -- to the first**
11 **page, there's the email from Mr. Buffington to Mr. Corson.**
12 **Do you see that email?**
13 **A. Mr. Buffington. Yeah.**
14 **Q. Okay. And he writes:**
15 **The below has created more questions, and we need**
16 **some concise direction on what to follow and what to tell**
17 **our election judges.**
18 **Do you see that?**
19 **A. Yeah, I see that.**
20 **Q. Okay. Is it the case that this -- the email --**
21 **the April 28th email from Mr. Corson created more questions**
22 **for at least the Liberty County clerk and recorder?**
23 **MR. MCINTOSH: Objection; foundation, speculation.**
24 **THE DEPONENT: I mean, you'd have to ask Davin,**
25 **but my opinion, based on what I've gathered, is that what**

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1 created confusion was having months of training, training
2 material, conducting trainings, and understanding a law,
3 having those laws be enjoined to laws that you don't
4 understand, and a couple weeks where you're trying to
5 formulate foreign laws to then have another new set of
6 laws, and eventually being like, I throw up my hands. What
7 do I do.
8 **Q. (By Ms. Lee) And Mr. Buffington asked Mr. Corson**
9 **for some concise direction; is that fair to say?**
10 **A. Yeah.**
11 **Q. Okay. And did Mr. Corson provide some concise**
12 **direction in response to this email from Mr. Buffington?**
13 **A. I mean, I wouldn't be surprised if we, you know,**
14 **additionally provided more information or maybe he called.**
15 **I don't -- like I said, we produced material, so I -- I'm**
16 **not -- I'm not ping-pong one that comes to mind right now,**
17 **but that's not to say that we didn't -- trying to do the**
18 **best we could to respond to the confusion created by the**
19 **injunction.**
20 **Q. Okay. And just for clarity, sitting here today**
21 **you don't know whether Mr. Corson provided Mr. Buffington**
22 **with some additional concise direction; is that fair to**
23 **say?**
24 **A. The record doesn't come to mind post-May 3rd and,**
25 **you know, pre whatever the next statewide one. Maybe --**

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<p>1 maybe Mr. Corson sent something out to the group of them.</p> <p>2 Like I said, maybe he talked to them on the phone. Trying</p> <p>3 to do the best we can to respond to people of what we knew.</p> <p>4 Q. Okay. But sitting here today you don't know</p> <p>5 whether that occurred one way or the other?</p> <p>6 A. No, I -- I -- I've talked as much as I can to get</p> <p>7 as much detail on, what, 100 topics. And I don't have</p> <p>8 every record in the thousands of pages in this case</p> <p>9 memorized. No.</p> <p>10 Q. (By Ms. Lee) So I'm handing you what's marked as</p> <p>11 SOS Exhibit 29.</p> <p>12 (Exhibit SOS 29 marked for identification.)</p> <p>13 THE DEPONENT: Okay.</p> <p>14 Q. (By Ms. Lee) Is it fair to say that this is an</p> <p>15 email chain from Dana Corson to county election officials</p> <p>16 informing them of the stay of the preliminary injunction</p> <p>17 with respect to HB176 and SB169?</p> <p>18 A. Yeah. Yeah. It looks like it's the email letting</p> <p>19 them know we can continue on as we know and understand.</p> <p>20 And it looks like the link didn't work. Providing an</p> <p>21 additional link. I remember a few responses from excited</p> <p>22 clerks to this one. Yeah, I do remember it.</p> <p>23 Q. Okay. And this email was sent on -- the initial</p> <p>24 email informing county election officials was sent on</p> <p>25 May 17th, the day that the stay came down; is that correct?</p>	<p>1 writes:</p> <p>2 I will provide more clarification later.</p> <p>3 Do you see that?</p> <p>4 A. Umm...</p> <p>5 Q. Just the last sentence on this first page.</p> <p>6 A. Detail about -- I will provide more clarification</p> <p>7 later. Yeah, I think that's -- I read that.</p> <p>8 Q. Okay. Has Mr. Corson provided the more</p> <p>9 clarification referenced in this email?</p> <p>10 A. I mean, it seems like through this one you've got</p> <p>11 the next one, so -- so he very well could have. I -- not</p> <p>12 sure sitting here whether we've added more stuff. As you</p> <p>13 can imagine, like, over the last couple week I've been</p> <p>14 doing my best to prepare for the long list of topics for</p> <p>15 today's deposition.</p> <p>16 Q. Sure. And looking back at the previous exhibit,</p> <p>17 Exhibit 28 --</p> <p>18 A. Okay.</p> <p>19 Q. -- so since this communication from Mr. Corson,</p> <p>20 has he provided the counties with further information on</p> <p>21 the status of the injunction with respect to HB --</p> <p>22 Section 2 of HB530 or HB506?</p> <p>23 A. Well, the stay wasn't, you know, relevant to</p> <p>24 those, so as this one talks about, the Senate Bill 169 and</p> <p>25 176, I don't know why additional communication would be</p>
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<p>1 A. I don't recall the exact day the stay came down,</p> <p>2 but it sounds like it would be around there. It looks like</p> <p>3 it's 5:40, and then it looks like the next day at about</p> <p>4 3:00 p.m. he was sending out extra links.</p> <p>5 Q. Okay. And in the second paragraph in the bottom</p> <p>6 email, it says:</p> <p>7 Today the Montana Supreme Court ruled in favor of</p> <p>8 the Secretary of State's office.</p> <p>9 Does that sentence refresh your recollection as to</p> <p>10 whether this email was sent on the day that the stay came</p> <p>11 down?</p> <p>12 A. Well, I suppose I'll trust that we was right;</p> <p>13 right?</p> <p>14 Q. And so is it fair to say the Secretary's office</p> <p>15 was able to communicate to county election officials about</p> <p>16 the stay of the injunction the day it came down, unlike the</p> <p>17 communications about the issuance of the injunction?</p> <p>18 A. Yes. It's fair to say that on this day, after</p> <p>19 hours, that Mr. Corson had the time. I mean, you can also</p> <p>20 imagine that when you spend an entire year working on</p> <p>21 something, and then someone smacks you in the face, that</p> <p>22 you're a lot less incentivized than the thrill you have</p> <p>23 when all the work that you've done is finally recognized.</p> <p>24 Q. Okay. And further down, still on the first page</p> <p>25 of this exhibit, at the bottom of Mr. Corson's email, he</p>	<p>1 necessary. I know that there was a change. But -- so</p> <p>2 it's -- I'm kind of confuse by your question there.</p> <p>3 Q. I'm just wondering if -- besides the document</p> <p>4 that -- that we're looking at in Exhibit 28, was there any</p> <p>5 additional guidance from the Secretary's office to the</p> <p>6 counties regarding injunction with respect to HB506 or</p> <p>7 HB530, if you're aware?</p> <p>8 A. Like I said, we did -- we went through a process</p> <p>9 to provide numerous supplemented discovery, you know, over</p> <p>10 the course of time. I don't have anything that rings a</p> <p>11 bell. But you have it. I don't know that I can provide</p> <p>12 you more facts without seeing it.</p> <p>13 Q. Okay. Great. Let's go off the record. I just</p> <p>14 need check, but then...</p> <p>15 THE VIDEOGRAPHER: The time is 2:52. Going off</p> <p>16 the record.</p> <p>17 (Break taken from 2:52 p.m. until 3:06 p.m.)</p> <p>18 THE VIDEOGRAPHER: The time is 3:06. Back on the</p> <p>19 record.</p> <p>20 MS. LEE: Thank you so much, Mr. James. I have no</p> <p>21 further questions at this time. I'm handing it over to</p> <p>22 counsel in the Montana Democratic Party case.</p> <p>23</p> <p>24 EXAMINATION</p> <p>25 BY MR. GORDON:</p>

<p>Page 188</p> <p>1 Q. Good afternoon, Mr. James. 2 A. Good afternoon. 3 Q. You'll recall that I am Matt Gordon, representing 4 Montana Democratic Party and Mitch Bohn in connection with 5 this case. 6 You've been handed -- or I'm handing you 7 Exhibit 30. Do you have that? 8 (Exhibit SOS 30 marked for identification.) 9 THE DEPONENT: I do. 10 Q. (By Mr. Gordon) Exhibit 30 is the Montana 11 Democratic Party and Mitch Bohn's amended notice of a Rule 12 30(b)(6) deposition; do you see that? 13 A. Yes. I see that. 14 Q. Did you review this document in preparation for 15 your deposition today? 16 A. Well, there's a bunch that -- that were sent in, 17 and so -- and it seemed like they were added -- the -- the 18 letter that I got kind of consolidated them all, so I 19 used -- used that to go through each one, and, where we 20 said we'd testify, gather as much information as possible 21 so that that way I can testify again. 22 Q. Sorry. Which letter are your referencing? 23 A. Like the -- the one that, like, had all the -- 24 that one. 25 MR. MCINTOSH: I think.</p>	<p>Page 190</p> <p>1 Exhibit 30, please, Mr. James -- 2 A. Uh-huh. 3 Q. -- I just want to note for the record that there 4 was a typo here that said the date and time of deposition 5 is May 27th. Obviously we're doing this May 26th. We 6 previously communicated with counsel about that and let 7 them know that that was, in fact, a typo. 8 Mr. James, earlier counsel questioned you about 9 your preparation for the deposition, and you identified a 10 number of things. 11 Did you do anything different to prepare to answer 12 questions in response to the notice of deposition that is 13 marked as Exhibit 30, or is your prior testimony about what 14 you did to prepare for today's deposition also applicable 15 to Exhibit 30? 16 A. Well, I mean, I'm giving my 30(b)(6), so I 17 prepared for my 30(b)(6). 18 Q. So the question is earlier you testified about 19 certain things that you did to prepare in response to the 20 notice of deposition from the Western Native Voice 21 plaintiffs. Is that same thing that you did to prepare for 22 notice of deposition from the Montana Democratic Party and 23 Mitch Bohn, or did you do anything additional? 24 A. I don't think there was anything additional. If 25 so, it would be my -- I mean, like I said, because today is</p>
<p>Page 189</p> <p>1 Q. (By Mr. Gordon) The objections letter? 2 A. Yeah. I think that's it. Let me see. It's 3 got -- yeah, so it's got, like, topics, and then it says 4 responses, you know. And so then it gives me nice topic 5 areas to kind of go through and ask questions about. Yep. 6 Q. Okay. So just to be clear, did you review the 7 topics identified in Exhibit A to Exhibit 30 here in the 8 amended notice of deposition? Did you actually review this 9 document or did you just review the document that you 10 referenced, the letter setting out objections to the 11 deposition notices? 12 A. I mean, so the -- having two document is -- I 13 guess thankfully there was only two instead of three of 14 topics to try to look through, and some of them were 15 overlapping. It was just really nice to have it all in one 16 for today's deposition. 17 Q. Understood. I'm just -- just simple question. 18 Did you review Exhibit 30? 19 A. I remember getting it, but I utilized this for 20 today's deposition. 21 Q. And when you said you utilized "this," you're 22 referencing the objection letter? 23 A. Yeah. Because it's got all the topics, you know, 24 combined. 25 Q. For the record, if you'll turn to Page 2 of</p>	<p>Page 191</p> <p>1 the 30(b)(6), I was able to kind of have this list of 2 combined topics and was able to figure out what I needed to 3 do to prepare. And I think I gave a pretty complete list 4 there. You know, maybe if you had different exhibits, then 5 I would have -- that would technically be different, but 6 it's still for the same deposition, so... 7 Q. Mr. James, one of the things that you said that 8 you did to prepare for today's deposition was speak with a 9 number of individuals: Mr. Corson, Mr. Fuller, Secretary 10 Jacobsen, et cetera. 11 Do you have any notes of those conversations? 12 A. No. Not really a notes kind of guy. I tried to 13 learn as -- literally as much as I could. I asked 14 questions. I think that's pretty evident from today that 15 I've got kind of the context of as much -- there's so much 16 documentation that -- and pages that I definitely don't 17 need any more paper in my life. 18 Q. So just to be clear, Mr. James, I'm trying to be 19 as expeditious as possible here. You're free to answer, of 20 course, however you want. But when I ask you just if there 21 are notes for these conversations, that's all I'm 22 interested in is whether you took notes. 23 You said that you looked at a number of documents. 24 Do you have any records of which documents you 25 review in preparation for today's deposition?</p>

1 A. Yeah. So I looked over, like, the first
2 production and then supplemental production. And I
3 mentioned, you know, trying to look at the things at the
4 historical society. I mean, really I was looking for --
5 you know, you've got a subject matter, like how can I know
6 as much as I can to provide you with information.
7 Q. Why did you look at things at the historical
8 society?
9 A. Well, because the administration is kind of, you
10 know, split, and so then there's a carryover. And you'd
11 asked a lot of things about, like, the -- you know, does
12 the Secretary of State have a history -- we -- it's so
13 wonky inside the Secretary of States' file search. We look
14 forward to having a more, you know, high-tech tool. And so
15 I was just trying to get as much information as I could to
16 provide with as much information as I could, and so I tried
17 to see if I could find some there. I'll tell you, it was
18 really informative, but it's definitely a slow proces.
19 Q. You said the administration is split.
20 What do you mean?
21 A. Well, what I mean is that there's a -- there's
22 s -- you know Secretary Jacobsen came in after a secretary,
23 so there's a -- you know, a rollover of new administration;
24 right?
25 Q. So were you saying that you went to the historical

1 election.
2 Q. You said that you asked Senator Cuffe or Senator
3 Cuffe a question.
4 What did you ask him?
5 A. Oh, shoot. What was that. You had a -- you had a
6 question for me that I said "I don't know" on. I was
7 trying to find as many answer as I could. Gosh. I don't
8 remember which one that was. But, yeah, on Tuesday there
9 was one that I said "I don't know." I think I might have
10 even said I'll do my best to learn. So I guess if it comes
11 up today, then hopefully I'll be able to answer.
12 Q. I believe you said you went to the law library; is
13 that correct?
14 A. Yes.
15 Q. What were you looking for at the law library?
16 A. So you asked a lot of questions about, like, you
17 know, Secretary of State or in Montana, and so the law
18 library has this really cool section with history books
19 about the state of Montana. And so I was able to kind of
20 flip through some of those to see if there was material
21 that would be responsive to some of the questions. And --
22 and I'll try to keep it short again, but like I said, I'm
23 from Butte, and luckily for me a lot of Montana history
24 references Butte, and so I took a liking to it as well.
25 Q. And did you find anything at the historical

1 society to identify documents from Secretary Jacobsen's
2 tenure?
3 A. No. What I'm saying is is that there's certain
4 levels of record retention and certain ones that go to the
5 historical society. And so I knew there were some
6 documents there. Not all of them, obviously, but ones that
7 were at least subject to that. And so I tried to see if I
8 could look through to find some of the things that -- that
9 you had asked for, or at least to, like -- the topic areas
10 that you had wanted me to respond to. It's always bad to
11 say no when it's there but you just don't know it. And so
12 I was trying to find as much as I could to explain to you
13 as much as I could during today's deposition to be as
14 prepared as possible.
15 Q. So just to be clear, in looking at the historical
16 society, were you looking for records specific to Secretary
17 Jacobsen's tenure or were you looking for records beyond
18 Secretary Jacobsen's tenure?
19 A. Yeah. So they don't -- they don't split it by
20 tenure. I mean, technically the tenure now would be more
21 in-house; right? But it's more just like boxes of topics,
22 and they're just kind of numbered. And so you can only ask
23 for five at a time, and -- and -- and then there's manilla
24 files in there. So I was trying to look through documents
25 that said "Secretary of State" or just tried to search

1 society or the law library that you felt was responsive to
2 the topics that we identified for your deposition today?
3 A. I mean, they provided information, but it's not
4 like, you know, documents for this or whatnot. So I tried
5 to just learn as much as I could, do as much research as I
6 could to try to provide you with as many information as I
7 could, you know?
8 Q. How many conversations did you have with
9 Mr. Corson in preparation for today's deposition, if you
10 recall?
11 A. I don't recall a number. I mean, it was
12 definitely multiple, because it's not like we had time to
13 just sit down and talk about all the topics. So it might
14 be, like, you know, get a good understanding of one, and
15 then later no go back and ask another question. That type
16 of deal.
17 Q. I believe you testified that you said this morning
18 you were trying to find more information for things you
19 didn't know.
20 Which things did you not know that you were trying
21 to find more information for?
22 A. So when I was driving over here one of the things
23 that popped in my head was you asked a question about the
24 television value for the PSAs, and whether we had paid that
25 amount or whether it was worth that amount, and how much

1 did we pay. And -- and I -- so I -- I called Julie Lake to
2 see if she had an answer for that.
3 Q. Did she?
4 A. She did.
5 Q. What was her answer?
6 A. She said that way that the PSAs are set up is that
7 we pay a flat fee, and then they give us the value.
8 Because, you know, when there's more watchers, it's, like,
9 worth points or whatever. And so we pay the flat fee, and
10 if it runs during a highly watched time, normally that
11 would evaporate up somebody's, you know, ad buy, per se.
12 But ours is just, like, straight up three months at a time
13 flat fee. And then they let us know what the value of that
14 would have been.
15 Q. What was the flat fee that you paid?
16 A. I guess I didn't ask that question. I was just
17 asked whether the value was something that was gifted to us
18 by MPA or whether we paid, and she said it's structured
19 kind of like a flat fee type of deal, or, like, we pay an
20 amount, and no matter how many points, you know, or
21 viewership or whatever, it doesn't change the duration that
22 the ads run.
23 Q. Other than reaching out to Senator Cuffe and your
24 conversation with Ms. Lake that you just referenced, did
25 you do any other preparation for your deposition since --

1 and by preparation for your deposition, I mean preparation
2 for today's deposition -- since the end of your personal
3 deposition on Tuesday night?
4 A. I mean, I guess if you -- if you consider, you
5 know, conversations with counsel about 30(b)(6)
6 differences. But in all honesty, yesterday I was trying to
7 rest, and I drank a ton of Gatorade because I haven't been
8 feeling that well, and I knew today was going to be long.
9 So I'm trying to do the best I can to feel alive, alert,
10 and enthusiastic.
11 Q. I appreciate your enthusiasm.
12 So you had a meeting with counsel yesterday to
13 talk about the 30(b)(6) differences?
14 A. Yeah. We talked on the phone last night.
15 Q. Okay. So in between the end of your personal
16 deposition Tuesday night and this morning's deposition what
17 I understand is you had that conversation with counsel last
18 night about a 30(b)(6) deposition, reached out to Ms. Lake
19 on the way here this morning, and you reached out to
20 Senator Cuffe.
21 Is that extent of the additional preparation you
22 did for today's deposition?
23 A. Well, no. I mean, like I said, I looked back --
24 tried to look over as many document as I could. My eyes
25 are starting to get fuzzy with this amount of hours this

1 week. But tried to look through those from the discovery.
2 And tried to look over the objection topics again, you
3 know, because there's a lot of them. And just trying to
4 think in my head so that that way -- I'd hate to have it
5 where, you know, my memory is in the way instead of the
6 answer. And then of course counsel was able to kind of
7 remind me of things where I said I wasn't sure, you know,
8 and -- and I would try to find those things too.
9 Q. Counsel asked you earlier about communication
10 practices in the Secretary of State's office.
11 Does Secretary of State, Ms. Jacobsen, ever email
12 people in her office about work-related matters?
13 A. I mean, back in the day when she had her first
14 role, then that would make more -- you know, make more
15 sense in the last tenure. But -- and I think there's a
16 couple times where she does. Most of the time it's, like,
17 following up, like, Hey, when's this going to get done, or,
18 you know, What's the status of this?
19 But for the most part she's got so many divisions
20 going on right now that she's kind of trying to keep up to
21 date with that, and that it's not like, you know, being
22 able to sit and correspond. I'm sure she'd like to.
23 Trying to keep a pulse takes so much time, you know?
24 Q. Sure. So let me just ask you a slightly different
25 question.

1 How often does the Secretary of State email people
2 in her office about work-related matters?
3 A. I'd imagine that I would get cc'ed on it, and I
4 would honestly say probably less than a handful since we
5 started. It's -- yeah, not very often.
6 Q. And are you aware of whether the Secretary of
7 State ever sends work-related texts, text messages?
8 A. No. I mean, we're -- we try to be very
9 intentional about work being work and personal being
10 personal. And so I -- I don't -- no. We don't have work
11 phones and things like that, but...
12 Q. So did you discuss with the Secretary of State
13 Jacobsen whether she ever sends work-related texts?
14 A. Well, I mean, we looked through the topics, I
15 asked whether she had any correspondence or anything like
16 that, anything that came to mind, and -- but, yeah, we
17 don't have -- we don't work text, we don't work phone.
18 It's a policy in the office. You know, there's
19 obviously -- you know, she's got friends or whatever, but
20 work material has got to stay separate. We try to be
21 pretty intention about that.
22 Q. I understand the policies and all that. My
23 question is just a much simpler one, Mr. James.
24 Did you ask Secretary Jacobsen whether she ever
25 sends work-related texts?

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<p>1 A. Well, I said, you know, I've got to get all the 2 information relevant to this. And, you know, so we went 3 over any type of thing, searched as much as I could. I've 4 tried to provide you a heap of correspondence, tons of 5 documents, so I've done the best that I can here. 6 Q. So, again, I'm trying to be as expeditious as 7 possible, but with all due respect you're not answering my 8 question. It's a simple question. 9 Did you ask Secretary Jacobsen whether she has 10 ever sent work-related text messages? 11 MR. MCINTOSH: Move to strike the sidebar. 12 THE DEPONENT: Yeah. Like I said before both 13 Tuesday and Monday and today again, I look for as much as 14 information as possible. We read your thing. It included 15 text messages. We don't have work phones. She doesn't 16 remember any conversations that would be applicable, so 17 that's as far as I know. 18 Q. (By Mr. Gordon) Did you ask Secretary of State 19 Jacobsen whether she ever sends work-related emails from 20 her personal email account? 21 A. I mean, she definitely does not send work-related 22 emails based on her personal account. 23 Q. And what's your basis for saying that? 24 A. Because I have heard many times where we have, you 25 know, communicated that we have got to make sure that all</p>	<p>1 Q. Just a yes/no question. The answer is, no, you 2 did not? 3 A. No, I didn't look through her personal 4 communications. 5 Q. You mentioned that the elections division has 6 morning meetings. 7 Is that every morning? 8 A. It's not every morning. But there's time where 9 they'll do that. The reason for it being morning, I think, 10 is because of coffee. And then also, you know, it's easier 11 for the remote folks. I think that they have somewhat 12 regular -- it would probably also depend on, like, the time 13 of year. They're obviously going to confer more at, like, 14 election times than they would other times. So -- but they 15 call them standups or something like that. 16 Q. Mr. James, just a reminder, if you don't 17 understand my question, you'll let me know; right? 18 A. I'm doing my best to answer based on understanding 19 your question, so I think I understood your question. I 20 think I answered your questions -- 21 Q. Okay. Just -- just to make sure, you do know that 22 we agreed before the other day -- so I just want to make 23 sure you understand -- if you don't understand a question I 24 ask you, you'll let me know; right? 25 A. I will absolutely do my best.</p>
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<p>1 work-related is on -- on work, and there's no work-related 2 on personal. You know, Montana public record laws are 3 pretty clear, and the last thing we want to be doing is 4 blending those. So it's a policy of the office, and I 5 think she just -- the adamancy makes me believe that. 6 That's the reason for my belief. 7 Q. Okay. Fair enough. Did you ask her the question 8 of whether she's ever sent a work-related email from her 9 personal email account? 10 A. I mean, I don't know if I asked something that 11 specific. We've asked about these, you know, type of 12 things. But, you know, we're -- we try to create good 13 public records for public business. I mean, obviously 14 she's got, you know, a personal capacity in terms of, like, 15 you know, she runs for office or whatever, which touches 16 on, like, topic areas. But in terms of official business, 17 like, you conduct official business on official business. 18 Q. Did you review Secretary of State Jacobsen's 19 personal email records to confirm that he has not sent any 20 work-related email from her personal email account? 21 A. I'm not going through somebody's personal account 22 to verify that type of thing. Like I said, we're very 23 deliberate about personal being personal and work being 24 work, so that would be really creepy, to be honest with 25 you.</p>	<p>1 Q. Okay. Do you attend these morning meetings with 2 the election division? 3 A. I -- I don't ever -- rarely -- I rarely ever have 4 time, and I actually feel fairly guilty about that. I 5 mean, at time I feel like it's important to not have people 6 in the office feel -- feel disconnected from each other, 7 you know, to work as a team. So I try to -- to just say hi 8 or at least, you know, if I see them in the conference room 9 or -- or whatever to at least stop in. I know that they 10 would prefer that I'm there more often because I think they 11 think it would help them out, just, you know, from the 12 ground up type thing. But I do at times. 13 Q. Are there agendas prepared for these morning 14 meetings of the election division? 15 A. No. It's a standup; right? So it's like one of 16 those things where you kind of go around and you talk about 17 what you're working on, where you need help or something 18 like that. It's like a coffee conversation. I think that 19 would be the best way to describe it. 20 Q. Are there notes or minutes taken of these 21 meetings? 22 A. There's not, you know, minutes or notes taken of 23 these types of things. Like I said, it's something where 24 people have coffee, talk about what they're working on. 25 And I think -- I mean, the best case scenario that you'd</p>

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1 see from -- from documents like that would be like in the
2 production where it talks about, you know, upcoming tasks,
3 and then it has, like, what they are and who's working on
4 it. Those are kind of the -- what flows out of that type
5 of a thing.
6 Q. Are you aware of any documents or any records of
7 the morning meetings of the election division?
8 A. I just responded to that I think.
9 Q. It's a simple question. Are you aware of any
10 documentary records of the election division's morning
11 meetings?
12 A. Yes, as I was just saying, it's not like there's
13 records for the morning meetings, but to my extent, the
14 task list type of thing sometimes flows out of that, you
15 know, where there's an awareness. I know we produced --
16 produced those types of, like, you know, task calendars,
17 whatever they're called.
18 Q. Earlier you testified that the emails are all
19 copied into the share file.
20 Do I have that correct?
21 A. No, so, like, the -- the SOS Elections emails,
22 when there's, like, a category topic that would, you know,
23 make, like, sense, then they'll forward them onto the
24 little share file thing. And then that's a newer --
25 it's -- so that -- they're trying to come up with ways to

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1 kind of use technology for record retention so that people
2 can kind of -- if their correspondence and stuff, that
3 30-day thing, where the 30 days kind of self-helps the
4 cleaning process to alleviate from that -- you know, I
5 guess you'd call it they're looking at an automation on the
6 records retention aspect. So that's what I was referencing
7 there.
8 Q. So it's not the case that all emails from members
9 of Secretary of State's office are copied into the share
10 file?
11 A. No. I mean, if that was the case the thing would
12 probably be even slower than it is.
13 Q. Okay. Then I want to ask you the question that
14 counsel asked before.
15 Whose -- who at the Secretary of State's
16 individual email inboxes were searched to gather
17 information responsive to the requests for production
18 served on the Secretary in this case?
19 A. So we got the requests for production. Put, you
20 know, Stewart and Connor and Dana and Angela and Julie and
21 Richie and Dana and me. Geez, I think even perhaps Jake
22 Kelly would have been there. And we basically went through
23 one by one and was, like, we've got to get this, what can
24 you search for, what can we try to find, does it hit any --
25 because we tried to -- you know, it was a lot of material

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1 and it took kind of a -- took a village there.
2 Q. Do you remember counsel asked you some questions
3 about whether it's a goal of the Secretary of State to
4 promote democracy?
5 A. Well, I -- boy, that feels like a while -- yeah, I
6 remember in the beginning where we talked about that.
7 Uh-huh.
8 Q. Okay. And I just want to make sure I understand
9 your question -- answer to the question.
10 Is it a goal for Secretary of State Jacobsen to
11 promote deposition?
12 MR. MCINTOSH: Objection; vague, asked and
13 answered.
14 THE DEPONENT: Yeah. So what I was -- what I was
15 saying is, you know, democracy, elections, there's this
16 generic aspect, which makes sense. But where the term
17 seems to be coming from was back when there was like --
18 that was a component of a mission statement from the
19 previous Secretary.
20 Q. (By Mr. Gordon) Does Secretary Jacobsen not have a
21 mission statement?
22 A. I don't -- no, I don't -- I think that was kind of
23 a Navy deal. It may. But, yeah, I remember that one.
24 Q. Okay. So Secretary Stapleton had a mission
25 statement that said that it's a mission of the Secretary of

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1 State's office to, among other things, promote democracy;
2 correct?
3 A. Yeah. You -- I know you know it, because the
4 reason that I really know it is from when you were asking
5 questions to Mr. Corson and the Green Party about it.
6 Q. Sure. And does Secretary -- Secretary Jacobsen
7 share that similar goal of promoting democracy?
8 MR. MCINTOSH: Objection; vague.
9 THE DEPONENT: Secretary Jacobsen's administration
10 is a lot different than Secretary Stapleton's
11 administration, that's for sure. We -- that was a thing
12 that was up on, like, a banner in -- when you walked in the
13 office, and that banner is definitely no longer there.
14 Q. Does Secretary Jacobsen have a goal of increasing
15 turnout in Montana's elections? By increasing turnout, I
16 mean increasing voter turnout.
17 A. I mean, I feel like I answered this earlier this
18 morning, which is that, you know, it's important to have
19 people turn out. It's important to have, when people
20 turnout, that they actually vote and don't turn out and are
21 turned away from being there too long. It's -- I mean,
22 there's a lot of general goals. Our goal, as I told you,
23 is to -- is to run great elections, make people confident
24 in their elections, proud of their elections, and to know
25 the people at the state capitol serve with a servant's

<p>Page 208</p> <p>1 heart.</p> <p>2 Q. Is it a goal of Secretary Jacobsen to increase</p> <p>3 voter turnout among historically disenfranchised groups?</p> <p>4 MR. MCINTOSH: Objection; vague.</p> <p>5 THE DEPONENT: Well, I mean, that's just, you</p> <p>6 know, an extension of what I just said a second ago, which</p> <p>7 is that our goal is to make it for all Montanans. That's</p> <p>8 absolutely including all groups.</p> <p>9 Q. (By Mr. Gordon) Your goal is to make it for all</p> <p>10 Montanans.</p> <p>11 What do you mean by "it"?</p> <p>12 A. Well, you're asking about turnout. You said is it</p> <p>13 a goal for turnout, and then you said, is it a goal for</p> <p>14 turnout for a certain demographic. And what I said was is</p> <p>15 that, when I answered the first question too, that it was</p> <p>16 the goal for all Montanans. The same is true for your</p> <p>17 second question, which is, like I already said, all</p> <p>18 Montanans, which includes all demographics.</p> <p>19 Q. (By Mr. Gordon) Earlier your testified in response</p> <p>20 to a question about what makes for a successful election,</p> <p>21 you said, at the end of the day when the people of Montana</p> <p>22 were proud.</p> <p>23 What does the Secretary of State do to determine</p> <p>24 whether the people of Montana were proud of a particular</p> <p>25 election?</p>	<p>Page 210</p> <p>1 the candidates that lost weren't very proud. I'm sure that</p> <p>2 you know, some that thought it was a good experience were</p> <p>3 proud. I'm sure that some that thought that there wasn't a</p> <p>4 good experience were not proud. There's probably a variety</p> <p>5 of different things, but I'm sure some were proud.</p> <p>6 Q. (By Mr. Gordon) And to be clear, what I'm asking</p> <p>7 about -- I'm not just asking about the candidates. I'm</p> <p>8 asking about the people of Montana generally.</p> <p>9 Do you think the people of Montana generally were</p> <p>10 proud of the 2020 general election?</p> <p>11 MR. MCINTOSH: Objection; vague, calls for opinion</p> <p>12 testimony.</p> <p>13 THE DEPONENT: Yeah. I mean, I'm -- I'm trying to</p> <p>14 think of this large thing. They maybe were proud of some</p> <p>15 things, proud of not other things. I mean, certainly I</p> <p>16 know that there's probably a group of people that were</p> <p>17 proud that, amongst all circumstances that we were dealing</p> <p>18 with in 2020, that we were able to -- to have an election.</p> <p>19 You know, I mean there's certain counties that -- that had</p> <p>20 less than one hand in numbers to do things, and so I'm sure</p> <p>21 they were proud of trying to find ways. I'm sure they</p> <p>22 weren't proud of having to find extra help at the last</p> <p>23 minute at the same time, but proud of being able to get</p> <p>24 through it. It's just -- you know, I'm sure there's levels</p> <p>25 of all types of thing.</p>
<p>Page 209</p> <p>1 A. I mean, I wasn't saying that we have some, you</p> <p>2 know, test formula to do so. I'm saying that -- that we --</p> <p>3 our goal is to make it to where people are proud without</p> <p>4 having to be asked if you're proud.</p> <p>5 Q. So how do you determine whether or not people are</p> <p>6 proud?</p> <p>7 A. That's a great question. I mean, like I said, I</p> <p>8 think my statement is true, which is we're trying to make</p> <p>9 people proud. How we determine how we make people proud, I</p> <p>10 mean -- yeah.</p> <p>11 Q. The question is just whether -- how you determine</p> <p>12 whether people are proud of the election. Does the</p> <p>13 Secretary of State do anything to determine whether people</p> <p>14 are proud of a particular election?</p> <p>15 MR. MCINTOSH: Objection; compound.</p> <p>16 THE DEPONENT: I don't think we have some, like,</p> <p>17 specific process in a pride meter. I think at the end of</p> <p>18 the day we -- you know, if -- if we're not doing our jobs,</p> <p>19 then our jobs won't be around here in a couple years.</p> <p>20 Q. (By Mr. Gordon) Do you think the people of Montana</p> <p>21 were proud of the 2020 primary election?</p> <p>22 MR. MCINTOSH: Objection; vague, calls for</p> <p>23 opinion.</p> <p>24 THE DEPONENT: Yeah. I mean, I -- I would imagine</p> <p>25 that candidates that won are pretty proud. I'm sure that</p>	<p>Page 211</p> <p>1 Q. (By Mr. Gordon) You testified earlier something to</p> <p>2 the effect of that you believed it was bad when there's not</p> <p>3 confidence in the election process.</p> <p>4 What does the Secretary of State do to measure</p> <p>5 confidence among Montanans in the election process?</p> <p>6 A. That's an intriguing aspect on gauging there, but,</p> <p>7 you know, what we're trying to do is constantly make a good</p> <p>8 system better and to have -- again, have people respect it</p> <p>9 and believe it in. So I don't know that there's one</p> <p>10 particular mark. I mean, I guess one gauge, for example,</p> <p>11 would be, you know, you go to a clerk's training and --</p> <p>12 year after year, and when they walk in, they say, Hey, you</p> <p>13 guys are trying real hard, you know, we're real impressed.</p> <p>14 And that would be one way to feel proud about it, you know.</p> <p>15 There's a lot of things that go into it, I suppose, and a</p> <p>16 lot of different issues for people, but doing best we can.</p> <p>17 Q. Let me ask more directly.</p> <p>18 Does the Secretary of State do anything</p> <p>19 specifically to measure voter confidence in Montana?</p> <p>20 A. Yeah. I don't -- I guess, you know, there's</p> <p>21 things that you could say apply to that sentence, but I</p> <p>22 don't have, like, something in my mind that is just, like,</p> <p>23 you know, here's a micro-target -- I don't know how -- what</p> <p>24 you would mean, so it seems kind of, like, abstract.</p> <p>25 Q. (By Mr. Gordon) Well, let me give you a specific</p>

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<p>1 example.</p> <p>2 Does the Secretary of State conduct any surveys of</p> <p>3 Montanan to measure their voter confidence?</p> <p>4 A. I don't think we -- we have any surveys for voter</p> <p>5 confidence. I don't know if we have any surveys for, you</p> <p>6 know, administrative rule confidence or business confidence</p> <p>7 either. Maybe you'd get some. I don't know how accurate</p> <p>8 it would be. Sometimes people are, you know, more apt to</p> <p>9 respond for one reason or another. I don't know how we'd</p> <p>10 get a good litmus. Maybe it's a good idea. I can</p> <p>11 certainly relay that back.</p> <p>12 Q. (By Mr. Gordon) Counsel asked you some questions</p> <p>13 about awareness of voter intimidation; do you recall that?</p> <p>14 A. Uh-huh. Yes. Sorry.</p> <p>15 Q. And you specifically mentioned an incident in</p> <p>16 Livingston where somebody had called the police because</p> <p>17 people were asking for their ballots; do you recall that?</p> <p>18 A. Yeah, I do.</p> <p>19 Q. And I think you'd mentioned that you read about</p> <p>20 that in the paper?</p> <p>21 A. Yeah. There was a newspaper article about that</p> <p>22 one. It could have been Big Timber, but I think it was</p> <p>23 that -- you know, that area.</p> <p>24 Q. When did it occur?</p> <p>25 A. Geez. I want to say it was 2018. Could have been</p>	<p>1 Q. (By Mr. Gordon) Okay. And you testified earlier</p> <p>2 that reports don't mean that it was actually true; correct?</p> <p>3 A. Yeah. I was -- I was talking about when people,</p> <p>4 you know, for instance, the good example there was somebody</p> <p>5 saying that -- that they refused to turn in their absentee</p> <p>6 because they want to go to the polling place, and that you</p> <p>7 can't polling place, then that means it's referred for</p> <p>8 once. They alleged there was no polling place, and as you</p> <p>9 probably know, even in a mail election the election office</p> <p>10 counts as a polling place, which means there is a polling</p> <p>11 place, so...</p> <p>12 Q. So after viewing the report in the newspaper about</p> <p>13 this incident in Livingston or Big Timber, did you do</p> <p>14 anything to confirm whether the circumstances reported in</p> <p>15 that newspaper article actually occurred and actually</p> <p>16 constituted an incidence of voter intimidation?</p> <p>17 A. Well, I mean, there was no reason for me to.</p> <p>18 Q. I think you also referenced something that</p> <p>19 occurred in Missoula in regards to questions about voter</p> <p>20 intimidation; do I have that right?</p> <p>21 A. I think the other place that it was talking about</p> <p>22 was Missoula. Yeah.</p> <p>23 Q. That same article?</p> <p>24 A. I believe it was the same article, yeah.</p> <p>25 Q. Okay. And did you do anything to follow up to</p>
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<p>1 2017. Sometime pretty, you know, fairly recent.</p> <p>2 Q. And --</p> <p>3 A. At least the one I had in mind.</p> <p>4 Q. And did you view -- scratch that.</p> <p>5 Is the basis for your knowledge about this</p> <p>6 incident that you're testifying to in Livingston or Big</p> <p>7 Timber based on anything other than what you read in the</p> <p>8 newspaper?</p> <p>9 A. Well, I mean, I was talking about the newspaper</p> <p>10 article where it talked about, you know, filing police</p> <p>11 reports, and I think the interviewed the people and then</p> <p>12 also interviewed the collectors. So, yeah, I was asked for</p> <p>13 an example of where they felt intimidated, and, I mean, I</p> <p>14 think an example of where it's talking about people saying</p> <p>15 "I felt intimidated" is an example of people feeling</p> <p>16 intimidated.</p> <p>17 Q. And that wasn't my question, Mr. James. Just --</p> <p>18 it's a narrow question, again, and I'd appreciate just</p> <p>19 answering the question, if you're able.</p> <p>20 Is the basis for your knowledge about the incident</p> <p>21 in Livingston or Big Timber based on anything other than</p> <p>22 reviewing the article in the newspaper that you referenced?</p> <p>23 MR. MCINTOSH: Objection; strike the sidebar.</p> <p>24 THE DEPONENT: Yeah. The -- what I was referring</p> <p>25 to was what was in the newspaper article there. Yeah.</p>	<p>1 confirm whether whatever was referenced in Missoula was</p> <p>2 accurate and was an actual incident of voter intimidation?</p> <p>3 A. I mean, I was a member of the public. So -- so,</p> <p>4 no, I read the article. I --</p> <p>5 Q. You -- sorry. I'm not trying to talk over you. I</p> <p>6 thought you were done.</p> <p>7 A. Oh, no, I was just going to say, you know, it'd be</p> <p>8 kind of odd for a person to read a newspaper article about</p> <p>9 someone that called the cops and the article explaining</p> <p>10 that situation, and then to say, Can I see the police</p> <p>11 reports?</p> <p>12 I mean, if they had an interest in the situation</p> <p>13 or something like that, but I was talking about the public.</p> <p>14 Q. You also mentioned something about precinct</p> <p>15 workers getting shot in the face?</p> <p>16 A. Uh-huh.</p> <p>17 Q. When did that occur?</p> <p>18 A. I think that was 1912.</p> <p>19 Q. Any other instances of voter intimidation that</p> <p>20 you're aware of other than what you saw in that newspaper</p> <p>21 article referencing something in Livingston and maybe</p> <p>22 something in Missoula, and the instances of -- the instance</p> <p>23 of precinct workers getting shot in 1912?</p> <p>24 A. Yeah. I mean, if you -- Montana history has</p> <p>25 some -- has interesting, you know, unique heritage, so --</p>

<p>Page 216</p> <p>1 Q. Mr. James, sorry -- sorry to interrupt. Just to 2 be clear, let's limit it to since 2000. I'm not interested 3 in necessarily stuff that happened back in the early part 4 of the 20th century or before. 5 So since 2000 are you aware of any instances of 6 voter intimidation other than what you've testified to? 7 A. Well, let's see. There could have been something 8 in the production that we did. You know, I -- I -- I 9 certainly -- let me think of an example. 10 Wasn't there some testimony in this case about -- 11 about some voters feeling that way? 12 Q. I'm sorry. Are you finished? 13 A. I thought -- I mean, I heard talking, so I just 14 stopped. 15 Q. Okay. Well, are you finished? Did you finish 16 your answer or do you have anything else? 17 A. Well, it kind of cut off my thought train there, 18 so you can go ahead. 19 Q. I just want to make sure you're able to give the 20 complete answer. 21 Counsel asked you about improper influence of -- 22 I'm sorry. Let me strike that. 23 Just to make clear, Mr. James, you do recognize 24 that the answers you're giving today are on behalf of the 25 Secretary of State; correct?</p>	<p>Page 218</p> <p>1 or have a much different lifestyle. But -- so, yeah, there 2 is a perception about it in politics, and I think that 3 that's something that's a general sentiment. And I think 4 that it's important to carefully think about that balance. 5 Q. Counsel asked you about legislative priorities, 6 and you said something about that you're already looking 7 ahead to the next session regarding legislative priorities. 8 A. Uh-huh. 9 Q. What specific legislative priorities are you, the 10 Secretary of State's office, looking ahead to for the next 11 session? 12 A. Well, the one I had in mind when I was talking 13 there was, you know, we had one congressional district 14 before this year, and there's some provisions in Title 13 15 that refer to creating -- let's see, what is it -- but it's 16 divided based on the congressional district, and then it 17 says the precincts in there. But now that we have two, and 18 there's a precinct or two that's split, it makes the way 19 the law applies kind of confusing because you can't -- you 20 know, all those precincts are in one district, but those 21 precincts are in two districts, so we need to be able to kind 22 of -- in order to be able to carry that out for the people 23 of Montana we just have to make some cleanup based on the 24 new changes of how the new districts -- that was one. 25 I know we're also working with -- with Montana</p>
<p>Page 217</p> <p>1 MR. MCINTOSH: Objection; asked and answered. 2 THE DEPONENT: Yeah. Like I said, you know, this 3 was me going to prepare on behalf of the Secretary of State 4 where I learned this material. 5 Q. (By Mr. Gordon) So when I ask -- when I'm asking a 6 question about are you aware of anything or I use the word 7 "you," I'm referencing not you personally. I'm referencing 8 the Secretary of State's office. 9 Do you understand that? 10 A. Yeah. 11 Q. Okay. You testified about -- in questioning about 12 the improper influence of money. You said something about 13 there's no doubt of a perception of it. 14 Do you recall that? 15 A. I -- I don't recall the full dialogue there. I'd 16 have to her read it back. But I remember us discussing the 17 perception of money being a thing. Sure. 18 Q. Okay. And what was the basis for your statement 19 that there was no doubt of a perception of improper 20 influence of money? 21 A. Well, I mean, for instance, you know, I work in 22 the Secretary of State's office, so at times you'll hear 23 people say, Well, you were bought by this person, or, 24 You -- you're a puppeteer of another. 25 So there's -- obviously I'm not bankrolled by coal</p>	<p>Page 219</p> <p>1 Association of Counties and a couple lawmakers and the 2 commissioner's office in at look at some -- some election 3 official protections. Because I told you that it's -- you 4 know, we want to look at that. Some of those statutes go 5 back right to 1912, to be honest. 6 And then I know that there's some interest in 7 looking at ways to kind of carefully revise the 8 Postelection Audit Act, which was back in 2006, and it 9 specifies which races you do an audit on. And some of 10 those are not local ones, and so there's a -- a MACo-type 11 interest in looking at giving the counties the option, when 12 they have a school board race, for example, or a just a 13 county-specific race, that they are able to have some, 14 like, you know, a randomized audit-type look. 15 So those are some of the ones that come to mind. 16 Q. Can you pull up Exhibit 6, please. 17 A. Yeah. 18 Q. Do you have that in front of you? 19 A. Hang on one second. Okay. I've got it. 20 Q. Okay. And counsel asked you some questions about 21 the second email from the top from Angela Nunn to Sharon 22 Greef. 23 Do you see that? 24 A. Uh-huh. 25 Q. And in response to this you said that the</p>

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<p>1 Secretary of State's office reached out to Doug Ellis to 2 see if he could testify regarding HB176; do I have that 3 right? 4 A. Yeah. I remember -- I remember -- yep. Uh-huh. 5 Q. And you said that the Secretary of State reached 6 out to election administrators who had expressed that they 7 felt that there should be a change to election day process; 8 correct? 9 A. Yeah. I mean, I think that, you know, that was 10 the -- the people that have worked in elections have heard 11 things over the years, and so they kind of who to -- who to 12 call or whatnot. Most of them are too far away, but 13 Broadwater is close. 14 Q. Okay. So the Secretary of State's office reached 15 out to Mr. Ellis because he was one of the election 16 administrators who had expressed a desire to have a change 17 to the election day process? 18 A. I don't -- I mean, I think -- I don't know if 19 that's the only reason or the specific reason, but it 20 certainly could have -- you know, could have been part of 21 it. In addition to the fact that he's rural clerk that is 22 close to the capital. And so if you're going to have 23 perspective for the civic dialogue for the legislature to 24 make these decisions, that would make sense to have 25 testimony from a person like that. And plus I think he was</p>	<p>1 was -- would have not testified and then simultaneously be 2 involved in this lawsuit, I wouldn't have remembered his 3 name. So I don't have specific names. I gave you the 4 categories and type of people. 5 Q. How many -- how many people did the Secretary of 6 State's office reach out to to try to get them to testify 7 in support of HB176? 8 A. I mean, your phrasing there, "get them to 9 testify," -- we reached out to people that had discussed 10 the issue. And I think the largest thing was that we 11 wanted to make sure that when -- when we had testimony 12 from -- from one clerk that was particularly passionate and 13 very active on one type of policy for a real urban 14 situations that lives a totally different life, that we 15 were able to have some form of balance. Because the last 16 thing we would want to do is discuss what has been conveyed 17 and we have from learned and lived experience about 18 election administrators and the experiences on that day, 19 and have someone say, That's not my experience, which is 20 kind of what, you know, you try to allude to. And that's 21 just -- you know, this makes it a positive change, and 22 clearly the testimony in this case supports that. 23 Q. (By Mr. Gordon) So, Mr. James, I'm going to advise 24 you again that I'm trying to be as expeditious as possible. 25 I'm asking you very simple questions, and you're giving me</p>
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<p>1 getting closer to the retirement situation, had more 2 experience, so I think he was more apt to be able to do it. 3 Q. The second sentence in this email says: 4 We reached out to several other people throughout 5 afternoon. 6 Who specifically did the Secretary of State's 7 office reach out to besides -- besides Doug Ellis? 8 MR. MCINTOSH: Objection; asked and answered. 9 Go ahead. 10 THE DEPONENT: Yeah. I mean, I testified on this 11 earlier and I think also on Tuesday, but we had reached out 12 to the clerks that had expressed -- I think that was the -- 13 one of the areas. And there was rural. And then, you 14 know, I think there might have been people that said, you 15 know, when -- when the election bills are up, would you let 16 me know. We would have done that. 17 Those are things that come to mind. But, you know, no 18 different than any other type of -- of body that reports 19 for supporting and opposing bills when there's a hearing 20 upcoming. 21 Q. (By Mr. Gordon) And I'm just asking for specific 22 names of people that you -- that the Secretary of State 23 reached out to. 24 Are you able to identify who those people were? 25 A. I mean, I -- honestly, if -- if -- if Mr. Ellis</p>	<p>1 long, nonresponsive answers that are eating up a lot of 2 deposition time. I will ask you to please listen to the 3 question and please answer the question that is asked. 4 The question to you is: How many people did the 5 Secretary of State's office reach out to to encourage them 6 to attend in person to testify in support of HB176? 7 MR. MCINTOSH: Objection; move to strike the 8 sidebar, and asked and answered. 9 THE DEPONENT: Yeah, I'm -- I really apologize. 10 I'm just trying to do my best here, Mr. Gordon. I think I 11 did answer that I don't know that we have a specific 12 number, and I don't know that even on that day, you know, 13 the day after you'd recall specifically who -- who it was 14 or not. 15 Q. (By Mr. Gordon) And if you don't know, that's 16 fine. You can just tell me you don't know, as I -- as 17 I advised you the other day as well. 18 MR. MCINTOSH: Objection; move to strike the 19 sidebar. 20 Q. (By Mr. Gordon) The next sentence talks about 21 after the hearing we will continue to do what we can to 22 reach out to supporters and encourage them to contact 23 members of the committee. 24 Do you -- do you know the names of anybody who the 25 Secretary of State's office reached out to after the</p>

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<p>1 hearing?</p> <p>2 A. Well, I mean, I think we had exhibits -- oh, I</p> <p>3 guess to make it simple -- no, I don't have specific names,</p> <p>4 Mr. Gordon.</p> <p>5 Q. Thank you. Do you how many people the Secretary</p> <p>6 of State's office reached out to to encourage them to</p> <p>7 contact members of the committee?</p> <p>8 A. I don't have a specific name as to how many people</p> <p>9 reached out asking and then directing them from us to the</p> <p>10 members of the committee, no.</p> <p>11 Q. Were you involved in that outreach personally?</p> <p>12 A. Like I said, I'm very busy and I've got to focus</p> <p>13 on my job, which is unfortunately not much customer</p> <p>14 interaction there.</p> <p>15 Q. You testified earlier that HB176 made the most</p> <p>16 minuscule change possible. When you use those terms, "most</p> <p>17 minuscule change possible," were you referring to ending</p> <p>18 election day registration?</p> <p>19 A. What I was referring to -- and I guess let me try</p> <p>20 to sit for a sec and see how to make it short for you,</p> <p>21 Mr. Gordon.</p> <p>22 When we looked at how we could make an improvement</p> <p>23 for the voters and for election administrators, and we</p> <p>24 looked at the law on the books and looked at experiences,</p> <p>25 we tried to address as precise as possible and make no more</p>	<p>1 I'm referencing your earlier testimony where you</p> <p>2 said we heard about undue stress on election employees and</p> <p>3 voters in line, and I'm asking you, from whom did you hear</p> <p>4 that?</p> <p>5 A. I mean, we've already talked about me and names,</p> <p>6 but I described to you that it was a woman with a child</p> <p>7 from Billings that turned to the voter when I was speaking</p> <p>8 there --</p> <p>9 Q. Sure. Anybody other than the woman that you</p> <p>10 reference earlier?</p> <p>11 A. There was -- I mean, yes, but it's -- I mean,</p> <p>12 it's -- that's like asking me what I had for dinner last</p> <p>13 Tuesday.</p> <p>14 Q. Okay. Are you able to identify, other than the</p> <p>15 woman in Billings, anybody else specifically that you heard</p> <p>16 about with regards to undue stress on election employees</p> <p>17 and voters in line?</p> <p>18 MR. MCINTOSH: Objection; mischaracterizes his</p> <p>19 prior testimony.</p> <p>20 Go ahead.</p> <p>21 THE DEPONENT: As I was saying earlier, like, I --</p> <p>22 your answer is, can you identify situations. I've recalled</p> <p>23 lots of situations where we were looking at -- or where</p> <p>24 this had come up. I mean, the thing is is it was, from an</p> <p>25 elections standpoint, it was like this is a -- something</p>
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<p>1 changing than are necessary to the change to complete the</p> <p>2 goals.</p> <p>3 Q. Is it the Secretary of State's position that</p> <p>4 ending election day registration is the most minuscule</p> <p>5 change possible?</p> <p>6 MR. MCINTOSH: Objection; calls for opinion,</p> <p>7 vague.</p> <p>8 THE DEPONENT: Yeah. I don't think that</p> <p>9 accurately describes what I said, Mr. Gordon. What I said</p> <p>10 was we were looking at voter registration deadline changes.</p> <p>11 So if you preface it with there is going to be a change, I</p> <p>12 do think that we made the most narrow, direct, and specific</p> <p>13 changes that we could to achieve the most amount of goals</p> <p>14 as possible. And when I say "we," I mean, like, what we</p> <p>15 encouraged for the legislature and what was ultimately</p> <p>16 adopted, and what we wanted -- or hoped or advocated for</p> <p>17 that would be framed for that legislation.</p> <p>18 Q. (By Mr. Gordon) Earlier you testified that you</p> <p>19 heard about undue stress on election employees and voters</p> <p>20 in line.</p> <p>21 From who did you hear about undue stress on</p> <p>22 election employees and voters in line?</p> <p>23 A. Who did I hear from election administrators and</p> <p>24 voters in line?</p> <p>25 Q. Sorry. Let me rephrase the question.</p>	<p>1 we've got to look at, but how do we do it right. I think</p> <p>2 that goes all the way back to -- geez, I mean, I think,</p> <p>3 what was it, the 2007 audit after election day registration</p> <p>4 where they had talked about stress on election officials,</p> <p>5 you know, after implementing the change. So there was a</p> <p>6 letter to the editor or an opinion editorial, I think,</p> <p>7 from -- from Johnson talking about, you know, that the --</p> <p>8 that the newfound stress that some -- benefits to it. I</p> <p>9 mean. There's a variety of different opinions. But, yeah,</p> <p>10 it's well-lived. I'm trying to keep it short here. I</p> <p>11 don't have specific names, but I have a lot of lived things</p> <p>12 and so would other people at the Secretary of State's</p> <p>13 office, and I think that's conveyed in the testimony in</p> <p>14 this case.</p> <p>15 Q. (By Mr. Gordon) Please look at Exhibit 7 again.</p> <p>16 A. Right on top. Right on.</p> <p>17 Q. Do you recall that this is the response where</p> <p>18 Angela Nunn forwards on to Secretary Jacobsen this</p> <p>19 individual who indicated opposition to -- I'm sorry,</p> <p>20 indicated support for HB176.</p> <p>21 Do you recall that?</p> <p>22 A. I recall when we were talking about this one.</p> <p>23 Yeah.</p> <p>24 Q. And do you recall that Ms. Nunn suggested to</p> <p>25 Ms. Jacobsen that this person might be willing to testify</p>

<p>Page 228</p> <p>1 next time. 2 If a Montana citizen had reached out -- I'm sorry. 3 Let me scratch that. 4 I believe you testified that if somebody expresses 5 a view on any bill, that you think it's best to point them 6 to the legislature to -- so that they can bring their views 7 up to the legislature. 8 Does that sound right? 9 A. Yeah. I think that loosely touches on some of the 10 things I said but doesn't fully describe what I said. But 11 I kind of understand what you're talking about. Depends on 12 the circumstance, what they said, when it is particularly. 13 You know, things like that. 14 Q. Sure. If somebody had emailed the Secretary of 15 State's office regarding their opposition to HB176 -- well, 16 let me stop there. 17 Did anybody email the Secretary of State's office 18 regarding opposition to HB176? 19 A. I don't remember anything. I don't think so. 20 Q. Okay. If they had, would the Secretary of State 21 have asked them to testify in front of the legislature? 22 A. Sure -- 23 MR. MCINTOSH: Objection; speculation. 24 THE DEPONENT: Sure. If there's a belief that 25 says, I want you to vote no on this, or whatever, I don't</p>	<p>Page 230</p> <p>1 not recruiting supporters. 2 Q. So the question, again, was just a simple one, 3 Mr. James. 4 Did the Secretary of State's office make any 5 effort to reach out to opponents of HB176 to encourage them 6 to testify in opposition to the bill? 7 MR. MCINTOSH: Objection; asked and answered, move 8 to strike the sidebar. 9 Go ahead. 10 THE DEPONENT: And like I said, I don't recall 11 anyone sending in that they opposed. There could have 12 been, I don't recall anything in -- anyway. But... 13 Q. (By Mr. Gordon) That wasn't my question, again, 14 whether you recalled people sending something in. 15 The question was: Did the Secretary of State's 16 office make any effort to identify people who were opposed 17 to HB176 and ask them to testify in opposition? 18 MR. MCINTOSH: Objection; asked and answered, move 19 to strike the sidebar. 20 THE DEPONENT: I don't think we had a 21 grassroots -- not a grassroots -- I don't think that there 22 was any focus of our time that we reported to the COPP 23 regarding opposition to 176, no. 24 Q. (By Mr. Gordon) Do you have Exhibit 8 in front of 25 you?</p>
<p>Page 229</p> <p>1 see why we wouldn't forward them to that. I mean, if 2 somebody asks about other things for other departments, we 3 forward them on to those people from time to time. You 4 know, I'm not -- I guess I would look at the email, but if 5 your position is that somehow, because of what we support, 6 we won't serve the public, you're flat wrong. 7 Q. (By Mr. Gordon) That wasn't my question. 8 Exhibit 8, please. 9 Well, let me ask you this: Did -- the Secretary 10 of State, you testified, made efforts to identify people 11 who would support HB176 and ask them to testify in support. 12 Did the Secretary of State make any effort to 13 identify anybody who was opposed to HB176 and ask them to 14 testify in opposition? 15 A. Matt -- excuse me. Mr. Gordon, remember that 16 there's specific procedures for when an agency is doing 17 certain type of lobby activity, and when we are doing this 18 supporting, it is -- it is designated on the COPP as 19 lobbying time. And we are using that lobbying time based 20 on our lobbying position. Off of that lobbying time, we 21 are serving the public. I mentioned before that if we're 22 doing that -- and we're always serving the public -- but I 23 mentioned that we would direct them to there, but I think 24 it would be kind of silly in the same way that the ACLU, 25 Western Native Voice, and the Montana Democratic Party were</p>	<p>Page 231</p> <p>1 A. Yeah. 2 Q. Okay. And you were asked about this earlier, and 3 I believe you testified something about the -- the reason 4 Representative Greef put in a bill was because she's heard 5 from people. 6 What is your basis for your testimony about 7 Representative Greef's reasons for putting in the bill that 8 became HB176? 9 A. That's -- that's simple. It's just my memory and 10 recollection. So when -- when they got to Helena, and I 11 told you we were looking through the list and then noticed 12 there was registration laws and wanted to know more about 13 what that law would look like. I think she was sniping a 14 donut, and we had asked about it, and she had said that she 15 was had maybe a draft ready or she had some kind of ideas 16 ready and had mentioned that what she was trying to do is 17 provide relief based on that. And I think, as I testified 18 earlier, she had mentioned either she or her husband or 19 maybe it was relatives -- she had some personal connection 20 to those that worked on election day and had experienced 21 those stresses. And so that was the basis for me making 22 those statements was my recollection of her words. 23 Q. So who specifically had she heard from; do you 24 recall? 25 A. I think I just answered that in the last one,</p>

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<p>1 but --</p> <p>2 Q. I'm sorry. I don't think you did.</p> <p>3 I'm asking specifically who had Representative</p> <p>4 Greef heard from specifically. Names.</p> <p>5 A. I don't know of the name of the person I was</p> <p>6 referring to earlier that was a relative that had</p> <p>7 experienced that or the election official she talked to. I</p> <p>8 was just -- it doesn't -- it didn't matter to me the name.</p> <p>9 All the mattered to me was figuring out what the bill was</p> <p>10 going to look like. And I'm -- you know, that was -- the</p> <p>11 goal at that time was looking at election bills so that we</p> <p>12 knew what to expect as they hit committee.</p> <p>13 Q. Did Representative Greef identify to you anybody</p> <p>14 else other than the person that you are referring to here</p> <p>15 that she had heard from?</p> <p>16 A. I mean, I -- as I've just mentioned, I know that</p> <p>17 she had some connection to somebody, and it could have been</p> <p>18 that she also was engaged in it. I just know that that was</p> <p>19 part of what she -- you know, was bringing it. And so, no,</p> <p>20 I don't know -- I definitely don't remember any names or</p> <p>21 any type of circumstance sitting here today.</p> <p>22 Q. On exhibit 8 where Mr. Corson is drafting -- or</p> <p>23 communicating the Representative Greef talking points</p> <p>24 draft, do you see he has a number of common voter problems</p> <p>25 that he's identified down there?</p>	<p>1 will resume the deposition and for how long, and if the</p> <p>2 parties are unable to agree on that, then we'll seek the</p> <p>3 Court's assistance.</p> <p>4 MR. MCINTOSH: Correct. The only clarification I</p> <p>5 would say from the defendant's perspective is we will be</p> <p>6 very close to seven hours at the time, so, I mean, we may</p> <p>7 not agree to reopen it at all, but hopefully we can reach</p> <p>8 an agreement so the court action is not necessary.</p> <p>9 MR. GORDON: Sure. We're not interested in</p> <p>10 involving the look, and we'll look forward to trying to</p> <p>11 reach agreement. The parties' respective positions as to</p> <p>12 the length of the depositions have been previously</p> <p>13 articulated, as we can discuss that further, if needed.</p> <p>14 Q. (By Mr. Gordon) Exhibit 9, please, Mr. James.</p> <p>15 A. Okay.</p> <p>16 Q. And if you recall, this is an exhibit that</p> <p>17 references -- or is an email at the top from Representative</p> <p>18 Greef talking about the committee being barraged with</p> <p>19 negative messages not wanting 176. I believe that when you</p> <p>20 were asked about this before you testified that the version</p> <p>21 of 176 that was up for consideration at that time was</p> <p>22 different than the version of 176 that ultimately passed,</p> <p>23 and that that difference was, I think, that at that time it</p> <p>24 was contemplated that election day registration would be</p> <p>25 ended on the Friday before election day rather than the</p>
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<p>1 A. Yes. I see down there where it says "common voter</p> <p>2 problems."</p> <p>3 Q. What is the basis for Mr. Corson identifying these</p> <p>4 as common voter problems?</p> <p>5 A. This would just be his, you know, experience as a</p> <p>6 state election official. We certainly wouldn't want it to</p> <p>7 be where, you know, the only situation is -- is -- is</p> <p>8 Greef's experience, so he was trying to, you know, describe</p> <p>9 different types of things that he knew or was familiar with</p> <p>10 based on his situation.</p> <p>11 MR. MCINTOSH: Can we take a short break when you</p> <p>12 get a minute, counsel?</p> <p>13 MR. GORDON: Sure. Yeah. This is a fine time.</p> <p>14 Let's go off the record.</p> <p>15 THE VIDEOGRAPHER: The time is 4:05. Going off</p> <p>16 the record.</p> <p>17 (Break taken from 4:05 p.m. until 4:19 p.m.)</p> <p>18 THE VIDEOGRAPHER: The time is 4:19. Back on the</p> <p>19 record.</p> <p>20 Q. (By Mr. Gordon) And just before we continue the</p> <p>21 questioning, I spoke with defendant's counsel, and the</p> <p>22 court reporter has notified us that she has to stop at</p> <p>23 6:00 o'clock, so we will pause this deposition at</p> <p>24 6:00 o'clock. The plaintiffs will hold the deposition over</p> <p>25 and we'll confer with defendant's counsel about when we</p>	<p>1 Monday before election day; is that correct?</p> <p>2 A. Yeah, I wouldn't say it was a barrage, but as far</p> <p>3 as the rest it, is, yeah, it was talking about the initial</p> <p>4 version versus the amended version. Yeah.</p> <p>5 Q. And the difference between those two being Friday</p> <p>6 before election day versus Monday before election?</p> <p>7 A. I think there was a few other, you know,</p> <p>8 variations, but that's probably, like, the largest category</p> <p>9 of differences. There's some more nuances in there too.</p> <p>10 Q. How many of the negative messages that the</p> <p>11 committee had received not wanting HB176 were opposed to</p> <p>12 HB76 [sic] because it would have moved the election day</p> <p>13 registration to the deadline -- I'm sorry. Let me scratch</p> <p>14 that and start over. It was a bad question.</p> <p>15 The negative messages that Representative Greef</p> <p>16 said that the committee had been barraged with from people</p> <p>17 not wanting the version of 176 that was in effect at that</p> <p>18 time or being considered at that time, how many of those</p> <p>19 people would -- did not oppose HB176 after it was amended</p> <p>20 to end election day on the Monday before election day</p> <p>21 rather than the Friday before election day?</p> <p>22 MR. MCINTOSH: I think I've got to say vague on</p> <p>23 that one.</p> <p>24 MR. GORDON: I think you do, and I'll restate it.</p> <p>25 Let me try again. I'm sorry. I spent some time in the</p>

<p>Page 236</p> <p>1 sun, and apparently --</p> <p>2 THE DEPONENT: I'm jealous.</p> <p>3 Q. (By Mr. Gordon) What I'm trying to ask you,</p> <p>4 Mr. James, is, of the people who barraged the committee</p> <p>5 with messages not wanting the version of 176 that was being</p> <p>6 considered as of January 28, 2021, how many of those people</p> <p>7 did not also oppose the version of HB176 that was</p> <p>8 ultimately passed?</p> <p>9 A. Well, I think I can be short and say that I don't</p> <p>10 know that exact -- the exact number. I know that there's a</p> <p>11 list out there for how many were opposed on one side.</p> <p>12 There's also a list on how many supported and opposed when</p> <p>13 it went to the senate side, so maybe you could look at who</p> <p>14 was on and off the list, but you'd probably have to ask</p> <p>15 each one what their feeling was or whether they just didn't</p> <p>16 respond in. But I don't know.</p> <p>17 Q. And do you -- in your experience is Representative</p> <p>18 Greef honest and accurate in her written correspondence?</p> <p>19 MR. MCINTOSH: Objection; character evidence.</p> <p>20 That's a 411 opinion.</p> <p>21 THE DEPONENT: I don't -- I mean, I don't have any</p> <p>22 reason to believe she's dishonest. She's, you know, a</p> <p>23 legislator that I don't know to well, but I don't have any</p> <p>24 reason to where I'm, like, I don't know particularly one</p> <p>25 way.</p>	<p>Page 238</p> <p>1 What efforts has the Secretary of State made to</p> <p>2 understand how many people in Montana support election day</p> <p>3 registration?</p> <p>4 A. How many people -- what have we done that how many</p> <p>5 people support. I mean, it seems awfully particular.</p> <p>6 There's things that, you know, people could be strong</p> <p>7 supporter of not waiting in line. I -- I don't know that</p> <p>8 we've done a complete thing. We've obviously hired experts</p> <p>9 in this case to -- to look at certain aspects of that. But</p> <p>10 as far as that highly specific, anecdotal thing, I don't</p> <p>11 know of anything off the top of my head, Mr. Gordon.</p> <p>12 Q. (By Mr. Gordon) Sorry. Just so I understand, when</p> <p>13 you say "that highly specific, anecdotal thing," what are</p> <p>14 you referencing?</p> <p>15 A. You referencing people's support right now for</p> <p>16 election day registration. Obviously election day</p> <p>17 registration to some people is all activities. To some</p> <p>18 it's just new voters. It's a lot of different things.</p> <p>19 Could be different. I don't know that we have done</p> <p>20 anything so highly specific as to people's support of House</p> <p>21 Bill 176 since it's been implemented.</p> <p>22 Q. Okay. So -- and my question is not just about</p> <p>23 HB176 since it's been implemented. My question is, since</p> <p>24 2006, are you aware of any efforts by the Secretary of</p> <p>25 State or people working for the Secretary of State to</p>
<p>Page 237</p> <p>1 Q. (By Mr. Gordon) Okay. So when she says the</p> <p>2 committee has been barraged with negative messages not</p> <p>3 wanting 176, do you have any reason to doubt the veracity</p> <p>4 of that statement?</p> <p>5 A. Yeah. And my reason to doubt that is I've heard</p> <p>6 before where it was, like, you know, we were getting</p> <p>7 pummeled by the amount of people on one side, and it's</p> <p>8 because there's, like, 22 people. And, again, 22 people in</p> <p>9 a line when normally there's nobody that testifies, it</p> <p>10 seems significant. But that's insignificant compared to a</p> <p>11 million people in the population.</p> <p>12 Q. And was that -- that instance that you're talking</p> <p>13 about, was that communication from Representative Greef</p> <p>14 that you're referencing?</p> <p>15 A. No, I'm just -- I was referencing from my -- from</p> <p>16 my basis of who shows up at the legislative hearings, you</p> <p>17 know, the perspective can be that there's a lot of people.</p> <p>18 So a barrage, you know, it mentioned how many people had</p> <p>19 sent in comments. I can't remember at this time, but I'm</p> <p>20 sure that was, you know, more than your average bill. And</p> <p>21 I don't know what it finished up at. And this is also, you</p> <p>22 know, sponsored and her bill, so I'm sure she probably</p> <p>23 feels a little more, you know...</p> <p>24 Q. What efforts did the Secretary of State make -- or</p> <p>25 let me strike that and try again.</p>	<p>Page 239</p> <p>1 determine the level of support for election day</p> <p>2 registration in Montana?</p> <p>3 A. There may be a -- I don't know if the Secretary of</p> <p>4 State would have commissioned things. There could be</p> <p>5 times. I mean, I guess it would be depending also on how</p> <p>6 they ask the question and what the person interpreted too.</p> <p>7 But I don't have something in particular that comes to</p> <p>8 mind, Mr. Gordon.</p> <p>9 Q. Are you aware of any efforts that the Secretary of</p> <p>10 State made to determine the level of popular support for</p> <p>11 HB176?</p> <p>12 A. I don't think we've done anything specific to</p> <p>13 House Bill 176 to my knowledge, Mr. Gordon.</p> <p>14 Q. Exhibit 10, please, Mr. James?</p> <p>15 A. Okay.</p> <p>16 Q. And do you recall this is the email discussing the</p> <p>17 timing of the publishing of the 2020 late registration</p> <p>18 report?</p> <p>19 A. Yes.</p> <p>20 Q. And I believe that you indicated that you</p> <p>21 wanted -- or that the Secretary of State's office was</p> <p>22 delaying the registration -- or release of the registration</p> <p>23 report because they wanted to provide more data and/or make</p> <p>24 the data more accurate; is that correct?</p> <p>25 A. I think that generally describes what I was</p>

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1 **testifying. I wasn't saying that we were trying to delay.**
2 **What I was trying to say is we were trying to publish the**
3 **report accurately.**
4 Q. And this report was ultimately published a couple
5 months later in July or August of 2021; does that sound
6 right?
7 **A. We went over that previous testimony, you know,**
8 **earlier in this deposition, but I don't have the date off**
9 **the top of my head. Sorry.**
10 Q. Okay. And just so I understand, when -- how long
11 after an election occurred was the late registration report
12 for previous elections reported?
13 **A. So I think that it was fairly quick, and the**
14 **reason was because they -- they thought that this would**
15 **just kind of be an automated thing. But like I said, I**
16 **truly think no one had looked into what -- whether the**
17 **categories were accurate or honest or described the**
18 **relevant material. And so -- so, yeah, quick information**
19 **that's inaccurate is -- I guess it's quicker, but it's**
20 **inaccurate.**
21 Q. Were the late registration reports produced by the
22 Secretary of State regarding elections prior to the 2020
23 general election inaccurate?
24 **MR. MCINTOSH:** Objection --
25 **THE DEPONENT:** Well --

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1 **MR. MCINTOSH:** Go ahead.
2 **THE DEPONENT:** -- I think that there is an
3 accurate -- accuracy component to it certainly because
4 it -- for instance, it said new registrations, and I think
5 that one would infer that that is a new registration and
6 not that that's an activity, for example. So there wasn't
7 a description of what was included in there, and it created
8 a perceptions, including by your complaint.
9 Q. (By Mr. Gordon) Other than what you just testified
10 to, are there any other ways in which the late registration
11 report produced by the Secretary of State reflecting
12 elections prior to the 2020 general election inaccurate?
13 **A. Well, there are some aspects to it that I don't**
14 **know whether we've fully got resolved. I know we've --**
15 **we've -- this year we made an extra effort to make sure**
16 **that when people do, like, for instance, some of the**
17 **registration activity, that they go back in and edit to**
18 **reflect the actual dates. So, like, for instance, a vote**
19 **eligibility date. So if that information is extrapolated**
20 **and somebody put it before the late registration period in**
21 **order to expedite the process in Montana Votes, they might**
22 **have put it in October 1st, but they didn't actually**
23 **register on October 1st, so that would need to be adjusted**
24 **later. So that would create date entry that, when**
25 **extrapolated, is inaccurate. So there's that kind of**

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1 **technical aspect. But as far as the report itself, I**
2 **think it's just making -- not necessarily inaccurate, but**
3 **conveying the full picture.**
4 Q. So the report that was produced in -- in or around
5 July 2021 regarding the 2020 general election -- and to be
6 clear, I'm talking about the late registration report
7 here -- how, if at all, did that differ from late
8 registration reports that were produced in connection with
9 previous elections in Montana?
10 **A. So, for one, it, you know, made sure that there**
11 **was reminders for folks to update. Well, I guess --**
12 **scratch that.**
13 **The main difference is that, under the category,**
14 **it describes what all those statuses are so that you can**
15 **identify what all activity occurred in a batch.**
16 Q. And has the Secretary of State made any effort to
17 update prior late registration reports to break them out --
18 to break it out by category as you've done for the late
19 registration report for the 2020 general election?
20 **A. I think the ones that are purchased have been**
21 **updated. I don't know whether the report themselves -- I**
22 **do remember we had some discussions and kind of, like, what**
23 **would we think if we were, you know, creating new reports**
24 **but with old data. We could do that, but keep the old one.**
25 **We're trying to make the best we can for -- for the current**

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1 **one, and then also, you know, hopefully the new voter**
2 **registration system will provide additional breakdown of**
3 **data entry so that way there's more opportunities to**
4 **extrapolate more specifically. And I think that would be a**
5 **really good thing for Secretary of State and policymakers**
6 **and parties and interest groups alike to have more**
7 **information that they don't right now.**
8 Q. Do the data exist to modify the prior registration
9 reports, late registration reports, reflecting elections
10 before the 2020 general election so that they contain the
11 same breakout that the late registration report for the
12 2020 general election contains?
13 **A. So, like I was saying, I think that the categories**
14 **have been updated to -- to do that when you buy the red**
15 **report for old ones. I think that's what Dana was working**
16 **with MI -- maybe I should double-check on that one. It's**
17 **possible. I -- I don't know that I've got -- I apologize,**
18 **Mr. Gordon. I just -- I prepared as best I could, but I**
19 **don't know that one.**
20 Q. Mr. James, if more people -- if more Montana
21 citizens vote in an election, does that create more burden
22 on Montana election administrators?
23 **MR. MCINTOSH:** Objection; speculation.
24 **THE DEPONENT:** That's -- I mean, that's possible,
25 but it's also possible to not be the case. You know, if --

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<p>1 I mean, if people are -- if there's more people 2 participating and more people are registered, there's less 3 needs for activity on election day, then you could have a 4 much quicker process, and much more administrated, 5 efficient process, and have record turnout all at the same 6 time. 7 Q. Sure. And I guess the question is -- what I meant 8 to say is, if you hold everything else constant, would you 9 agree with me that more people voting results in more 10 burden on election administrators? 11 A. Like I said, I don't necessarily think that that's 12 true. There's a possibility where it's true, but there's 13 also a possibility where that's not true. It depends on 14 the circumstances of more voters. 15 Q. Is the process for registering a voter in person 16 different if it occurs on the day before election day as 17 opposed to occurring on election day? 18 MR. MCINTOSH: Objection; speculation, incomplete 19 hypothetical. 20 THE DEPONENT: So the process, meaning you fill 21 out the form. 22 Q. (By Mr. Gordon) The process -- so let's go back to 23 preHB176 -- 24 A. Uh-huh. 25 Q. -- when there was a -- election day registration</p>	<p>1 voter registers, is there any difference in how the voter 2 is registered, the process the voter goes through when 3 they're at the polls if they're there on election day to 4 register or if they're there the day before election day to 5 register? 6 A. Well, I mean, if the process that they're going 7 through -- that seems to me like it would include, you 8 know, waiting in line for -- at certain times, whether 9 they're -- you know, different activities. But the actual 10 steps, you know, it's registration form. Obviously at that 11 point you need to cancel out a ballot or -- to make a 12 transition or let another state know. I mean, these are 13 steps. You do those same things, but the ability to do so 14 changes. So it's kind of like -- it's, as my dad use to 15 always say, same thing but different. 16 Q. Has the Secretary of State ever analyzed whether 17 the burdens that are claimed -- let me start that over. 18 Has the Secretary of State every done anything to 19 analyze whether the burdens that the Secretary claims 20 resulted from election day registration could be 21 ameliorated by additional funding to the county elections 22 departments? 23 A. You know, precise studies for that precise 24 question, I -- I don't know whether there's something like 25 that. I mean, obviously we know that if there's a</p>
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<p>1 was in effect. 2 A. Uh-huh. 3 Q. If a voter showed up the day before election day, 4 he had to go through certain steps to register in person -- 5 talking about in-person registration; okay? 6 A. Uh-huh. 7 Q. A voter who showed up on election day to register 8 would go through certain steps to register. 9 Is that process and those steps different if the 10 voter showed up the day before election day as opposed to 11 on election day? 12 A. You know, purely process speaking, I believe that, 13 because you finalize the list of registered voters on day 14 before at noon -- that's the process is finalizing the 15 precincts -- then the -- once that -- after that occurs to 16 update those reports you have to do supplemental 17 distributions to the precincts, and so that's an additional 18 step. But also, I mean, the larger additional portions 19 really comes down to the activity that's going on. So to 20 try to keep things short, because you're talking about 21 purely just the mechanics, I guess that's one example I 22 think of, you know, as far as the processing of it that is 23 different. 24 Q. Okay. So other than the -- the processing that -- 25 or the step that you talked about that happens after the</p>	<p>1 continuation of problems with additional funding in 2020, 2 but that's kind of a unique election. Something so narrow, 3 Mr. Gordon, I'm not sure that we have done, to my 4 knowledge, but could have. But I -- I would be with you to 5 guess that it was unlikely for something so specific. 6 Q. Has the Secretary of State ever analyzed whether 7 the burdens that its claim to result from election day 8 registration could be ameliorated by additional staffing at 9 the county election offices? 10 A. Well, I mean, I don't know that we have something 11 so specific. I don't know that we've studied whether 12 staffing is available. Even if it was, you know, there's 13 other factors. But with all those in mind, I don't -- I 14 don't know about that hypothetical. I just know we did 15 what -- we implemented a law that was intended to -- to do 16 that in the most narrow way. 17 Q. Did the Secretary of State ever do any analysis of 18 how HB176 and the end of election day registration might 19 affect voter turnout? 20 A. Well, I think the answer could be yes, right, 21 because, we obviously hired experts in this case to analyze 22 whether there's changes, if any. 23 Q. Other than the experts hired in this case did the 24 Secretary of State do any analysis of how HB176 and ending 25 election day [sic] might affect voter turnout in Montana?</p>

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<p>1 A. Well, it seems like -- I mean, the hypothetical --</p> <p>2 an extreme hypothetical. The bill was going to be</p> <p>3 introduced regardless of the Secretary of State, but we</p> <p>4 certainly didn't do any studies provide to the legislature</p> <p>5 to consider in the short time that we had to my knowledge.</p> <p>6 Q. And the experts you retained in this case were</p> <p>7 hired after HB176 passed; correct?</p> <p>8 A. Yeah.</p> <p>9 Q. Did the Secretary of State do any analysis -- and</p> <p>10 again here -- let me start it over.</p> <p>11 Other than the experts who were hired in this case</p> <p>12 after HB176 passed and was enacted into the law, has the</p> <p>13 Secretary of State done any analysis to determine how HB176</p> <p>14 might affect voter turnout among particular subgroups of</p> <p>15 Montana voters?</p> <p>16 A. Other than the reports that we looked at? Like --</p> <p>17 did you -- did you say that?</p> <p>18 Q. I said other than the experts that you hired in</p> <p>19 this case.</p> <p>20 A. Oh, I don't -- I don't think that we did something</p> <p>21 outside of this case. I think probably with -- it would</p> <p>22 have to be included in this case if we did; right?</p> <p>23 Q. Did the Secretary of State -- again, other than</p> <p>24 the experts you hired in this case -- has the Secretary of</p> <p>25 State done any analysis of how SB169 might affect voter</p>	<p>1 groups more than others?</p> <p>2 A. Well, we -- the Secretary of State really -- like</p> <p>3 I said, we were enjoined before starting, so no.</p> <p>4 Q. In the period of time before HB530, Section 2, was</p> <p>5 enjoined, did the Secretary of State do any such analysis?</p> <p>6 A. We hadn't got to Section 2, so no.</p> <p>7 Q. Exhibit 14. Could you pull that up, please,</p> <p>8 Mr. James?</p> <p>9 Counsel asked you about this force of law</p> <p>10 question -- or this force of law statement at the very</p> <p>11 bottom of that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Do you see that?</p> <p>14 A. Uh-huh.</p> <p>15 Q. At the bottom?</p> <p>16 A. Yep.</p> <p>17 Q. And you offered some testimony about BIPA, the</p> <p>18 Ballot Interference Prevention Act.</p> <p>19 BIPA was a statute; correct?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And you said -- well, that's not -- doesn't have</p> <p>22 the force of law because it's been enjoined; is that right?</p> <p>23 A. Uh-huh.</p> <p>24 Q. And I'm sorry, Mr. James --</p> <p>25 A. Oh, I'm sorry --</p>
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<p>1 turnout?</p> <p>2 A. I don't -- I don't think so, Mr. Gordon.</p> <p>3 Q. Other than the experts you hired in this case, has</p> <p>4 the Secretary of State done any analysis of how SB169 might</p> <p>5 affect some groups more than others?</p> <p>6 A. I don't think that there's been such a precise</p> <p>7 study, no.</p> <p>8 Q. Other than the experts you've hired in this case,</p> <p>9 has the Secretary of State done any analysis of how HB530,</p> <p>10 Section 2, might affect voter turnout?</p> <p>11 A. Well, I mean, it would be kind of silly to analyze</p> <p>12 something before the administrative rules were in place.</p> <p>13 Although maybe that would have been a good suggestion</p> <p>14 during the notice and comment period would have been for</p> <p>15 clients to, you know, look at that. But I think that's</p> <p>16 part of the administrative rule process is to gather that</p> <p>17 information, and certainly we hope that all plaintiffs will</p> <p>18 participate if -- if that process ever occurs.</p> <p>19 Q. So -- but just as you sit here today, has the</p> <p>20 Secretary of State Done any analysis how HB530 might affect</p> <p>21 voter turnout?</p> <p>22 A. I apologize, Mr. Gordon. No, not -- no.</p> <p>23 Q. Okay. And as you sit here today, other than the</p> <p>24 expert reports in this litigation, has the Secretary of</p> <p>25 State done any analysis of whether HB530 will affect some</p>	<p>1 Q. -- just remember to answer with --</p> <p>2 A. Sorry. Yeah. I apologize.</p> <p>3 Yeah. That was -- that was one of the examples I</p> <p>4 brought of just because something is in the law list, for</p> <p>5 example, doesn't necessarily mean it's supreme.</p> <p>6 Q. Would you agree with me that if an administrative</p> <p>7 rule has not been enjoined by a court and has been not</p> <p>8 repealed that it has the force of law?</p> <p>9 MR. MCINTOSH: Objection; calls for a legal</p> <p>10 conclusion.</p> <p>11 Go ahead.</p> <p>12 THE DEPONENT: No, I wouldn't agree with in that.</p> <p>13 Q. (By Mr. Gordon) You wouldn't. Why not?</p> <p>14 A. Because the force of law would be based on what is</p> <p>15 supreme, and if the administrative rule is directly in --</p> <p>16 contradicts statute, and statute is very specific as to</p> <p>17 what it requires, then that law is supreme and that force</p> <p>18 of law is greater than the other force of law.</p> <p>19 Q. So is the statement on Secretary Jacobsen's</p> <p>20 website as reproduced on paragraph -- excuse me -- Exhibit</p> <p>21 14, the last sentence, which reads, quote, once adopted,</p> <p>22 administrative rules are published in the Administrative</p> <p>23 Rule of Montana, ARM, and have the force of law, end quote.</p> <p>24 Is that statement inaccurate?</p> <p>25 A. I think the statement is accurate, but at the same</p>

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<p>1 time there could be an additional sentence that says, you 2 know, so long as other law is not supreme or it has not 3 been enjoined or there is not a statute that conflicts or 4 the federal government doesn't pass an act that preempts 5 the former state law or the other situations in which the 6 force of law would be relegated. 7 Q. Exhibit 16, please. 8 A. Uh-huh. 9 Well, I guess I really jumped. 4 to 18. 10 16. Okay. Sorry, Mr. Gordon. 11 Q. It's okay. Do you have that in front of you? 12 A. I do. 13 Q. This is a press release from Secretary Jacobsen; 14 correct? 15 A. From the Secretary's office. Yeah. The Secretary 16 of State. 17 Q. Okay. Are -- is the information contained in 18 press releases from the Secretary of State's office 19 accurate? 20 MR. MCINTOSH: Objection; overbroad. 21 THE DEPONENT: I mean, it -- we do our best to try 22 to provide information the most accurate we have at the 23 time. I mean, obviously, like, a press release could have 24 a circumstance come after that which changes the situation. 25 So I think a press release is the best available</p>	<p>1 weird if it said, the -- the -- "the second floor east wing 2 said." 3 Q. And I'm not trying to be tricky here, Mr. James. 4 I'm just trying to understand. This press release says 5 that Secretary Jacobsen said, quote, Montana sets the 6 standard for elections across the country. However there 7 is always room for improvement, and voter ID and voter 8 registration deadlines are best practices in protecting the 9 integrity of elections. 10 Did Secretary Jacobsen make that statement? 11 A. Like I said, I remember being in the room when we 12 were typing this up. This was our office working on 13 putting out a press release, and including making a quote 14 that -- that could be used. So, no, it's not like 15 Secretary Jacobsen said something and we put it in 16 quotation marks and wrote it down. It's a press release. 17 It's designed to prevent a followup to our office. 18 MR. GORDON: Can you read back the last thing he 19 said? 20 (Record read.) 21 Q. (By Mr. Gordon) What do you mean when you say 22 "it's designed to prevent a followup" from your office? 23 A. I'm glad you allowed me to elaborate. Not prevent 24 a followup, but to try -- it's designed to try provide to 25 the media with the information that they need to write the</p>
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<p>1 information at the time so long as it's proofread, you 2 know, and other circumstances like that. But we do -- we 3 do our best to provide the public with pertinent 4 information. 5 Q. (By Mr. Gordon) When a press release from 6 Secretary Jacobsen's office includes quotations from 7 Secretary Jacobsen, do those accurately reflect statements 8 that Secretary Jacobsen has made? 9 A. I think it's the statement from the office; right? 10 I mean, she has her First Amendment right too, but we're -- 11 oftentimes, as you know, they'll say, Would you like to 12 provide a quote? And so we try to provide a quote right at 13 the outset. 14 Q. Well, let me ask, there's a quote from Secretary 15 Jacobsen in the second paragraph here. 16 Is that an accurate reflection of what Secretary 17 Jacobsen stated? 18 A. Well, it's the -- it's an accurate representation 19 of what our office put together as the quote for the 20 secretary. 21 Q. Okay. Well, it says "said Secretary Jacobsen." 22 Did she say that? 23 A. This is -- it does say "said Secretary Jacobsen." 24 Like I said, what happens is the press say, Can you get a 25 quote from your office, you know. And it would be a little</p>	<p>1 story, you know. Does that make more sense? Because 2 otherwise it's like this happened, and they say, Great, can 3 we get a quote from your office? So here you go. 4 Q. So the first sentence of this press release says 5 two of the priority bills requested by Secretary of State 6 Christi Jacobsen -- and it references SB169 and HB176. 7 Is it accurate that HB176 and SB169 were two 8 priority bills requested by Secretary of State Christi 9 Jacobsen? 10 A. Well, we discussed earlier that the -- that we 11 considered them -- you know, all of the bills to priorities 12 that our office tracked. So the -- we -- and we also 13 discussed how we authorized putting "by request of" on 14 there like agencies are allowed to do. So I think 15 that's -- that makes sense as to the way the sentence 16 reads. The legislature passed a bill. We supported it. 17 Q. Did Secretary of State Christi Jacobsen request 18 SB169? 19 A. Well, Secretary Jacobsen I don't believe can do a 20 bill request, but we can -- we can, you know, work on 21 legislation in the same way that, like, for instance, the 22 Montana Democratic Party and ACLU and Western Native Voice 23 can. No different. 24 Q. Did Secretary Jacobsen request HB176? 25 A. My answer to the first one is the same.</p>

1 Q. So why does this press release say that those
2 bills were required by Secretary Jacobsen if she didn't
3 request them?
4 **A. That they were required? Or requested?**
5 Q. Did I -- if I said "required," I meant -- thank
6 you for catching that.
7 **A. No problem.**
8 Q. Yeah. I'm just trying to understand why does this
9 press release say that HB176 and SB169 were requested by
10 Secretary Jacobsen if she didn't actually request them?
11 **A. I told you already both, I think, Monday, Tuesday,**
12 **and today. So there's an option for other branches of**
13 **government to have a caption up on the title where it says**
14 **"by request of." So it can be, you know, by the request of**
15 **the Supreme Court, for instance, you know, on the probate**
16 **laws. Oftentimes you'll see in commercials where it says,**
17 **like, "worked bipartisanly," and it'll be because it was on**
18 **request of the Department of Justice, and Tim Fox was**
19 **elected, and there's a Democratic legislator, so all of a**
20 **sudden it's bipartisan. That doesn't mean, like, it was**
21 **Attorney General Fox was like, You've got to do this**
22 **certain bill. It's just a part of the law-making process,**
23 **the legislative process.**
24 Q. Can you pull up Exhibit 3? Please keep Exhibit 16
25 out because --

1 **than others.**
2 Q. So, again, just to be specific, I'm not asking
3 about these other entities, other organizations. Just with
4 respect to Secretary of State Christi Jacobsen, what does
5 it mean to say that these were her priority bills?
6 **A. Well, like I just said, when people are supporting**
7 **bills in the legislature, oftentimes there's ones that, to**
8 **them, are higher up on the list than others. I mean, you**
9 **can support something, and if it dies, it's okay. But this**
10 **was one where it was significant to have meaningful reform**
11 **and improve the election process.**
12 Q. So can you go to the second page of Exhibit 3 now,
13 please?
14 **A. Uh-huh.**
15 Q. And this is a document on Secretary Jacobsen's
16 letterhead --
17 **A. Uh-huh.**
18 Q. -- do you see that --
19 **A. Uh-huh.**
20 Q. And it says "top priorities" there; do you see
21 that?
22 **A. Uh-huh.**
23 Q. Whose priorities are those?
24 **A. Well, it's the office of the Secretary of State.**
25 Q. The office or Secretary Jacobsen personally?

1 **A. Okay. I'm glad you told me --**
2 Q. -- please keep that available, and then also pull
3 up Exhibit 3, please.
4 **A. Uh-huh. I think that's probably at the bottom.**
5 **Okay.**
6 Q. Do you have that?
7 **A. Yeah.**
8 Q. Okay. And you still have Exhibit 16 there as
9 well?
10 **A. Yeah. I set that one there, so I've got her. You**
11 **want me to put them side by side or --**
12 Q. Yes, please.
13 **A. Oh, okay. Cool.**
14 Q. And before we go to Exhibit 3, one more question
15 on Exhibit 16.
16 What does it mean here to say that these were
17 priority bills?
18 **A. I mean, that -- so you support a lot of bills, you**
19 **oppose a lot of bills, and you're informational. And**
20 **there's certain ones that are priority or key. I mean, for**
21 **instance, like, I think Western Native Voice and the ACLU**
22 **do scorecards, and there's ones that have stars. The**
23 **Chamber of Commerce, Department of Transportation.**
24 **Governor's Office, there's ones that they flag out as,**
25 **like, this carries more weight, for example, of our support**

1 **A. Personally. I mean, she can personally support**
2 **something. The case law is pretty clear that she still has**
3 **the First Amendment. She can talk about bills on her**
4 **campaign side or whatever. But that -- that's got to be on**
5 **her personal phone, not on her public phone. It's got to**
6 **be on her personal email, not on this email. This is the**
7 **letterhead -- and that letterhead cannot be, as my former**
8 **boss found out, used for personal purposes. And this is**
9 **for office purposes, and this is the office's priority**
10 **bills. That's simple.**
11 Q. And you identified that -- before you talked about
12 how people might have a list of -- of top priorities.
13 Does that list here under the heading "Top
14 Priorities" accurately reflect Secretary Jacobsen's or the
15 office of the Secretary of State under Secretary Jacobsen's
16 top priorities for the 2021 legislative session?
17 **A. I couldn't tell you what it accurately reflects.**
18 **As I testified earlier is that on January 31st, which would**
19 **have been a couple weeks into the start of the legislature,**
20 **and here's the latest draft and this is their current**
21 **status.**
22 Q. And are these priorities -- they're listed --
23 they're in a list here, and is Priority Number 1 her top
24 priority, or the Secretary's top priority?
25 **A. I don't know that they're in sequential order.**

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<p>1 Q. So you don't -- you don't know whether the</p> <p>2 ordering here identifies or reflects a rank ordering of</p> <p>3 priorities?</p> <p>4 A. Sorry, Mr. Gordon. I specifically -- oh, there we</p> <p>5 go. No, I don't know. I mean, obviously it seems like</p> <p>6 there's some pretty important ones, but -- but, no, I don't</p> <p>7 think that it was in any particular ranking. Looks like</p> <p>8 here that the ones that are four down are still in LC</p> <p>9 number, so it very well could be based on the ones that</p> <p>10 are -- already had a bill number; right?</p> <p>11 Q. So you don't know why voter ID is listed as number</p> <p>12 one on her top priorities?</p> <p>13 A. Well, as I just said, the -- for instance, four,</p> <p>14 five, and six still are in LC number, so it looks like the</p> <p>15 top three are all the same category -- ones that have</p> <p>16 hearings set and they're a bill -- and it looks like the</p> <p>17 bottom three are still in LC number and have question.</p> <p>18 Looks like this is as of January 30th, and so those are the</p> <p>19 priorities at the time. Voter ID is a -- was a -- is a</p> <p>20 great reform, so, I mean, all three of those I think were</p> <p>21 ones that were clearly important to the office.</p> <p>22 Q. So I, again, just want to be clear, Mr. James, do</p> <p>23 you know why voter ID is identified as Priority Number One</p> <p>24 under Top Priorities list?</p> <p>25 A. That's mischaracterizing that it's Priority Number</p>	<p>1 Q. The second paragraph, the statement from Secretary</p> <p>2 Jacobsen:</p> <p>3 Montana sets the standard for elections across the</p> <p>4 country.</p> <p>5 What did she mean by that?</p> <p>6 A. Well, I mean, people from Montana are really proud</p> <p>7 of Montana, and so we -- we believe what we're doing is --</p> <p>8 is a good thing. And so like I said, we work really hard</p> <p>9 to try to make this not a partisan change and make it not</p> <p>10 an overly significant change, but to literally try and</p> <p>11 achieve the best goals that we could in the most efficient</p> <p>12 way possible. And so I think that's what she means by "set</p> <p>13 the standard."</p> <p>14 Q. Well, it looks to me like she's talking about</p> <p>15 before the changes in HB176 and SB169 that Montana sets the</p> <p>16 standard.</p> <p>17 Do you disagree with that?</p> <p>18 A. I wasn't saying that. I was saying -- she follows</p> <p>19 right after that there's always room for improvement.</p> <p>20 Q. Let me ask you this: When Governor Gianforte</p> <p>21 signed these bills into law, he said Montana has a long</p> <p>22 history of secure, transparent elections, setting the</p> <p>23 standard for the nation.</p> <p>24 Does the Secretary of State agree with Governor</p> <p>25 Gianforte that Montana has a long history of secure,</p>
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<p>1 One, and instead it's one on the list. Because like I</p> <p>2 said, the bottom three aren't Priority Four, Five, and Six.</p> <p>3 They're listed four, five, and six, and it appears the</p> <p>4 reason is because there's not a bill number.</p> <p>5 Q. So do you know that's why they're listed as four,</p> <p>6 five, fix, or are you speculating or inferring something</p> <p>7 from --</p> <p>8 A. I mean, seems awfully coincidental, doesn't it?</p> <p>9 Q. I don't know. Number 3 has HB176. Number 1 has</p> <p>10 LC1321. So I don't know. I'm asking you --</p> <p>11 A. No, no. Number 1 is SB169.</p> <p>12 Q. I think Number 1 says "use LC1329"? Am I</p> <p>13 misreading --</p> <p>14 A. Are you looking at the priority list here that's</p> <p>15 attached to the email? Number 1, voter ID, Senate Bill</p> <p>16 169, hearing planned. Number 2, Senate Bill 170, hearing</p> <p>17 planned. Number 3, House Bill 176.</p> <p>18 Q. I see. I'm sorry.</p> <p>19 A. Then it goes to LC numbers --</p> <p>20 Q. So I have a different document pulled up, so let</p> <p>21 me -- let me come back to that because I was looking at an</p> <p>22 earlier version. I think that explains the confusion.</p> <p>23 Let's go back to Exhibit 16.</p> <p>24 A. Oh, yeah. The one you told me to set aside.</p> <p>25 Sorry.</p>	<p>1 transparent elections?</p> <p>2 A. I mean, seems -- we're talking about quotes here.</p> <p>3 I don't know what the governor was referring to there. I</p> <p>4 don't know whether the Secretary individually says certain</p> <p>5 things. I know that for us we try to -- to be proud of</p> <p>6 what we got, look at how we can continue to improve, and, I</p> <p>7 mean -- exactly.</p> <p>8 Q. Let me ask the question a little differently.</p> <p>9 Does the Secretary of State's office believe that</p> <p>10 Montana has a long history of secure, transparent</p> <p>11 elections?</p> <p>12 A. Well, I mean, again, like she said, there's always</p> <p>13 room for improvement. So we've -- we've got a history of</p> <p>14 the opposite. We also have a history of that included.</p> <p>15 Certainly would be a bad thing for a governor to say our</p> <p>16 elections suck.</p> <p>17 Q. And, again, I'm -- I'm not interested in all of</p> <p>18 that. I'm just interested in the question I asked.</p> <p>19 Does the Secretary of State believe that Montana</p> <p>20 has a long history of secure, transparent elections?</p> <p>21 A. I -- I don't think I can add anything from what I</p> <p>22 answered to that on the last one.</p> <p>23 Q. Well, you didn't answer it, with all due respect,</p> <p>24 Mr. James.</p> <p>25 Does the Secretary of State Believe that Montana</p>

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1 has a long history of secure, transparent election?

2 **MR. MCINTOSH:** Objection; move to strike the

3 sidebar, asked and answered.

4 Go ahead.

5 **THE DEPONENT:** I really think I answered directly

6 that. And I know you're trying to ask me a yes or no, but

7 it's a "yes, but" and a "no, but." I mean, there's an

8 explanation, and I tried to give one, Mr. Gordon.

9 Q. (By Mr. Gordon) Okay. So you're not going to

10 answer the question whether the Secretary of State believes

11 that Montana has a long history of secure, transparent

12 elections?

13 **MR. MCINTOSH:** Objection --

14 **THE DEPONENT:** Incorrect. I answered it.

15 **MR. MCINTOSH:** -- argumentative.

16 Q. (By Mr. Gordon) What was your answer?

17 **THE DEPONENT:** Would you like to read it back?

18 **MR. GORDON:** No, I'd like to know from you. What

19 is the answer to the question? Because -- and just to

20 clear, Mr. James, I'm not trying to quibble with you. I --

21 I don't believe you answered my question, which is why I'm

22 asking it again, and I'll ask you one more time just to be

23 clear.

24 Q. (By Mr. Gordon) Does the Secretary of State

25 believe that Montana has a long history of secure,

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1 transparent elections? Yes or no?

2 **MR. MCINTOSH:** Objection; asked and answered, move

3 to strike the sidebar.

4 **THE DEPONENT:** As I said, we have a very

5 fascinating history. We're still in existence. We'd be

6 proud of what we've got and we'd be proud of the continuing

7 improvements that got us here.

8 Q. (By Mr. Gordon) You testified on Tuesday I believe

9 under questioning about the 2020 presidential election. I

10 think you were asked if you believe the 2020 presidential

11 election was stolen.

12 Do you recall that?

13 **A. Yeah, it was, like, about 11:30 was when we were**

14 **closing up there. Almost midnight. Yep.**

15 Q. Okay. And I think your answer was you did not

16 believe that it was stolen; correct?

17 **A. No, I don't.**

18 Q. Okay. And what about the Secretary of State?

19 What is her position on whether the 2020 election was

20 stolen?

21 **A. Secretary Jacobsen in her professional and her**

22 **individual capacity does not believe the election was**

23 **stolen.**

24 **Are you kidding?**

25 Q. (By Mr. Gordon) No, I'm not kidding. I'm asking

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1 you an honest question, because I don't know --

2 **A. No, we don't believe it was stolen. We believe we**

3 **did absolutely the best we can, and we look forward to**

4 **continuing to do the best we can.**

5 Q. Does the Secretary of State believe that the 2020

6 election in Montana was secure and transparent?

7 **A. I think that the Secretary of State believes that**

8 **that we tried to be the most transparent we can, most**

9 **secure that we can. It's a good thing to get more**

10 **transparency and more security. Certainly try to continue**

11 **to make the possible feel confident in our process as we**

12 **continue to improve it at the same time.**

13 Q. Back to Exhibit 16, Mr. James.

14 **A. Still got it.**

15 Q. Okay. Secretary Jacobsen's statement -- again, in

16 the second paragraph -- references voter ID.

17 Did Montana have a voter ID law before SB169 was

18 passed?

19 **A. Yeah. We had -- yeah, we had an identification**

20 **law. Yep.**

21 Q. Okay. And Secretary Jacobsen also references

22 voter registration deadlines as another best practice.

23 Prior to the enactment of HB176 did Montana have

24 voter registration deadlines?

25 **A. Yeah. I think both the identification of voters**

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1 **and the registration deadlines line began in about 1893,**

2 **and we've been making improvements to what that looks like**

3 **ever since.**

4 Q. Was the enactment of election day registration in

5 2006 an improvement?

6 **MR. MCINTOSH:** Objection; calls for opinion,

7 vague.

8 **THE DEPONENT:** It was a -- it was policy choice

9 to -- to look at improving election, for sure. And I think

10 that this does some fine-tuning to it.

11 Q. (By Mr. Gordon) When Secretary Jacobsen says that

12 voter ID is a best practice in protecting the integrity of

13 elections, does she mean that relegating student IDs to

14 secondary forms of identification for voting is a best

15 practice?

16 **A. That's -- that mischaracterizes the bill and**

17 **mischaracterizes the position of the Secretary of State.**

18 Q. Okay. So let's talk about SB169. Before SB169

19 was enacted, a Montana University System student ID could

20 be used as a primary form of ID; correct?

21 **A. That depends. To register to vote, you could --**

22 **something that has a name and photo could be used as an**

23 **alternative ID if someone does not have a Social Security**

24 **Number and does not have a drivers license. So there's**

25 **certain types of voters that that would apply.**

<p>Page 268</p> <p>1 Q. Okay. So thanks for the clarification. 2 My questions are about -- specifically about using 3 student ID at the polls, not to register; okay? 4 A. Uh-huh. 5 Q. All right. So before SB -- now I lost my train of 6 thought. 7 MR. GORDON: Can you tell me what my question was 8 a couple back? 9 (Record read.) 10 Q. (By Mr. Gordon) So just with respect to the ID 11 that you show at the polling place to vote, prior to the 12 enactment of SB169 could a Montana University System 13 student ID be used as a primary form of ID? 14 A. So it provided IDs, and one of the ways that you 15 could show it as a current and valid name and photo ID, 16 which would include a elementary school or college or 17 Costco card or any of those things, as long as they were 18 current and valid. 19 Q. So prior to SB169 a Montana voter could have shown 20 a Montana University System student ID at the polls to vote 21 without supplying any other identifying information; 22 correct? 23 A. They could provide a current and valid photo with 24 a their name and photo. Yeah. 25 Q. And after SB169 was enacted the -- a Montana</p>	<p>Page 270</p> <p>1 provided for them. 2 Q. They have to fill it out; correct? 3 A. They would have to use their pen, yes. 4 Q. Okay. Are there any other circumstances after 5 SB169 in which a voter -- strike that. 6 Setting aside your discussion about the polling 7 place elector identification form, are you aware of any 8 circumstances in which a voter after the enactment of SB169 9 could use a Montana University System student ID at the 10 polls as sufficient identification to vote? 11 A. Well, we might as well just say "name and photo" 12 at each one, because that's what it was. It wasn't 13 specific to one type. It's all name and photos. And, 14 yeah, they would be able fill out a provisional ballot, and 15 then they could cure that any time after. 16 Q. Okay. Any other circumstances? 17 A. Where they could use a name and photo but they 18 don't have a provisional ballot and they don't use the 19 failsafe for the polling place ID form? Is that what 20 you're asking? 21 Q. That's what I'm asking. 22 A. I don't think of another circumstance. I feel 23 like those first two cover it. 24 Q. Okay. Back to Exhibit 16 and Secretary Jacobsen's 25 comment about voter ID being a best practice.</p>
<p>Page 269</p> <p>1 University System photo ID, student ID, was no longer -- is 2 no longer acceptable as a primary form of ID at the polls. 3 In other words, it now requires that the voter show an 4 additional document; correct? 5 A. The name and photo is one that satisfies certain 6 requirements. There's different process, but it's 7 different than it was before. Correct. 8 Q. And it's different in that now if you're showing a 9 student ID at the polls, you also have to supply additional 10 documentation; correct? 11 A. Not necessarily. 12 Q. Not necessarily. Under what circumstance could a 13 person after SB169 show only a Montana University System 14 photo ID, student ID, at the polls and be allowed to vote? 15 A. So they could present a photo ID and then also 16 fill out a polling place ID form with the information, and 17 then that would be converted into a government document. 18 So that would be not something that they brought with them 19 to the polling place. The only thing they brought to 20 present is a student ID, and they'd still be fully entitled 21 to vote. 22 Q. Okay. So in under those circumstances they still 23 have to provide the additional documentation of the polling 24 place elector identification form; correct? 25 A. They don't have to provide it. It would be</p>	<p>Page 271</p> <p>1 Does Secretary Jacobsen believe that making 2 student ID a second -- secondary form of ID at the polls 3 rather than a primary form of ID is a best practice in 4 protecting the integrity of elections? 5 A. That mischaracterizes the bill, Mr. Gordon. The 6 bill does not -- does not do that. It provides for a 7 different type of approach where there's additional 8 primaries, and then also has something that's applicable to 9 those with name and photos. There's as much -- as much 10 toward a Costco card and my Snowbowl pass. 11 Q. And so after SB169 a Montana University System 12 photo ID, student ID, is treated the same as your Snowbowl 13 pass or your Costco card in terms of the identification 14 requirements for voting at the polling places; correct? 15 A. How a Snowbowl pass, a Costco card, a student ID 16 was treated before were all the same, and they're all 17 treated the same now. 18 Q. And so to be clear, "now," you mean after SB169, a 19 student -- a Montana University System photo ID, a Snowbowl 20 pass, and a Costco card are treated the same; correct? 21 A. That category of ID before was treated the same, 22 and that category of ID now is treated the same. 23 Q. Let's take a short break. 24 THE VIDEOGRAPHER: The time a 5:11. Going off the 25 record.</p>

1 (Break taken from 5:11 p.m. until 5:28 p.m.)
2 **THE VIDEOGRAPHER:** The time is 5:28. Back on the
3 record.
4 Q. (By Mr. Gordon) Mr. James, you recognize you're
5 still under oath?
6 A. I do.
7 Q. And you still have Exhibit 16 in front of you?
8 A. I do.
9 Q. Okay. One more question for you on that, again
10 referencing Secretary Jacobsen's statement where she says
11 voter registration deadlines are best practices.
12 Is it Secretary Jacobsen's position that ending
13 election day registration is a best practice in protecting
14 the integrity of elections?
15 **MR. MCINTOSH:** Objection; compound.
16 **THE DEPONENT:** I don't think that's an accurate
17 description of where that's going. I think it's talking
18 about the overall effect, which is to make sure that, you
19 know, that mom that I talked to you about that talked to me
20 on the phone maybe has a chance, that the gals in the
21 testimony -- or in the record -- from Western Native Voice
22 that said that they were unable to get the people to go
23 vote because they -- the line was too long, that maybe
24 there's a chance they can participate. And so by making
25 people have -- with having the registration earlier and to

1 only the minor bits improves that process. It also
2 prevents against other things. And it's a minor tweak that
3 we're trying to do to have the largest amount of cups
4 filled, I guess you'd call it.
5 Q. What do you mean when you say "the largest amount
6 of cups filled"?
7 A. Oh, you've got state -- you know, state aspects,
8 county aspects, voter aspects, you know, security,
9 accessibility, all of these different things, and trying to
10 strike the balance amongst having as many cups fill as
11 possible.
12 Q. Counsel asked you earlier whether you had any
13 knowledge of voted ballots not being returned, and you
14 referenced something that you had seen about some torn-up
15 ballots.
16 Do you recall that?
17 A. I provided one example in Billings there. Yep.
18 Q. Okay. What's your basis of knowledge about this
19 example of torn-up ballots in Billings?
20 A. It was in the newspaper, I believe, and I know we
21 produced maybe some -- something about it in -- in this
22 case. And I -- I think that we also received a call from
23 someone that had seen it in the news. That's the reason
24 that we saw the news report. And I guess from the larger
25 general statement there, that was an example in Montana,

1 but I think that it had happened in, what was it,
2 California last week.
3 Q. Any other basis of knowledge about the incident in
4 Billings other than what you testified to about the news
5 report and the person calling you?
6 A. I mean, I didn't tear up the ballots, if that's
7 any closer basis. I think the basis would be the reporting
8 on it and the people that pointed us to that information.
9 Q. Does the Secretary of State's office -- or has the
10 Secretary of State's office done anything to determine
11 whether the reports about the torn-up ballots reflected
12 that those ballots were actually voted ballot that were
13 collected by a third-party ballot collector and torn up by
14 that third-party ballot collector?
15 A. I mean, I don't know that we would look into
16 something under that highly specific lens or any other lens
17 for that matter. I mean, the goal of it is to -- you asked
18 for an example, I provided an example.
19 Q. Sure. And just to be clear, the Secretary of
20 State's office has not done anything to look further into
21 that example that you provided?
22 A. No, I -- there's maybe -- maybe we talked to
23 Brett, but I wasn't -- I don't have any personal
24 involvement. In preparing for this deposition, it didn't
25 come up about anything else.

1 Q. Okay. So when you say "maybe we talked to Brett,"
2 you're speculating?
3 A. Yes.
4 Q. Okay. Exhibit 21, Mr. James?
5 (Court reporter clarification.)
6 **MR. MCINTOSH:** Exhibit 31? You said 21.
7 (Exhibit SOS 31 marked for identification.)
8 Q. (By Mr. Gordon) Sorry. Exhibit 31. Thank you.
9 Members of counsel earlier asked you about the PSA
10 scripts. You were looking at initial drafts of PSA
11 scripts.
12 Do you recall that?
13 A. Uh-huh. Yep.
14 Q. Exhibit 31 appears to reflect finalized PSA
15 scripts; would you agree with me?
16 A. Well, it says:
17 Send me the finalized PSA script.
18 I see that. I don't know -- I mean, obviously in
19 this there's you URLs, and we didn't say the URL in the
20 script. So I can't say -- I can't agree with the question
21 that you asked, but at the same time I can affirm that it
22 says "send me the finalized scripts."
23 Q. Okay. So I'm just -- again, not trying to tricky
24 here. I'm just trying to understand if the scripts on the
25 pages that are attached to Exhibit 31 -- Page 2 and Page

1 3 -- are these the finalized scripts, understand that in
2 the SB169 script Secretary Jacobsen didn't read out the
3 URLs that are referenced there?
4 **A. You know, I'm -- honestly, I'm not -- I see that**
5 **it says finalized scripts. It very well could be. I think**
6 **we're tried to provide it. But I don't -- I do'nt have the**
7 **script memorized, and so I can't -- I don't want to say**
8 **that it's a final script.**
9 Q. Okay. Well, let me ask you this: Do you have any
10 basis for believing that these are not the final scripts?
11 **A. Oh, okay. Let me read them. I'm just trying to**
12 **go quick here.**
13 **(Reviews document.)**
14 **My wife watches Jeopardy, so I saw them a lot, so**
15 **I'm trying to hear them in my mind.**
16 **Yeah. I think that's -- I think that they're -- I**
17 **don't have any reason to believe that they're inaccurate.**
18 **I just don't know if that's the final one.**
19 Q. Fair enough. Are these the PSAs that went out on
20 TV or on radio or both?
21 **A. Boy, that's a good question, Mr. Gordon. I think**
22 **that they were the -- I think they had similar message,**
23 **but -- boy, you'd think I know this and -- and I don't.**
24 **I'm sorry.**
25 Q. And in your declaration there was a reference to

1 the number of times these PSAs are run; do you recall that?
2 **A. Yes, sir.**
3 Q. Okay. And that number -- and I don't have it in
4 front of me -- but whatever that number was, does that
5 reflect the number of times that these PSAs -- each PSA was
6 run cumulatively -- that's a bad question.
7 **A. You're fine.**
8 Q. What I'm trying to get at is the number in your
9 declaration about the number of times that these PSAs were
10 run, it reflect the total number of times that one of these
11 three PSAs was run; correct?
12 **A. No, so what it would reflect is the total number**
13 **based on the reports that we got back that said views, that**
14 **were available as of the time I wrote my declaration.**
15 Q. So what I'm saying is if I look at the number in
16 your declaration -- and say it's 1,000 --
17 **A. Fine. Yes.**
18 Q. Okay. Does that mean that the HB176 PSA was run
19 1,000 time? Or does that mean that the 1,000 includes the
20 number of times the HB176 PSA was run and the SB169 PSA was
21 run and the combined PSA was run?
22 **A. I'm following. It would -- I looked at the total**
23 **amounts of times that -- that there was air for the months**
24 **for television, so I think that's the combination of the --**
25 **of the scripts for both TV and video -- or TV and radio.**

1 Q. And just to be clear, the SB169 script here
2 doesn't make any mention of student IDs; correct?
3 **A. I don't see student IDs in there. No.**
4 Q. Earlier your testified, Mr. James, something to
5 the effect of clerks are quitting because they have too
6 much work.
7 Who specifically were you referencing?
8 **A. I don't think I was referencing any specific**
9 **individual. I mean, there's a lot of coverage on that now**
10 **nationally, and certainly we hear the sentiments. And, you**
11 **know, it's not only work, but also work that's being**
12 **brought onto them, and -- you know, not just outside of the**
13 **election, but just there seems to be waves. So I don't**
14 **have any specific -- sorry. Sorry. I should have been**
15 **shorter.**
16 **I don't have any specific names, Mr. Gordon.**
17 Q. Okay. So as you sit here today you're not aware
18 of any particular Montana election clerk who has quit or
19 has indicated that he or she intends to quit because they
20 have too much work?
21 **A. You know, I can't remember whether the testimony**
22 **when Mr. Ellis retired, whether he referenced, you know, it**
23 **being too much. I -- I do know that election officials in**
24 **our office have -- we've had to coax from retiring. So I**
25 **guess I have specific names there. But as far as the**

1 **county goes, it's -- I don't want to say, yeah, it was for**
2 **sure this reason. But I can say that it's a national**
3 **thing, it's felt amongst my office, certainly could be a**
4 **contributing factor if it's not the only factor.**
5 Q. Are you aware of reports of county election
6 officials quitting or saying that they intend to quit
7 because of threats against them?
8 **A. I don't know if there's one that -- that said, you**
9 **many, just because of that, but I certainly think that**
10 **it's, like I said, something that is being felt. I mean, I**
11 **didn't contemplate quitting, but I can tell you it's**
12 **certainly made for a different day in my life too.**
13 Q. And to be clear here, I'm just referencing county
14 election officials --
15 **A. Yeah. Okay. Sorry.**
16 Q. That's okay. Are you aware of reports of county
17 election officials quitting or saying that they intend to
18 quit because of threats against them?
19 **A. I know that there's been a discussion. I mean,**
20 **yesterday I know that Commissioner Mangan spoke after the**
21 **Secretary of State. I don't know whether he referenced a**
22 **specific person saying they were going to quit or just the**
23 **frustration. I think there was some news coverage today,**
24 **but I didn't read the article yet because I was kind of**
25 **focused on this. But -- so I don't know of a name saying**

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1 **that that -- that they're quitting and that's the reason**
2 **and that's the only reason.**
3 Q. Are you aware of reports of election -- again,
4 county election officials indicating that they were
5 intending to quit because of politicians' attacks on the
6 voting system?
7 **A. I don't know of that being a particular thing, but**
8 **like I said it's been really stressful, and we've**
9 **definitely heard from -- you know, of that -- the source of**
10 **it changes depending on the times, you know what I mean.**
11 Q. What, if anything, has the Secretary of State done
12 to address the issue of threats against county election
13 officials?
14 **A. Oh, we've -- we've spoke to counties about working**
15 **with their sheriffs. I remember in the last election**
16 **having a meeting with the highway patrolmen so that that**
17 **way we could start looking at potential -- you know, like a**
18 **model agreement for -- for counties to use for highway**
19 **patrol retention type thing. As I mentioned, we were**
20 **looking at statutory changes for -- we're doing what we can**
21 **to make sure things are good.**
22 **(Exhibit SOS 32 marked for identification.)**
23 Q. (By Mr. Gordon) Handing you what I've marked as
24 Exhibit 32.
25 **A. Uh-huh.**

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1 Q. And I'm giving you this, Mr. James, because you
2 referenced Commissioner Mangan's comments on the issue of
3 physical threats and you mentioned that there was some news
4 coverage about that. And I think this is maybe what you
5 were referencing.
6 Does his ring a bell?
7 **A. Well, it's -- let's see. It's May 26th. I**
8 **think -- is today May 26th?**
9 Q. I think so.
10 **A. Yeah. So like I said, I -- I remember seeing a**
11 **news alert that came out, and then also I was trying to**
12 **refresh my memory in preparing for this deposition, and I**
13 **turned on SAVA kind of resisting to turning on SAVA so I'd**
14 **have full focus. And I heard -- you know, when the**
15 **commissioner started speaking, it was compelling. I**
16 **couldn't do anything but listen. So I heard Mr. Mangan,**
17 **and I saw there's a story up, and I haven't read the story.**
18 Q. In the third paragraph --
19 **A. Uh-huh.**
20 Q. -- do you see where this starts "election
21 misinformation" --
22 **A. Uh-huh.**
23 Q. -- and this is quoting Commissioner Mangan. He
24 says:
25 Election misinformation, disinformation, the stuff

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1 that's happening across the state is harming and putting at
2 risk our election officials, our election judges, our
3 election volunteers, and poll watchers in the coming
4 elections.
5 Do you see that?
6 **A. Uh-huh.**
7 Q. Does the Secretary of State agree that election
8 misinformation, disinformation is harming and putting at
9 risk election officials?
10 **A. Yeah, I mean I certainly think that it's a**
11 **contributed factor. I know it's caused a lot of -- you**
12 **know, misinformation has caused a lot of stress on our**
13 **office. A lot of -- I mean, we're talking about a pillar**
14 **of our government here when it comes to elections. I mean,**
15 **I remember -- if you're in the Capitol on the second floor**
16 **next to Jeanette Rankin there's a statue of Wilbur Sanders,**
17 **and there was an election to move the capital from Virginia**
18 **City to Helena, and there were more registered voters**
19 **that -- than voted than there were population. And they**
20 **had a grand jury over it, and there was no convictions over**
21 **the fraud. And when he writes -- he wrote to the**
22 **president -- I think it was Garfield -- he said that the**
23 **feeling in Montana is reminiscent of what it would feel**
24 **like when a civil war is approaching.**
25 **So, yeah, when there's -- there's been times in**

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1 **Montana where this questioning, for good reason or not, has**
2 **happened, and it's just really important to have confidence**
3 **in our system, to make those practical steps. And**
4 **certainly some of the misinformation I deal with on a**
5 **day-to-day basis, and so do other people in my office.**
6 Q. And does the election misinformation and
7 disinformation affect voter confidence?
8 **A. I mean, I think that a lot of things play a**
9 **factor. It certainly could play a factor to a certain**
10 **voters; right? There's a lot of things that go into it,**
11 **and then being able to restore that person's confidence**
12 **based on their misinformation with accurate information, or**
13 **or good systems that are in place to preclude against that**
14 **can alleviate it. And I think that we do the best to do**
15 **that with good election law in Montana.**
16 Q. Can you go Page 3 of Exhibit 32, please.
17 Let me know when you're there.
18 **A. Uh-huh.**
19 Q. Okay. If you look down on Paragraph 5, it says --
20 in his comment; do you see that?
21 **A. Yep.**
22 Q. Okay. And here it says that Commissioner Mangan
23 expressed disappointment in Secretary Jacobsen for
24 largely -- staying largely silent on election fraud,
25 misinformation, and safety threats.

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<p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. Do you agree with Commissioner Mangan that</p> <p>4 Secretary Jacobsen has stayed largely silent on election</p> <p>5 fraud, misinformation, and safety threat?</p> <p>6 A. No. And I don't believe that that's what he said</p> <p>7 either. I listened to what he said, and I heard it full</p> <p>8 context. And what he said was that he was surprised when</p> <p>9 the Secretary of State went before him that they didn't</p> <p>10 bring it up and that we should be telling people, Feel</p> <p>11 confident. And so that was the context in which he began</p> <p>12 to say it. And I also know that we have definitely not sat</p> <p>13 silent because I see the emails that go out, I've consulted</p> <p>14 with my client providing legal advice on -- on</p> <p>15 allegations regarding being able to respond to this</p> <p>16 hocus-pocus that we see each day. And so, yeah, we've done</p> <p>17 a lot to -- to combat that misinformation and we've also</p> <p>18 done things to improve the system. And we're working</p> <p>19 really hard to try to maintain confidence in elections.</p> <p>20 Q. What specifically has Secretary of State Jacobsen</p> <p>21 done to combat election fraud, misinformation, and safety</p> <p>22 threats?</p> <p>23 A. For example, you know, we held public testing of</p> <p>24 the machines in January, and we tried to reach out to all</p> <p>25 of the individuals that had sent us the pillow guy's stuff</p>	<p>1 at Capital Fitness.</p> <p>2 Q. And you were going to the workout class with her?</p> <p>3 That's why you were with her at that time?</p> <p>4 A. Yeah, I was catching a ride. A couple do. I was</p> <p>5 not taking care of my health in the beginning of this job</p> <p>6 with the amount of stress that is being put on me, so it</p> <p>7 turns out they always say if you need to increase your</p> <p>8 ability to go the gym, get a workout buddy. And it turns</p> <p>9 out that if your boss is leaving to the workout, it's</p> <p>10 pretty easy to be held accountable to leave work to go work</p> <p>11 out.</p> <p>12 Q. Does Secretary Jacobsen believe there's any</p> <p>13 concrete evidence to support allegations or coordinated</p> <p>14 voter fraud in Montana?</p> <p>15 A. I mean, that's a -- that's a silly way to put it.</p> <p>16 I mean, there's obviously things that are alleged and stuff</p> <p>17 like that. But the goal is not to be policing around</p> <p>18 and -- and pointing things out. And even in this case it's</p> <p>19 like, why don't you show us these highly specific examples.</p> <p>20 And that's why that's harmful is because -- because then it</p> <p>21 creates people's fear, and why isn't this being taken care</p> <p>22 of.</p> <p>23 And it's a lot better to just have reasonable laws</p> <p>24 that prevent things in the first place. If they don't</p> <p>25 prevent, they alleviate. And people can feel confident in</p>
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<p>1 to say come -- come watch us evaluate machines so that you</p> <p>2 can see that these things are legit and that we run a good</p> <p>3 system here.</p> <p>4 Listen, I understand that -- that there's</p> <p>5 different -- different factions of certain things, but as I</p> <p>6 said before, I walk in that office every day and so does</p> <p>7 everyone else with a servant's heart to serve all people in</p> <p>8 Montana.</p> <p>9 Q. Down below the article goes on to say, "Asked</p> <p>10 repeatedly in a December interview..."</p> <p>11 Do you see that?</p> <p>12 A. I see that.</p> <p>13 Q. And this is referencing Secretary Jacobsen,</p> <p>14 whether she believes there was any concrete evidence to</p> <p>15 support allegations of coordinated voter fraud in Montana,</p> <p>16 she declined to answer.</p> <p>17 Do you see that?</p> <p>18 A. Is this Sam Wilson that wrote this article? Yeah.</p> <p>19 Okay. I was there when he was approaching us. Yeah.'</p> <p>20 Secretary Jacobsen teaches a workout class at noon</p> <p>21 on Tuesdays and Fridays, and Sam was in the hallway at</p> <p>22 about 12:05m, and we were rushing to get to the class, and</p> <p>23 we said that repeatedly. And I've seen in stories that we</p> <p>24 refused to answer. But as we've said to Mr. Wilson</p> <p>25 numerous times, we were -- she was late for a workout class</p>	<p>1 the elections. It's just -- it's just that. Doing the</p> <p>2 constitutional duty.</p> <p>3 Q. Two paragraphs down it says that Secretary</p> <p>4 Jacobsen also declined to say whether she feels that</p> <p>5 allegations of election irregularities in Missoula County</p> <p>6 hold any merit.</p> <p>7 Does Secretary Jacobsen believe that the</p> <p>8 allegations of election irregularities in Missoula County</p> <p>9 have any merit?</p> <p>10 A. So, you know, the allegations were that there was</p> <p>11 a difference in the number of envelopes compared to when</p> <p>12 they counted the first time versus when they counted the</p> <p>13 second time. Now, the thing is is that whether or not</p> <p>14 there's a difference in numbers is different than whether</p> <p>15 or not there was some systemic problem or the election</p> <p>16 office had an issue.</p> <p>17 So -- so saying, you know, do you believe the</p> <p>18 election office committed a error? Well, they may have not</p> <p>19 brought out all the envelopes at the time that they were</p> <p>20 counting the first or whatever else, but we weren't part of</p> <p>21 this, and -- and, you know, clearly weren't partaking in</p> <p>22 any of the conspiracy theories. And -- and at the same</p> <p>23 time the county is defending their practices vigilantly, as</p> <p>24 you were well aware because you worked with them to help</p> <p>25 defend it. And -- and we're happy for counties doing that.</p>

1 But, no, we -- we're focused on trying to do the
2 best we can. We handled the allegations by -- by these
3 wingnuts the best we could?
4 Q. Which wingnuts?
5 A. I -- I should not have said that under oath. If I
6 could amend my testimony, that would be great. I -- the
7 ones that -- the ones that take that type of a situation
8 and believe that all of a sudden we should count by every
9 paper ballot and throw the whole -- I mean, come on. We've
10 got a good system, but we continue to make improvements.
11 And the reason we've got a good system is because we've
12 continued to make improvements from the beginning. So,
13 yeah, it's -- it's hard for me when we want to practically
14 work on our job on a day-to-day basis when we're having to
15 respond to a bazillion FOIAs and a bazillion -- I mean,
16 just as Secretary Jacobsen said in the quote, we work
17 every, single day toward safe, secure, and accessible
18 elections. With a servant's heart.
19 Q. With a servant's heart. And you've used that
20 phrase a number of times today.
21 A. Yeah. That's actually maybe me using it is why
22 they used it yesterday or whenever they responded to this.
23 That was not coordinated or something that's -- that's part
24 of it, but it's something that we try to remind ourselves
25 at all times. We are -- when I walk in there every day I

1 identification away. And, you know, it's really simple to
2 have this list of government documents, and at the same
3 time say, you know, name and photo and -- and government
4 document that has name and address. It's -- it's similar
5 to what someone experiences when they identify themselves
6 when they get a library card, you know.
7 Q. When you referenced government identification were
8 you referencing government photo identification?
9 A. I was referencing some of the options in
10 primary -- yeah. So you've got your passport park card and
11 your passport. You've got your drivers license. You've
12 got your state ID card. You've got a lot of different
13 options there. Concealed carry permit now look just like a
14 drivers license.
15 Q. Is the student identification issued by a college
16 or university in the Montana University System a government
17 identification?
18 A. Now, I don't know whether that's the case,
19 Mr. Gordon, because, you know, I think that Carroll might
20 be part of that. That's obviously a private institution,
21 and I'm not sure. But I can say that -- that, you know,
22 let's take the drivers license, state ID card, those --
23 there's residency in there. The passport card, there's a
24 residency component there. That's a good thing. Concealed
25 carry permit, there's a residency thing there.

1 serve my neighbors, I serve my brother and sisters and my
2 cousins. I serve Mr. Meloy. I serve -- I serve these two
3 folks over here. This is not a partisan operation. I work
4 in an election office. It has been hell and not the job
5 that I expected, but I'm not going to quit. And I try
6 really hard at my job.
7 Q. What does Secretary Jacobsen contend are the state
8 interests served by SB169?
9 A. And I think that we've -- we've outlined that
10 pretty well in discovery.
11 Q. And respectfully, Mr. James, whether or not you
12 outlined it well in discovery, I'm asking you as the
13 representative of the Secretary of State's office today.
14 A. Okay. I'll try to give you as many as I can for
15 Senate Bill 169. I mean, I believe that it creates a good
16 perception of that someone is who they say they are. I
17 think identification is important. It's also great because
18 it's -- they're government identifications, and the
19 authenticity of that is supported by the governmental
20 backing. They're connected to systems most often. Have
21 greater residency likelihood. There's a lots of failsafes
22 that are -- that are provided for, but at the same time
23 providing a lot of -- of options to vote, and it reduces
24 the amount of confusion for various things such as the
25 current and valid. It takes a great obstacle for tribal

1 I think the legislature made good choices. And
2 certainly, like, you know, rather than spend a million
3 dollars on a lawsuit, it would be a great idea to come up
4 with a bill that had Montana University System as included
5 as a potential option that we could start looking at for
6 the next legislative cycle. I mean, there's policy
7 considerations that we can have here, but I do think that
8 Senate Bill 169 achieves a lot of state interests and
9 achieves a good policy goal.
10 Q. How much money has the Secretary of State's office
11 spent on this lawsuit to date?
12 A. I have no idea. I mean, I know -- I know that the
13 amount of people in this room probably made more money this
14 week sitting with me than I'll make in a month.
15 Q. So you don't have any idea?
16 A. No. No.
17 Q. Okay. How much appropriated for this lawsuit?
18 A. I think they gave -- they gave some amount, but, I
19 mean, obviously there were an enterprise funds, so, you
20 know, there's some appropriation. But I don't remember
21 exactly what it is.
22 Q. Has the Secretary of State's office spent more
23 than \$100,000 on this litigation to date?
24 A. I don't -- I don't -- was it in the things in
25 needed to be prepared for how much we spent? I don't -- I

<p>Page 292</p> <p>1 didn't look into that. I -- I'm sorry. 2 Q. Are schools in the -- I'm going to ask you again. 3 Let's go back to the Montana University System. 4 Do you understand what the Montana University 5 System is? 6 A. As far as I know it's the MUS, Montana University 7 System. It's those schools that are within Montana. Like 8 I said, I'm not sure whether it includes private or not. I 9 think it would be kind of confusing to say some college IDs 10 are accepted, some not. I mean, obviously there's also 11 other components to it, you know, that maybe have to be 12 figured out in that policy choice. I'm not a Michigan 13 resident, but I've still got my Michigan State card, you 14 know. There's -- there's -- this is a policy choice that 15 we're discussing. 16 Q. Are drivers licenses issued by states other than 17 Montana government identification cards? 18 A. Well, states other -- I mean, as far as I know. 19 Yeah, they'd be another government. 20 Q. So my understanding is that the Montana University 21 System does not include private colleges like Carroll 22 College. 23 So based that assumption are the schools in 24 Montana University System part of the Montana state 25 government?</p>	<p>Page 294</p> <p>1 Q. The schools in the Montana University System are 2 subject to the Montana public records laws. 3 A. I mean, I've never worked in a school. 4 Q. Are you aware of any evidence that Montana 5 University System student identifications are any less 6 secure than Montana concealed carry permits? 7 MR. MCINTOSH: I'm sorry. Can you read that back? 8 (Record read.) 9 MR. MCINTOSH: Foundation. Speculation. 10 Go ahead. 11 THE DEPONENT: I'm not sure -- 12 MR. MCINTOSH: And -- sorry. I apologize. I 13 think that's beyond the scope. 14 THE DEPONENT: I'm not sure what you mean by 15 secure, but I do know that if we're talking about secure 16 elections, which seems to be what you're asking about, 17 residency seems to be a certain important thing. I know 18 that a concealed carry permit, a person has to be a 19 resident, prove it, for a year. I know that I've still got 20 a Michigan State card and I've never been a resident of 21 Michigan. So to the extent that that applies to the 22 security of elections, then I think there's your answer. 23 Q. (By Mr. Gordon) The concealed carry permits were 24 added to the list of primary forms of identification by 25 SB169; correct?</p>
<p>Page 293</p> <p>1 A. Like I said, I don't -- I don't know the 2 parameters of the Montana University System. But again, it 3 wasn't just -- that just because it's government makes it 4 somehow different. That would be completely misconstruing 5 what I said earlier. So that one factor alone doesn't 6 mean -- isn't the only reason why Senate Bill 169 is good. 7 It's all the other reasons that I've testified to over the 8 last three days. 9 Q. And I'm going to move to strike as nonresponsive. 10 Again, I'm just asking you a simple question about 11 the Montana University System -- 12 A. And I don't know, Mr. Gordon. 13 Q. Okay. Do you know that -- are you aware that the 14 Montana University System is governed by a Board of Regents 15 pursuant to statute? 16 MR. MCINTOSH: Objection; counsel is testifying. 17 THE DEPONENT: I know that there's a Board of 18 Regents because when I was on ASUM we had a student regent, 19 but that's the extent of what I know. 20 Q. (By Mr. Gordon) Do you know whether schools in the 21 Montana University System are subject to public records 22 law? 23 A. I'm -- what -- you're going to have to clarify 24 that one for me, Mr. Gordon. The regents are subject to 25 public record law? Is that what you're asking?</p>	<p>Page 295</p> <p>1 A. Yes. The amended in. Uh-huh. 2 Q. Were any other forms of ID besides concealed carry 3 permits added to the list of primary IDs by 169? 4 A. I want to say passport cards, you know, because 5 those two things were really emerging. And if you're from 6 Montana you know that around January, that time last 7 year -- well, I guess there's been several months over the 8 last 10 years where the Real ID, where we're about to not 9 be able to get on a plane with our Montana drivers license. 10 And so people getting that official aspect so they can get 11 on plane, when they would go to do that, they would just 12 say, well, I'd rather have the passport license. And so it 13 was a hugely increased popularity thing. And same thing 14 with the concealed carry permit. I mean, during the -- 15 during -- I host a fraternity retreat at my -- my parent's 16 place every year, and those kids were getting concealed 17 carry permits like crazy. And my mom got one too. I 18 didn't, but at the time they could do it online for the 19 first time. So there's a huge boom in those types of IDs. 20 They've got to be residency. Those are something that was 21 added in, and I guess -- I suppose the legislate choice 22 makes sense to me. 23 Q. Is the Secretary of State aware of any instances 24 of voter fraud involving the use of a student ID to vote? 25 A. That's kind of an impossible question because,</p>

1 like, the ID that's used to vote, if it was -- well, I
2 guess drivers license or Social Security Number, those
3 things are in the system. But when someone uses a name and
4 photo ID, which is what you're referencing -- a student ID
5 is just one of that category, as we talked about earlier --
6 it's not something that's -- so I don't know about a Costco
7 card, I don't know about a ski pass, I don't know about an
8 elementary ID or a student ID --
9 (Court reporter clarification.)
10 **THE DEPONENT:** I just do know that the -- that the
11 current law seems to make -- make -- make security more
12 likely than less. That's for sure. While at the same time
13 keeping things accessible.
14 Q. (By Mr. Gordon) Move to strike as nonresponsive.
15 And, again, Mr. James, my question is just a
16 simple one. Is the Secretary of State aware of any
17 instances of voter fraud involving the use of a student ID
18 to vote?
19 **MR. MCINTOSH:** Objection; asked and answered.
20 Go ahead.
21 **THE DEPONENT:** Like I said, as far as IDs with a
22 name and photo, which would include a Costco card, a
23 student ID, and elementary card, all those different types
24 of things, they're not logged in system. So if someone --
25 say they did use that to register to vote fraudulently, and

1 they were -- they were caught fraudulently voting, we would
2 have no idea what ID they used. So, I mean, it's -- you're
3 asking me for a question that's impossible to answer to try
4 to create an outcome that's wrong.
5 Q. I'm just asking a simple factual question, and let
6 me ask --
7 **MR. MCINTOSH:** It's 6:00.
8 **MR. GORDON:** Do we need to -- can I ask on
9 followup question?
10 **THE COURT REPORTER:** You can ask one question.
11 **MR. GORDON:** I promise.
12 Q. (By Mr. Gordon) Same question with respect to
13 out-of-state drivers licenses.
14 Is the Secretary of State aware of any instances
15 of voter fraud involving the use of an out-of-state drivers
16 license to vote?
17 A. We -- I mean, we very well could be. I -- I don't
18 know of a specific example off the top of my head. I'm
19 trying to think of whether -- whether the out-of-state
20 drivers license number is logged. I think some of this
21 might get answered if we look at, like, an Eric* system or
22 something. But I think what we're trying to do is take the
23 most information that we have and put together a law that
24 makes sense, has a lot of failsafes, and at the same time,
25 does a good job.

1 **MR. GORDON:** Thank you, Mr. James. We're going to
2 pause here pursuant to the further discussion. And, as
3 indicated, plaintiffs intend to hold the deposition open
4 and will confer with defense counsel about when to resume
5 and the parameters for that.
6 **MR. MCINTOSH:** John, could you please let us know
7 while we're on the record just how many minutes we've been
8 on the record.
9 **THE VIDEOGRAPHER:** Add on the 30 minutes here, so
10 we're about 400.
11 **MR. MCINTOSH:** Okay. Well, we will certainly give
12 you at least another 20 minutes and then we can confer
13 about anything additional.
14 **MR. GORDON:** Okay. Well, as you know,
15 Mr. McIntosh, we -- we will seek to have more than
16 20 minutes, and that's been our consistent position. We're
17 happy to discuss that with you.
18 **MR. MCINTOSH:** Yeah. Let us know how much time
19 you need, and we'll consider your position.
20 **MR. GORDON:** Thank you. Off the record.
21 **THE VIDEOGRAPHER:** The time is 6:02. Going off
22 the record.
23 (Deposition suspended at 6:02 p.m.)
24 (Signature reserved.)
25 -----

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EXHIBIT C

From: Gordon, Matthew P. (SEA)
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Subject: Conferral follow-up

Len,

Thanks for taking the time to chat today. Further to our conversation about the Secretary's deposition, see below. Please let me know your position and whether we should seek the Court's input on the matter.

Also, we discussed trying to sort out before the James deposition the issue of privilege waiver regarding the subjects of his declarations. It might also be productive to attempt sort out another issue that we touched on briefly today—the time the plaintiffs have to depose the witnesses. Our position, as previously communicated to Dale, is that the plaintiffs do not by virtue of consolidation lose their individual right to each take a 7-hour deposition. This is consistent with the rules on consolidation, which make clear that consolidated parties retain the same rights they'd have in a non-consolidated case. While none of the depositions to date has exceeded 7 hours, it seems possible that the SOS 30(b)(6) could exceed that. While we're not looking to spend 7 hours each on that deposition, we're also reserving the right to go beyond seven hours collectively if necessary. Again, I think it'd be useful to address this issue before the 26th to see whether we can sort it out. Please let us know what you think.

Regarding the Secretary's personal deposition. We understand that the Secretary is a busy public official, and we don't intend to take any more of her time than is necessary. But Secretary Jacobsen has personal knowledge of matters directly at issue in this case that we cannot obtain information on from any other witness or by other methods of discovery, and she has repeatedly made statements, including from her personal social media account, about issues in this case.

Secretary Jacobsen was personally involved in the legislative process for SB 169 and HB 176. According to [her own press release](#), she requested those bills. And we know from deposition testimony that her office was involved in pushing for their adoption. Whether the burdens imposed by the bills are justified by a compelling state interest and whether the bills are narrowly tailored to achieving that interest are at issue in this case, and, given the Secretary's personal involvement in the legislative process, we must be able to ask about her intent in requesting the laws and the bases for that intent, as well as her personal communications with legislators and other stakeholders. See *League of Women Voters of Fla. v. Lee*, Case No.: 4:21cv186-MW/MAF, 2021 WL 4962109, at *3 (N.D. Fla. Oct. 19, 2021) (holding plaintiffs could depose Supervisor of Elections regarding communications with legislators and lobbyists about challenged legislation and her "involvement in and influence over" the challenged legislation as it "moved through the legislative process").

Likewise, the Secretary has repeatedly asserted that Montanans are concerned about the integrity of elections, that the challenged laws contribute to that concern, and that eliminating EDR eliminates administrative burdens for election officials. Whether these statements are true—and the Secretary's basis for making these assertions—are at issue here. And in response to interrogatories aimed at uncovering the bases for these statements, the Secretary has made vague and general assertions about conversations she has personally had with or her personal awareness of complaints made by numerous Montanans, legislators, and election administrators, as well as her own personal awareness of "difficulties" in conducting EDR.

When pressed for more details, the Secretary provided none. Instead, she stated that, while she “has had numerous responsive conversations with Montanans, . . . she does not keep detailed records of those conversations sufficient to allow her to provide” further information about these conversations, and she therefore objects that the interrogatories are overly broad and unduly burdensome. She has yet to provide any further detail about the communications referenced in other interrogatories. Because these conversations and the Secretary’s personal knowledge are apparently being used to support the Secretary’s defense as to key elements of Plaintiffs’ claims, it is essential that Plaintiffs have an opportunity to ask her about these conversations.

The Secretary has also made public statements about the integrity of Montana’s elections and how well they are run—both of which implicate the state interests the Secretary alleges are served by the challenged laws. Her more recent public statements, which we’ve previously discussed, also touch on issues in this case, including the merits of the case and the bases for the Secretary’s motion for stay.

The Secretary has made assertions about conversations that *she herself* has had, concerns that have been reported to her, and her own *personal awareness* of various facts, as well as personal statements about the laws and practices at issue and Montana’s elections. Other people cannot testify to what the Secretary personally knows or the bases for her personal statements. *Greater Birmingham Ministries v. Merrill*, 321 F.R.D. 406, 412 (N.D. Ala. 2017) (holding that plaintiffs could depose Secretary of State about his communications with legislators and his statements regarding Alabama’s election laws, election integrity, and the purpose behind the challenged laws because if the statements were without a factual basis, that would be evidence that the laws were passed for pretextual purposes); *see also Nw. University v. City of Evanston*, No. 00 C 7309, 2001 WL 743756, at *2 (N.D. Ill. June 29, 2001) (where Mayor’s veto message said she did not want “to support a continuation of this animosity by signing an ordinance agreeable to some residents and much opposed by others,” deposition was only way to determine whether the basis for that statement was conversations with City’s aldermen about their reasons for passing ordinance).

Plaintiffs have no way to obtain information about the bases for the Secretary’s statements or the conversations and communications she has had about the challenged laws other than deposing Secretary Jacobsen. The Secretary’s 30(b)(6) designee cannot speak to the conversations the Secretary has personally been a part of or what the Secretary personally knows and how she knows it. Plaintiffs have attempted to use written discovery to obtain some of this information where possible, but written discovery is not a substitute, and in any event the Secretary has refused to provide the requested detail. “[W]ritten testimonies may not allow for the same in-depth probing that deposition testimony and examination can provide[.]” *Byrd v. District of Columbia*, 259 F.R.D. 1, 8 (D.D.C. 2009), and a deposition allows Plaintiffs to “attempt[] to refresh [the Secretary’s] memory” about her conversations and statements. *Payne v. District of Columbia*, 859 F. Supp. 2d 125, 136 (D.D.C. 2012).

We do not wish to take more of the Secretary’s time than is necessary, and to that end we are happy to talk about how to circumscribe the deposition.

Thanks,
Matt

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)

Plaintiffs,)

Cause No. DV 21-0451

Western Native Voice, Montana Native Vote,)
Blackfeet Nation, Confederated Salish and)
Kootenai Tribes, Fort Belknap Indian)
Community, and Northern Cheyenne Tribe,)

Plaintiffs,)

Hon. Michael Moses

**NOTICE OF DEPOSITION OF
CHRISTI JACOBSEN**

Montana Youth Action, Forward Montana)
Foundation, and Montana Public Interest)
Research Group,)

Plaintiffs,)

v.)

CHRISTI JACOBSEN, in her official)
capacity as Montana Secretary of State,)

Defendant.)

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30, Plaintiffs Montana Democratic Party and Mitch Bohn will take the deposition of Christi Jacobsen at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be conducted in person and recorded via stenographic and videographic means. The deposition will continue until completed.

Person to be examined:	Christi Jacobsen
Date and time of deposition:	May 25, 2022 9:00 a.m. MDT
Place of deposition:	Meloy Law Firm 2601 E Broadway Steet, Helena, MT 59601

DATED THIS 19th day of May, 2022.

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CERTIFICATE OF SERVICE

I, Matthew P. Gordon, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

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DATED: May 19, 2022

/s/ Matthew P. Gordon
Matthew P. Gordon

EXHIBIT E

From: Gordon, Matthew P. (SEA) <MGordon@perkinscoie.com>

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Cc: Rylee Sommers-Flanagan <ryleesf@gmail.com>; Alex Rate <ratea@aclumontana.org>

Subject: RE: Conferral follow-up

This message was received from an external email account. Please use caution when opening messages, attachments or external links from unknown senders.

Len,

Following up on our conversation last week:

- We can do the MDP 30b6 deposition during the June 15-17 timeframe. As discussed, I'm hopeful that for efficiency we can coordinate that deposition with the Secretary's. To that end, were you able to determine if she is available one of those days? As the SOS 30(b)(6) deposition did not obviate the need to take her deposition, we'd like to move ahead with scheduling.
- Regarding the PHV motions I mentioned, can you please let me know your client's position?

Thanks,
Matt

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)	
)	
Plaintiffs,	)	Cause No. DV 21-0451
)	
Western Native Voice, Montana Native Vote,	)	Hon. Michael Moses
Blackfeet Nation, Confederated Salish and)	
Kootenai Tribes, Fort Belknap Indian)	
Community, and Northern Cheyenne Tribe,)	
	)	WESTERN NATIVE VOICE
Plaintiffs,	)	PLAINTIFFS' NOTICE OF
	)	DEPOSITION OF CHRISTI
	)	JACOBSEN
Montana Youth Action, Forward Montana)	
Foundation, and Montana Public Interest)	
Research Group,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CHRISTI JACOBSEN, in her official)	
capacity as Montana Secretary of State,)	
)	
Defendant.)	
)	

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30(b), Plaintiffs Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe will take the deposition of Christi Jacobsen at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be recorded via stenographic means and will be video recorded. The deposition will continue until completed.

Person to be examined: Christi Jacobsen

Date and time of deposition: June 10, 2022 at 9:00 a.m. until
conclusion (or at an alternate date)

and time to be negotiated by the parties)

Place of deposition:

Helena, MT, and by remote means via Zoom

DATED THIS 27 day of May, 2022.

Jacqueline De León*
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302-6296
(303) 447-8760
jdeleon@narf.org

Samantha Kelty*
NATIVE AMERICAN RIGHTS FUND
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Theresa J. Lee*
ELECTION LAW CLINIC, HARVARD LAW SCHOOL
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/s/ Alex Rate
Alex Rate (MT Bar No. 11226)
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Alora Thomas-Lundborg*
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athomas@aclu.org
dale.ho@aclu.org
*admitted *pro hac vice*

Attorneys for Western Native Voice Plaintiffs

CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

David M.S. Dewhirst
Solicitor General
Office of the Attorney General
State of Montana
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Dale Schowengerdt
Len Smith
Ian McIntosh
William "Mac" Morris
CROWLEY FLECK, PLLP
900 North Last Chance Gulch, Suite 200
Helena, MT 59601
P.O. Box 797
Helena, MT 59624-0797

DATED: May 27, 2022

/s/ Alex Rate
Alex Rate

EXHIBIT G

RYLEE SOMMERS-FLANAGAN
Upper Seven Law
P.O. Box 31
Helena, MT 59624
Phone: (406) 396-3373
Email: rylee@uppersevenlaw.com

RYAN AIKIN
Aikin Law Office, PLLC
P.O. Box 7277
Missoula, MT 59807
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Email: ryan@aikinlawoffice.com

Attorneys for Plaintiffs

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

<p>Montana Democratic Party, Mitch Bohn,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Cause No. DV 21-0451 Hon. Michael Moses</p> <p style="text-align: center;">YOUTH PLAINTIFFS' NOTICE OF DEPOSITION OF CHRISTI JACOBSEN</p>
---	---

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30(b), Plaintiffs Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group ("MontPIRG") will take the deposition of Christi Jacobsen at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be recorded via stenographic means and will be video recorded. The deposition will continue until completed.

Person to be examined:	Christi Jacobsen
Date and time of deposition:	June 10, 2022 at 9:00 a.m. until conclusion (or at an alternate date and time to be negotiated by the parties)
Place of deposition:	Helena, MT, and by remote means via Zoom

DATED THIS 27th day of May, 2022.

/s/ Rylee Sommers-Flanagan

Rylee Sommers-Flanagan
Upper Seven Law

Ryan Aikin
Aikin Law Office, PLLC

Attorneys for Youth Plaintiffs

CERTIFICATE OF SERVICE

I, Rylee Sommers-Flanagan, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

David M.S. Dewhirst
Solicitor General
Office of the Attorney General
State of Montana
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Dale Schowengerdt
Len Smith
Ian McIntosh
William "Mac" Morris
CROWLEY FLECK, PLLP
900 North Last Chance Gulch,
Suite 200
Helena, MT 59601
P.O. Box 797
Helena, MT 59624-0797

Dated: May 27, 2022

/s/ Rylee Sommers-Flanagan

Rylee Sommers-Flanagan

EXHIBIT H

From: Ian McIntosh <imcintosh@crowleyfleck.com>

Sent: Monday, May 30, 2022 9:21 AM

To: Alex Rate <ratea@aclumontana.org>; Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>; Mac Morris <wmorris@crowleyfleck.com>; Dale Schowengerdt <dschowengerdt@crowleyfleck.com>; David F. Knobel <dknobel@crowleyfleck.com>; david.dewhirst@mt.gov <david.dewhirst@mt.gov>; Len Smith <lsmith@crowleyfleck.com>

Cc: Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Lee, Theresa J. <thlee@law.harvard.edu>; Ryan Aikin <ryan@aikinlawoffice.com>; Jacob Linfesty <jacob@uppersevenlaw.com>

Subject: RE: Cause No. DV 21-0451: Notice of Jacobsen Deposition

Alex –

So that we may consider your request to depose the SOS, please let us know if all of Plaintiffs' reasons supporting the request to depose Secretary Jacobsen are contained within Matt's email to Len on 5/17/22, sent at 4:47 pm. If there are other reasons Plaintiffs contend they are entitled to depose the SOS, please let us know.

We will evaluate Plaintiffs' request and get back to you as soon as we can.

Thanks.

IAN MCINTOSH

1915 South 19th Avenue

Bozeman, MT 59718

Main: 406.556.1430 | Fax: 406.556.1433

Direct: 406.522.4521

CROWLEY | FLECK PLLP
ATTORNEYS

WITH OFFICES IN MONTANA, NORTH DAKOTA, AND WYOMING:

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

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EXHIBIT I

From: Alex Rate <ratea@aclumontana.org>

Sent: Tuesday, May 31, 2022 1:05 PM

To: Ian McIntosh <imcintosh@crowleyfleck.com>; Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>; Mac Morris <wmorris@crowleyfleck.com>; Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; David F. Knobel <dknobel@crowleyfleck.com>; david.dewhirst@mt.gov; Len Smith <lsmith@crowleyfleck.com>

Cc: Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Lee, Theresa J. <thlee@law.harvard.edu>; Ryan Aikin <ryan@aikinlawoffice.com>; Jacob Linfesty <jacob@uppersevenlaw.com>

Subject: Re: Cause No. DV 21-0451: Notice of Jacobsen Deposition

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Ian - in addition to the justifications offered by Matt Gordon in the 5/17 email to Len, in the wake of last week's depositions it has become abundantly clear that we will need to depose Secretary Jacobsen. Those reasons include:

1. The repeated assertions of privilege and standing objection on that basis during Mr. James' deposition.
2. Mr. James' evasive and nonresponsive answers to deposition questions.
3. The Secretary's use of email as a form of communication within her office, and her failure to produce responsive emails.
4. Mr. James' refusal to specifically answer questions about what the Secretary did or did not do to implement the challenged laws.
5. The bases behind the Secretary's blanket denials of the RFA's propounded by MDP.
6. Mr. James' evasive answers in response to questions about the Secretary sending and receiving work-related text messages.

I would also note that during the colloquy with Judge Moses during Mr. James' personal deposition it was clear that the Court was expecting that the Secretary would be deposed.

For all of these reasons (as well as the reasons set forth in the 5/27 email to Len) we intend to proceed with Secretary Jacobsen's deposition. The original notice identified June 10 as the date for her deposition, but we are open to finding an alternate time. For example, I know that Matt and Len were discussing June 15-17 for the rescheduled MDP deposition.

If the Secretary will not be produced for a deposition I expect that you will need to file a Motion for a Protective Order. Please let me know if you disagree.

Finally, you should expect an email in the next couple days from Matt and Rylee regarding the continuation of the 30(b)(6) deposition.

Let me know if you have any questions, and I hope you had a good weekend.

Alex Rate | Legal Director

(pronouns he/him)

ACLU of Montana

P.O. Box 1968, Missoula, MT 59806

Office: 406-224-1447

ratea@aclumontana.org

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<https://twitter.com/ACLUMT>

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EXHIBIT J

From: Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>

Sent: Tuesday, May 31, 2022 5:10 PM

To: Alex Rate <ratea@aclumontana.org>

Cc: Ian McIntosh <imcintosh@crowleyfleck.com>; Mac Morris <wmorris@crowleyfleck.com>; Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; David F. Knobel <dknobel@crowleyfleck.com>; david.dewhirst@mt.gov; Len Smith <lsmith@crowleyfleck.com>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Lee, Theresa J. <thlee@law.harvard.edu>; Ryan Aikin <ryan@aikinlawoffice.com>; Jacob Linfesty <jacob@uppersevenlaw.com>

Subject: Re: Cause No. DV 21-0451: Notice of Jacobsen Deposition

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Hi all,

The reasons that Matt and Alex have outlined are, I believe, sufficient, but I am following up to be clear both that I agree with those reasons and express the same but independent need to depose Secretary Jacobsen. I don't see a reason to reiterate each point, but because Youth Plaintiffs are a separate party from MDP and from WNV, I wanted to be clear that we have separately and independently noticed the Secretary.

Many thanks,
Rylee

Rylee Sommers-Flanagan
she/her/hers
Founder & Executive Director
Upper Seven Law
406-396-3373
rylee@uppersevenlaw.com

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EXHIBIT K

From: Mac Morris <wmorris@crowleyfleck.com>

Sent: Tuesday, May 31, 2022 6:46 PM

To: Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>; Alex Rate <ratea@aclumontana.org>

Cc: Ian McIntosh <imcintosh@crowleyfleck.com>; Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; David F. Knobel <dknobel@crowleyfleck.com>; david.dewhirst@mt.gov; Len Smith <lsmith@crowleyfleck.com>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Lee, Theresa J. <thlee@law.harvard.edu>; Ryan Aikin <ryan@aikinlawoffice.com>; Jacob Linfesty <jacob@uppersevenlaw.com>

Subject: RE: Cause No. DV 21-0451: Notice of Jacobsen Deposition

Rylee, Alex, et al,

I'm following up pursuant to our obligations to meet and confer under Rule 26(c)(1). In particular, I'm writing regarding the six reasons (in addition to those in Mr. Gordon's email which will be addressed by separate email) that WNV and Youth Plaintiffs claim are grounds to take the deposition of Secretary Jacobsen. The reasons offered are unclear and/or appear unrelated to your purported need to take Secretary Jacobsen's deposition. I'll address each of the proffered reason in turn:

1. The repeated assertions of privilege and standing objection on that basis during Mr. James' deposition.

The Secretary's claim of privilege over legal advice Mr. James offered to the office of the Secretary is unrelated to any purported need to take Secretary Jacobsen's deposition. Plaintiffs stipulated to a standing objection to privilege and efforts to protect privileged information from disclosure does not give rise to a need to depose Secretary Jacobsen. Mr. James testified to all non-privileged facts and to the extent any privileged information was withheld Plaintiffs had the opportunity to explore the basis of any privilege. Very few issues of privilege ever came up during the 30b6 deposition. Additionally, the Secretary obviously will not be waiving privilege even if you were to depose Secretary Jacobsen. For these reasons, we fail to see any connection between assertions of privilege, the stipulated standing objection to privilege in Mr. James' deposition, and your purported need to take Secretary Jacobsen's deposition. Please explain why you believe there is any connection.

2. Mr. James' evasive and nonresponsive answers to deposition questions.

Plaintiffs deposed Mr. James for more than 8 hours. Each Plaintiff concluded its questioning by stating it had no further questions, followed by a subsequent statement that it may seek to reopen the deposition on the ground that Mr. James had not produced documents pursuant to Plaintiffs' procedurally improper deposition notices. Even assuming for the sake of argument that any of Mr. James' answers were evasive and nonresponsive, this would not give rise to any right or need to depose Secretary Jacobsen. At most, this would give rise to conduct further questioning of Mr. James, whether in his personal capacity or in a 30b6. Notably, the 30b6 has not yet concluded. In any event, please identify the questions to which you claim Mr. James provided evasive or nonresponsive answers and explain why you believe Secretary Jacobsen should be deposed in order to provide you with further answers to those questions.

3. The Secretary's use of email as a form of communication within her office, and her failure to produce responsive emails.

Mr. James testified that Secretary Jacobsen rarely uses email to communicate for work. The Secretary has produced all responsive emails of which it is aware. We do not know what you mean when you claim the Secretary has failed to produce responsive emails. We are unaware of any prior assertion of such deficiency in the Secretary's discovery

responses or production. If you are aware of particular emails that you claim the Secretary should have produced, please identify those emails and the particular discovery request that you claim such emails are responsive to. Please also explain why any of the Secretary's inner-office emails are relevant to the constitutionality of the challenged statutes.

4. Mr. James' refusal to specifically answer questions about what the Secretary did or did not do to implement the challenged laws.

Your memory of the deposition of Mr. James is certainly different than mine. Mr. James provided extensive testimony about the various steps the Secretary took to implement the challenged laws. If there are particular questions you believe Mr. James refused to answer about the steps taken to implement the challenged laws, please identify them. Please also explain why you believe Secretary Jacobsen would be better suited to provide answers to such questions. Also, please explain why such information is relevant to the constitutionality of the challenged statutes.

5. The bases behind the Secretary's blanket denials of the RFA's propounded by MDP.

The bases for the Secretary's denials of the RFA's propounded by MDP are set forth in the Secretary's discovery responses and objections. As explained therein, the requests for admission are, among other things, extremely absolute and overbroad. Plaintiffs have not previously raised any issue with such denials that I am aware of. Additionally, none of the Plaintiffs attempted to question Mr. James or the Secretary through the 30b6 about the requests for admission. Furthermore, questioning Secretary Jacobsen in a deposition about the basis for the Secretary's denials of RFAs would be improper and a waste of time. Unlike interrogatories, answers to requests for admission are not sworn. Questioning any witness about the basis for denials of requests for admission would be waste of time. Please explain why you believe this provides a basis to depose Secretary Jacobsen.

6. Mr. James' evasive answers in response to questions about the Secretary sending and receiving work-related text messages.

Mr. James testified he did not have work-related text messages with Secretary Jacobsen. We are unaware of any text messages sent by or to the Secretary that would be responsive to any discovery requests. If you believe otherwise, please identify the text messages and the particular discovery request(s) that you believe such text messages would be responsive to. Please also explain why you contend the Secretary's text messages would have any relevance to the constitutionality of the challenged statutes.

We look forward to your response to this email as we consider your demand to depose Secretary Jacobsen. Thank you.

MAC MORRIS

1915 South 19th Avenue
Bozeman, MT 59718
Main: 406.556.1430
Direct: 406.522.4536

CROWLEY FLECK
ATTORNEYS

WITH OFFICES IN MONTANA, NORTH DAKOTA, AND WYOMING:

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

EXHIBIT L

From: Alex Rate <ratea@aclumontana.org>

Sent: Friday, June 3, 2022 2:57 PM

To: Mac Morris <wmorris@crowleyfleck.com>; Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>

Cc: Ian McIntosh <imcintosh@crowleyfleck.com>; Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; David F. Knobel <dknobel@crowleyfleck.com>; david.dewhirst@mt.gov; Len Smith <lsmith@crowleyfleck.com>; Gordon, Matthew P. (Perkins Coie) <MGordon@perkinscoie.com>; Lee, Theresa J. <thlee@law.harvard.edu>; Ryan Aikin <ryan@aikinlawoffice.com>; Jacob Linfesty <jacob@uppersevenlaw.com>

Subject: Re: Cause No. DV 21-0451: Notice of Jacobsen Deposition

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Mac - At this point we no longer feel like it is productive to engage in an extended back-and-forth regarding the necessity of taking Secretary Jacobsen's deposition (and indeed, to my knowledge Matt still has yet to receive any response to his original 5/17 email explaining the reasons for taking her deposition). As she is the Defendant in these consolidated cases, we are presumptively entitled to take her deposition. The burden is not on us to identify the reason or reasons why such a deposition is necessary. If your position is that there are no grounds for taking her deposition, then you are certainly within your rights to file a motion for a protective order, in which case it is your burden to articulate those grounds with specificity.

Len emailed today that June 22-24 is open for the Secretary's deposition. Accordingly, we will issue an amended deposition notice for the Secretary shooting for those dates. As always, we are happy to work with you on scheduling.

Don't hesitate to reach out if you have any questions, and have a good weekend.

Alex Rate | Legal Director

(pronouns he/him)

ACLU of Montana

P.O. Box 1968, Missoula, MT 59806

Office: 406-224-1447

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<https://twitter.com/ACLUMT>

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EXHIBIT M

June 3, 2022

Via Email

Matthew Gordon
Perkins Coie LLP
1202 Third Avenue, Ste 4900
Seattle, WA 98101-3099
mgordon@perkinscoie.com

RE: MDP, et al., v. Jacobsen

Matt,

I'm writing pursuant to Mont. R. Civ. P. 26(c)(1) regarding MDP's demand to depose Secretary of State Christi Jacobsen. You recently wrote that MDP's Rule 30(b)(6) deposition of the Secretary of State on May 26, 2022 did "not obviate the need to take her deposition." We note that the deposition was left open pursuant to stipulation and we have only a rough transcript at this point. Please identify the reasons for your assertion that the Rule 30(b)(6) deposition did not obviate MDP's asserted need to take Secretary Jacobsen's deposition.

You have previously indicated that MDP is demanding to take Secretary Jacobsen's deposition because she purportedly "has personal knowledge of matters directly at issue in this case that we cannot obtain information on from any other witness or by other methods of discovery." More specifically, you assert that you need to depose Secretary Jacobsen because "she was personally involved in the legislative process for SB 169 and HB 176." You say this is supported by deposition testimony. Please identify what deposition testimony you believe supports the contention that Secretary Jacobsen was "personally involved in the legislative process for SB 169 and HB 176." We are unaware of any.

That the Secretary of State's office supported SB 169 and HB 176, and the activities of the office in that regard, has been explored exhaustively in depositions of Mr. James and the Rule 30(b)(6) deposition of the Secretary of State. The Secretary of State has also answered discovery concerning the office's support for these bills. All legislative testimony concerning the bills is also a matter of public record. To the extent this information is even relevant, please explain why the discovery already conducted is insufficient to inform MDP about the Secretary's support for and involvement in the legislative process with respect to SB 169 and HB 176.

Additionally, you seem to suggest that the Secretary's "intent" in supporting HB 176 and SB 169—either in her purported personal capacity or in her official capacity as the Secretary of State—is relevant to the constitutionality of the statutes that were ultimately passed and signed into law by the governor. We are unaware of any case law indicating that the Secretary's intent in supporting a bill is relevant to the constitutionality of a statute subsequently voted on and passed by the legislature and signed by the governor. Whether the State has an interest that is advanced by the challenged laws is unrelated to the Secretary's individual or official support for the statutes. While the legislative intent may in certain limited circumstances have some relevance to some aspects of MDP's claims, Secretary Jacobsen lacks foundation to testify as to legislative intent. If you disagree, please identify any case law that supports your position.

You also contend that MDP needs to depose Secretary Jacobsen because the Secretary asserts that Montanans are concerned about the integrity of elections and that the challenged laws may assuage those concerns and ease the administrative burdens on elections officials. You claim that "whether these statements are true—and the basis for making these assertions—are at issue here." There are numerous problems with MDP's position in this regard.

You are correct that it is the Secretary of State's position in this lawsuit that the challenged laws advance legitimate state interests, including voter concerns about election integrity and easing administrative burdens on election officials. But to the extent that any such "statements" have been made by Secretary Jacobsen in her official capacity as Secretary of State, MDP has had ample opportunity to explore these statements in the depositions of Mr. James, the Rule 30(b)(6) deposition of the Secretary of State, and written discovery, and it has done so. To the extent you assert Secretary Jacobsen has personally made such statements, it is not clear what "statements" you are referring to. Please identify them.

Assuming such statements exist, it is unclear what relevance they would have to the constitutionality of the challenged statutes. Ms. Jacobsen's personal opinion about the benefits of the challenged laws is not at issue in this case. The issue is whether the legislature had the authority under the Montana Constitution to pass the laws. *See Rohlf v. Klemenhagen, LLC*, 2009 MT 440, ¶¶ 17-20. The testimony of election administrators, among others, indicates that HB 176 can be expected to ease administrative burdens on election officials. The testimony of the Secretary's experts and the Secretary of State, among others, demonstrates the legitimate state interests served by SB 169.

You also assert that the Secretary "has made assertions about conversations that *she herself* has had, concerns that have been reported *to her*, and her own *personal awareness* of various facts." This is inaccurate. The Secretary has answered discovery requests in this case as a Defendant sued in her official capacity as the Secretary of State. The Secretary's responses to discovery thus encompass the information the office has, which may include concerns of election officials, legislators, or constituents expressed *to the office*. To the extent such communications are relevant to the constitutionality of the statutes, MDP (and the other Plaintiffs) have had the opportunity to explore all such communications in the depositions of Mr. James and the Rule

30(b)(6) deposition of the Secretary. As previously explained, the Secretary has already provided MDP with all the information it has regarding any such communications in written discovery responses. Secretary Jacobsen does not have additional information about these conversations and deposing her is not going to change that, even assuming such information has any real relevance to this case.

The Secretary's public statements about this lawsuit or the challenged laws also provide no basis to depose the Secretary, any more than Mr. Meloy's, Mr. Rate's, Ms. DeLeon's, or Ms. Summers-Flanagan's public statements about this lawsuit and the challenged laws provide a basis to depose them. If making general public statements about the laws or this lawsuit makes Secretary Jacobsen a witness in this case, then many of Plaintiffs' attorneys are likewise witnesses and should withdraw immediately. As I am sure you know, the case law rejects the notion that a high-ranking public official's general public statements about a challenged law (or relevant issue) provides sufficient reason to depose such high-ranking public official. *See e.g. Naylor Farms. v. Anadarko OGC Co.*, 2011 WL 2535067, at *1 (D. Colo. June 27, 2011).

Additionally, we will not be calling Secretary Jacobsen as a witness to testify at the trial of this matter. Secretary Jacobsen has not offered any declarations or affidavits in this case. The office of the Secretary has not relied on any personal views of Secretary Jacobsen to support its contentions and defenses in this case. Secretary Jacobsen is sued in her official capacity because she is the head election official of the State, not because she passed the laws at issue or has some special personal interest in them. In any event, whatever Secretary Jacobsen's personal views may be regarding the challenged laws, she will not be offering such views, or any other testimony, as evidence at trial or at any other stage of this litigation. Thus, there is no reason to depose her about her views.

For these reasons, we request that Plaintiffs withdraw the deposition notice for Secretary Jacobsen. Alternatively, please respond to the above points and provide us with further information as to what relevant, non-repetitive, factual information Plaintiffs believe Secretary Jacobsen has that justify deposing her and that Plaintiffs cannot obtain, or have not already obtained, through less-intrusive means of discovery. Given the short time remaining for addressing this issue, we request you respond no later than Monday at noon, but let us know if you would like to further discuss.

Sincerely,

CROWLEY FLECK PLLP

By /s/ Mac Morris
Mac Morris

CC: All Counsel

EXHIBIT N

From: Gordon, Matthew P. (SEA) <MGordon@perkinscoie.com>

Sent: Tuesday, June 7, 2022 9:16 AM

To: Mac Morris <wmorris@crowleyfleck.com>; Alex Rate <ratea@aclumontana.org>; Rylee Sommers-Flanagan <rylee@uppersevenlaw.com>

Cc: Ian McIntosh <imcintosh@crowleyfleck.com>; Dale Schowengerdt <DSchowengerdt@crowleyfleck.com>; David F. Knobel <dknobel@crowleyfleck.com>; david.dewhirst@mt.gov; Len Smith <lsmith@crowleyfleck.com>; Lee, Theresa J. <thlee@law.harvard.edu>; Ryan Aikin <ryan@aikinlawoffice.com>; Jacob Linfesty <jacob@uppersevenlaw.com>; Alyssa McCrossin <amccrossin@crowleyfleck.com>

Subject: RE: Cause No. DV 21-0451: Notice of Jacobsen Deposition

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Mac,

I inferred from the Monday noon response deadline that a more fulsome response after that time would not be productive. And, substantively, it seems that that further back-and-forth on the topic is unlikely to be useful. From MDP's perspective, we understand that we have the right to take the Secretary's deposition, and although you haven't provided any Montana authority indicating that we needed to do so, we took the time to explain to you why we believed her deposition was particularly necessary in this case, along with authority from other jurisdictions addressing similar situations. You've not provided contrary authority, or any authority indicating that we are precluded from taking her deposition under these circumstances.

So given all that, we intend to proceed with her deposition. But again, I'm happy to discuss the issue further with you if you think it would be productive.

Thanks,
Matt

Matthew Gordon | Perkins Coie LLP

PARTNER

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Attorneys for Plaintiffs Mitch Bohn and MDP

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)

Plaintiffs,)

Cause No. DV 21-0451

Western Native Voice, Montana Native Vote,)

Blackfeet Nation, Confederated Salish and)

Kootenai Tribes, Fort Belknap Indian)

Community, and Northern Cheyenne Tribe,)

Plaintiffs,)

Hon. Michael Moses

**AMENDED NOTICE OF
DEPOSITION OF CHRISTI
JACOBSEN**

Montana Youth Action, Forward Montana)

Foundation, and Montana Public Interest)

Research Group,)

Plaintiffs,)

v.)

CHRISTI JACOBSEN, in her official)

capacity as Montana Secretary of State,)

Defendant.)

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30, Plaintiffs Montana Democratic Party and Mitch Bohn will take the deposition of Christi Jacobsen at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be conducted in person and via Zoom and recorded via stenographic and videographic means. The deposition will continue until completed.

Person to be examined:	Christi Jacobsen
Date and time of deposition:	June 22, 2022 9:00 a.m. MDT
Place of deposition:	Meloy Law Firm 2601 E Broadway Steet, Helena, MT 59601

DATED THIS 9th day of June, 2022.

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DATED: June 9, 2022

/s/ Matthew P. Gordon
Matthew P. Gordon

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

Montana Democratic Party and Mitch Bohn,)	
)	
Plaintiffs,	)	Cause No. DV 21-0451
)	
Western Native Voice, Montana Native Vote,	)	Hon. Michael Moses
Blackfeet Nation, Confederated Salish and)	
Kootenai Tribes, Fort Belknap Indian)	
Community, and Northern Cheyenne Tribe,)	
	)	WESTERN NATIVE VOICE
Plaintiffs,	)	PLAINTIFFS' AMENDED NOTICE
	)	OF DEPOSITION OF CHRISTI
	)	JACOBSEN
Montana Youth Action, Forward Montana)	
Foundation, and Montana Public Interest)	
Research Group,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CHRISTI JACOBSEN, in her official)	
capacity as Montana Secretary of State,)	
)	
Defendant.)	
)	

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30(b), Plaintiffs Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe will take the deposition of Christi Jacobsen at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be recorded via stenographic means and will be video recorded. The deposition will continue until completed.

Person to be examined: Christi Jacobsen

Date and time of deposition: June 22, 2022 at 9:00 a.m. until conclusion

Place of deposition:

Helena, MT, and by remote
means via Zoom

DATED THIS 9th day of June, 2022.

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Attorneys for Western Native Voice Plaintiffs

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I, Alex Rate, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

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DATED: June 9, 2022

/s/ Alex Rate
Alex Rate

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Attorneys for Plaintiffs

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

<p>Montana Democratic Party, Mitch Bohn,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, and Northern Cheyenne Tribe,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p>Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">vs.</p> <p>CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Cause No. DV 21-0451 Hon. Michael Moses</p> <p>YOUTH PLAINTIFFS' AMENDED NOTICE OF DEPOSITION OF CHRISTI JACOBSEN</p>
---	---

TO EACH PARTY AND EACH PARTY'S ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that pursuant to Mont. R. Civ. P. 26 and 30(b), Plaintiffs Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group ("MontPIRG") will take the deposition of Christi Jacobsen at the time and place stated below, before a notary public or other officer authorized by law to administer oaths. The deposition will be recorded via stenographic means and will be video recorded. The deposition will continue until completed.

Person to be examined:	Christi Jacobsen
Date and time of deposition:	June 22, 2022 at 9:00 a.m. until conclusion
Place of deposition:	Helena, MT, and by remote means via Zoom

DATED THIS 9th day of June, 2022.

/s/ Rylee Sommers-Flanagan

Rylee Sommers-Flanagan
Upper Seven Law

Ryan Aikin
Aikin Law Office, PLLC

Attorneys for Youth Plaintiffs

CERTIFICATE OF SERVICE

I, Rylee Sommers-Flanagan, hereby certify on this date a true and accurate copy of the foregoing document was emailed to:

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Office of the Attorney General
State of Montana
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William "Mac" Morris
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Helena, MT 59624-0797

Dated: June 9, 2022

/s/ Rylee Sommers-Flanagan

Rylee Sommers-Flanagan

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*Lead Attorneys for Defendant Christi Jacobsen, in her
official capacity as Montana Secretary of State*

**IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,

Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

Christi Jacobsen, in her official capacity as
Montana Secretary of State,

Defendant.

Consolidated Case No. DV 21-0451

Hon. Michael Moses

**AFFIDAVIT OF SECRETARY OF STATE
CHRISTI JACOBSEN**

STATE OF MONTANA)

: ss.

COUNTY OF LEWIS AND CLARK)

I, Christi Jacobsen, being of lawful age, do swear and affirm as follows:

1. I am the current Secretary of State for the State of Montana. I was elected in 2020 and have served as Secretary of State since being sworn in on January 4, 2021. I have been named as the Defendant in this lawsuit, in my official capacity as Secretary of State.

2. One responsibility of the Secretary of State is to obtain and maintain uniformity in the application, operation, and interpretation of Montana's election laws. This includes the laws that are at issue in this suit, HB 176, SB 169, HB 506, and HB 530.

3. My Office publicly supported the passage of SB 169 and HB 176 during legislative sessions. However, the final form the bills took and the power to enact the laws resided with the Montana's Legislature. Although the Office assisted at various points with proposing language with respect to these bills, I did not draft the bills or proposed language for the bills. I am not a member of the Legislature, and I did not and could not introduce, sponsor, or vote on these bills, or any other bills at issue in this lawsuit.


4. The Office, as state public servants, attempts to remain generally aware of concerns in relation to our duties. As a result, our Office is generally aware of concerns, complaints, and other opinions expressed by legislators, election officials, and voters with respect to the election administration process in Montana, and in the United States generally including with respect to voter ID, ballot collection, absentee ballot distribution to voters not yet eligible to vote, and election day registration. As a candidate for office and in my tenure as Secretary of State, I generally recall that at various points people, including but not limited to legislators, election officials, and voters, have broadly expressed to me a range of concerns with the election administration process, some of which likely touched on voter ID, ballot collection, and election

day registration. I do not, however, recall the details of such communications and my understanding is that my Office does not create or maintain notes or records of such conversations.

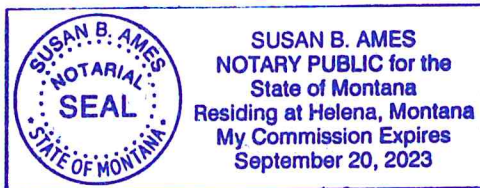
5. I do not intend to testify as a witness at the trial of this matter.

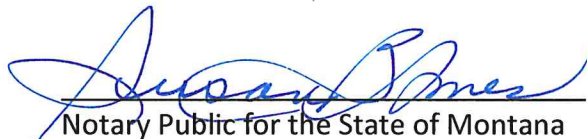
Further your affiant sayeth naught.

Dated this 9th day of June, 2022.


Christi Jacobsen

SUBSCRIBED AND SWORN to before me this 9th day of June, 2022




Notary Public for the State of Montana

CERTIFICATE OF SERVICE

I, Leonard Hudson Smith, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 06-10-2022:

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Fort Belknap Indian Community (Plaintiff)
Service Method: Other Means by Consent

Confederated Salish And Kootenai Tribes (Plaintiff)
Service Method: Other Means by Consent

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Service Method: Other Means by Consent

Electronically signed by Connie Reynolds on behalf of Leonard Hudson Smith
Dated: 06-10-2022