

Alora Thomas-Lundborg*
Jonathan Topaz*
Dale Ho*
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
(212) 519-7866
athomas@aclu.org
jtopaz@aclu.org
dale.ho@aclu.org

Alex Rate (MT Bar No. 11226)
Akilah Lane
ACLU OF MONTANA
P.O. Box 1968
Missoula, MT 59806
406-224-1447
ratea@aclumontana.org
alane@aclumontana.org

Attorneys for Plaintiffs
*admitted *pro hac vice*

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
1514 P Street N.W. (Rear) Suite D
Washington, D.C. 20005
(202) 785-4166
kelty@narf.org

Theresa J. Lee*
ELECTION LAW CLINIC, HARVARD LAW SCHOOL
6 Everett Street, Suite 5112
Cambridge, MA 02138
(617) 998-1010
thlee@law.harvard.edu

**IN THE 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,

v.

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

Defendant.

Consolidated Case No. DV 21-0451

***WESTERN NATIVE VOICE*
PLAINTIFFS' RESPONSE TO
DEFENDANT'S RENEWED
MOTION FOR SUMMARY
JUDGMENT**

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Plaintiffs Western Native Voice (“WNV”), Montana Native Vote (together, “Non-Profit Plaintiffs”), Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Northern Cheyenne Tribe (together, “Tribal Plaintiffs”), (all together, “WNV Plaintiffs”) submit this response to Defendant’s renewed motion for summary judgment.

INTRODUCTION

Once again, Defendant mischaracterizes the facts and distorts the law to ask this Court to grant summary judgment. While limited discovery remains outstanding, the evidence amply demonstrates disputes of material fact that preclude summary judgment in Defendant’s favor.

Defendant’s attempts to relitigate questions of law that have already been definitively resolved by this Court should be rejected. Once again, Defendant argues that Plaintiffs lack standing, that Plaintiffs’ claims related to HB 530 are not ripe, and that Article IV, § 3 permits the legislature to run roughshod over the constitutional right to vote. Those very same arguments were considered, and rejected, by this Court in two separate instances – when Defendant filed a Motion to Dismiss the *Montana Democratic Party* case, and when all Plaintiffs filed their Motions for Preliminary Injunction. That fact that more ink must be spilled on issues that have already been put to bed reflects Defendant’s attempt to divert attention from an evidentiary record remarkably devoid of facts supporting its position.

WNV Plaintiffs, along with the Plaintiffs in the other consolidated cases, have adduced overwhelming evidence that the laws they challenge severely burden the fundamental constitutional rights of Native American voters in Montana. Glaringly, Defendant makes no effort to contend with the extensive factual evidence in the record demonstrating the particular burdens on Native American voters, invoking Native American voters only twice, once in reference to a law the WNV Plaintiffs are not even challenging, Def. Br. 8, and once to mischaracterize the content of a document produced by WNV, *id.* at 44. Contrary to Defendant’s willful blindness, the evidence in the record demonstrates that HB 176 and HB 530 disproportionately and severely burden the rights of Native American voters in Montana, and that these burdens are not justified by any state interest, much less a compelling one. Likewise, there remains virtually no evidence in the record of any *genuine* state interest, and nothing at all to even suggest that HB 176 and HB 530 are tailored to further such interest. At best for Defendant, the evidence establishes genuine disputes about the extent, genuineness, and relevance of the asserted interests.

Nothing in the record suggests any conclusions contrary to those that this Court already found: HB 176 and HB 530 significantly burden WNV Plaintiffs' constitutional rights. Pointing to scant testimony regarding facts wholly unrelated to the burdens of HB 176 and HB 530, Defendant misrepresents the factual record in this case and mischaracterizes the testimony offered by WNV Plaintiffs. Defendant cannot point to a single assertion that alters the record with respect to HB 176 and HB 530, and endeavors to do so by flatly misrepresenting the testimony of one of the tribal witnesses. *See* Plaintiffs' Joint Response to Def.'s Renewed Stmt. of Undisputed Facts ¶ 107. The evidence developed in discovery only provides further support for the conclusion that HB 176 and HB 530 violate Plaintiffs' constitutional rights.

FACTUAL BACKGROUND

By removing relied-upon EDR and by effectively ending organized ballot assistance, HB 176 and HB 530 violate fundamental rights, including the right to vote, equal protection, freedom of speech, and due process. Rural tribal communities across the seven reservations in Montana depend on EDR and ballot assistance, and if these laws operate undisturbed, many Native Americans will be unable to fully participate in Montana's elections.

Native American voters will be disproportionately impacted by HB 176 and HB 530. *Street Aff.* ¶¶ 4, 6 (and accompanying report ¶¶ 21-22) (Dkt. 44); *McCool Rep.* ¶¶ 160, 165 (Dkt. 45). Native American voters face numerous barriers to the voting franchise including poverty, worse educational and health outcomes, less stable housing and higher homelessness rates, lack of internet or residential mail services, and inadequate transportation. *See, e.g., McCool Rep.* ¶¶ 18-46, 67 & tbls.32-33, 83-85. Native Americans living on reservations also have less access to the postal mail, live farther away from polling sites and P.O. boxes, face poor roads, and are less likely to have access to reliable vehicles. *McCool Rep.* ¶ 83; *Weichelt Rep.* ¶¶ 38-42, 52 (Dkt. 46); *Gray Aff.* ¶ 4 (Dkt. 47); *McDonald Aff.* ¶ 4 (Dkt. 49); *Spotted Elk Aff.* ¶ 4 (Dkt. 48); *Horse Aff.* ¶ 17 (Dkt. 50). These barriers make voting more difficult for them, thereby making access to EDR and to the support of ballot collection and conveyance particularly important. These facts are amply supported by the record and go directly to the burdens caused by HB 176 and HB 530 on Native voters in Montana.

Non-Profit Plaintiffs' get-out-the-vote work has been critical to increasing access to the franchise for Native voters. In 2018 and 2020, Non-Profit Plaintiffs hired local community organizers to collect and convey ballots for Native American voters and to drive would-be voters

to the county seat on Election Day for them to register and vote. Horse Aff. ¶ 10; Perez Dep. 60:3-14, 141:2-9, 189:9-11, 191:8-15 (Ex. A)¹. These organizations have been very successful in their work to facilitate Native American voting. Horse Aff. ¶¶ 13-14. In 2018, eighty percent of the voters they contacted voted. *Id.* Across 2018 and 2020, these organizers collected and conveyed hundreds of ballots. *Id.* ¶ 31. Likewise, providing rides to the county seat on Election Day is a key component of Non-Profit Plaintiffs’ and CSKT’s strategy to increase Native American turnout. Members of the Blackfeet Nation particularly rely upon the availability of Election Day registration through the satellite location open on the reservation on Election Day. Gray Aff. ¶ 17. HB 176 and HB 530 impede WNV Plaintiffs’ work and prevent the Native American voters they serve from accessing the ballot. Horse Aff. ¶¶ 31-33; Perez Dep. 250:24-251:18. Other means of voting are insufficient to replace the loss of EDR and these organizations’ ballot collection activities. As a result, many Native American voters will be disenfranchised.

LEGAL STANDARD

Defendant utterly fails to meet her burden as the moving party to “establish[] an absence of genuine issues of material fact,” *BNSF Ry. Co. v. Eddy*, 2020 MT 59, ¶ 7, 399 Mont. 180, 188, 459 P.3d 857, 865, and tries instead to skip directly to the non-moving party’s duty as if she had already met her burden. Def. Br. 1. Here, however, any review of the record reveals substantial issues of material fact. As the party seeking summary judgment, Defendant “bears the burden of initially establishing the *complete absence* of a genuine issue of material fact.” *Prindel v. Ravalli Cnty.*, 2006 MT 62, ¶ 19, 331 Mont. 338, 347, 133 P.3d 165, 173 (emphasis added). To satisfy this burden, Defendant must make a clear showing, using admissible evidence, “as to what the truth is so as to exclude any real doubt as to the existence of any genuine issue of material fact.” *Frazer Educ. Ass’n, MEA/FEA v. Bd. of Trustees, Valley Cnty. Elementary Sch. Dist. No. 2* (1993), 256 Mont. 223, 225, 846 P.2d 267, 269. Defendant simply cannot meet this burden.

In evaluating this motion, “the evidence must be viewed in the light most favorable to the non-moving party, and all reasonable inferences will be drawn therefrom in favor of the party opposing summary judgment.” *Montanans for Equal Application of Initiative Laws v. State ex rel. Johnson*, 2007 MT 75, ¶ 15, 336 Mont. 450, 454, 154 P.3d 1202, 1205 (internal quotation marks and citations omitted); *see 360 Ranch Corp. v. R & D Holding* (1996), 278 Mont. 487, 491, 926

¹ Exhibits cited in this brief that are not already on the docket are attached as Exhibits to the Declaration of Alex Rate, filed contemporaneously with this brief.

P.2d 260, 262 (“[I]f there is any doubt regarding the propriety of the summary judgment motion, it should be denied.”).

Here, even without viewing the evidence in the light most favorable to Plaintiffs and drawing all reasonable inferences in Plaintiffs’ favor, there are genuine disputes of material fact regarding the burdens imposed by HB 176 and HB530 and the interests in them asserted by Defendant. As a result, Defendant’s renewed motion for summary judgment should be denied.

ARGUMENT

I. Plaintiffs have standing.

Defendant is unable or unwilling to contend with long-settled Montana precedent and the law of the case regarding standing. As this Court already explained in both the denial of the motion to dismiss the *Montana Democratic Party* case and in the decision granting Plaintiffs’ preliminary injunctions, under Montana law, “[a]n organization may assert standing either as an entity or by the associational standing of its members. As an entity, an organization may ‘file suit on its own behalf to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the [organization] itself may enjoy.’” *New Hope Lutheran Ministry v. Faith Lutheran Church of Great Falls, Inc.*, 2014 MT 69, ¶ 27, 374 Mont. 229, 236, 328 P.3d 586, 593 (citing and quoting *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 42, 360 Mont. 207, 226, 255 P.3d 80, 95) *overruled on other grounds*, *Warrington v. Great Falls Clinic, LLP*, 2020 MT 174, 400 Mont. 360, 467 P.3d 567. That WNV Plaintiffs are not individuals does not determine whether they have standing.

Rather, the record demonstrates that the Non-Profit Plaintiffs have incurred, and will continue to incur, distinct injuries directly traceable to HB 176 and HB 530, as “[e]conomic harm caused by, or likely to be caused by, an alleged illegality is sufficient to establish standing to assert an otherwise cognizable claim for relief.” *Larson v. State*, 2019 MT 28, ¶ 46, 394 Mont. 167, 201 434 P.3d 241, 263 (citations omitted). The record evidence demonstrates that HB 176 forces WNV to spend additional resources to hire organizers earlier in the election cycle in order to mobilize turnout, Horse Aff. ¶¶ 20-30, and that HB 530 effectively ends their ballot collection and assistance work which is central to their get-out-the-vote work and cannot be replaced by other measures, *id.* ¶¶ 31-35. Defendant offers nothing to contest these facts which clearly support standing under governing precedent.

And continuing in her theme of ignoring the political status of Native Americans in Montana, Defendant altogether fails to address the fact that Tribal Plaintiffs have *parens patriae* standing. As Defendant does not even contest this earlier finding of the Court, it remains law of the case.

As such, the record demonstrates the WNV Plaintiffs have standing, and summary judgment cannot be granted on this ground.

II. The key issues in this case are not purely legal.

In an effort to avoid the obvious conclusion that the factual record is rife with disputed issues that make summary judgment inappropriate, Defendant asserts that the constitutionality of the laws challenged is purely a legal question. Def. Br. 4-5. But that's just not true.

Whether, and the extent to which, HB 176 and HB 530 implicate fundamental constitutional rights is a question of fact, to be decided based on the evidentiary record. *See, e.g., Driscoll v. Stapleton*, 2020 MT 247, ¶¶ 21-22, 401 Mont. 405, 417, 473 P.3d 386, 393 (affirming district court's factual finding that the challenged statute would burden the right to vote and noting that the Defendant-Appellant "fai[ed] to refute the District Court's finding" because he did not address this evidence about the statute's burden); *Montana Env't Info. Ctr. v. Dep't of Env't Quality* ("MEIC"), 1999 MT 248, 296 Mont. 207, 988 P.2d 1236 (relying on evidentiary record to conclude that state action burdened constitutional rights). This is especially true under Defendant's preferred test, *Anderson-Burdick*, "whether an election law imposes a severe burden is an intensely factual inquiry." *Feldman v. Ariz. Sec'y of State's Office*, 843 F.3d 366, 387 (9th Cir. 2016) (internal quotation marks omitted).

In arguing otherwise, Defendant points to cases that do not stand for the propositions on which she insists. Defendant's reliance on *Clark Fork Coal. v. Montana Dep't of Nat. Res. & Conservation*, 2021 MT 44, ¶ 48, 403 Mont. 225, 265, 481 P.3d 198, 218 is misplaced because in that case there was *no* dispute of fact. Instead, "[t]he narrow issues presented [in that case were] purely legal issues of statutory and constitutional construction that [did] not depend upon adjudication of related factual issues." *Id.* ¶ 2. Under those circumstances, where the specific questions were purely legal, the court's conclusion that "[w]hether the challenged statutory provisions substantially interfere[d] with a fundamental right . . . [was] a question of law," *id.* ¶ 48, is hardly surprising. Defendant tries to make this case-specific conclusion into a generally applicable rule by changing to the indefinite article in advance of the quoted language. But any

fair reading of *Clark Fork Coalition* shows it does not stand for the proposition that all constitutional challenges to statutes are pure questions of law susceptible to resolution on summary judgment. Because factual questions underpin the extent to which HB 176 and HB 530 burden Plaintiffs' rights and advance state interests, summary judgment is inappropriate.

And none of the other cases Defendant cites for this proposition hold it is always the case that whether a statute is unconstitutional is purely a question of law. *State v. Hamilton*, 2018 MT 253, ¶ 22, 393 Mont. 102, 110, 428 P.3d 849, 856, considered only a vagueness claim and provides no information about other kinds of constitutional claims. So too, *Comm'r of Pol. Pracs. for State through Mangan v. Wittich*, 2017 MT 210, ¶ 71, 388 Mont. 347, 370, 400 P.3d 735, 752, which addressed whether the constitutionality of an underlying statute, raised as an affirmative defense, should have been submitted to the jury.² *Id.* ¶ 63. Plaintiffs here agree that the constitutionality of the challenged laws are issues for the Court, not a jury, to resolve. It does not follow that issues decided by a court are not factual ones. Finally, the citation to *Crawford v. Marion County Board of Elections* is likewise unavailing, as the Court there explicitly arrived at its holding—under *Anderson-Burdick*, no less—“on the basis of the evidence in the record.” 553 U.S. 181, 200 (2008).

None of the cases Defendant cites alters the fact that factual questions underpin whether HB 176 and HB 530 violate Plaintiffs', and all Montanans', constitutional rights.

III. HB 176 and HB 530 infringe upon Plaintiffs' constitutional rights.

A. Strict scrutiny is the appropriate standard for reviewing both HB 176 and HB 530.

The Montana Supreme Court has repeatedly held that “strict scrutiny [is] used when a statute implicates a fundamental right found in the Montana Constitution’s declaration of rights.” *Driscoll*, ¶ 18; *see also Mont. Cannabis Indus. Ass’n v. State*, 2012 MT 201, ¶ 16, 366 Mont. 224, 229, 286 P.3d 1161, 1165; *Wadsworth v. State* (1996), 275 Mont. 287, 302, 911 P.2d 1165, 1174. Accordingly, this Court has already held that the challenged laws are subject to strict scrutiny review. Findings of Fact, Conclusions of Law and Order Granting Plaintiffs’ Motions for Preliminary Injunction (Dkt. 124). Each of WNV Plaintiffs’ claims specifically assert a violation of rights deemed fundamental under the Montana Constitution: the right to vote, equal protection,

² Defendant’s favorable citation to *Wittich*, of course, makes her Motion for an Advisory Jury even more inexplicable. Defendant simultaneously argues that there are no factual issues to resolve in this case, and yet that there are enough sufficiently important factual issues that a jury must hear them.

freedom of speech, and due process. Defendant's various efforts to shift the standard to either rational basis review or the different federal standard for the right to vote are wholly unavailing.

These legal gymnastics are also telling: under the correct standard, Defendant is unable to demonstrate that she is entitled to summary judgment on any of WNV Plaintiffs' claims. *See State v. Riggs*, 2005 MT 124, ¶ 47, 327 Mont. 196, 206, 113 P.3d 281, 288 ("A right is 'fundamental' under Montana's Constitution if the right . . . is found in the Declaration of Rights"); *MEIC*, ¶ 63 (statutes that implicate fundamental rights "must be strictly scrutinized"); *see also Snetsinger v. Montana Univ. Sys.*, 2004 MT 390, ¶ 17, 325 Mont. 148, 154, 104 P.3d 445, 450 (applying strict scrutiny to determine whether a law that implicated a fundamental right violated equal protection); *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶ 23, 314 Mont. 314, 322, 65 P.3d 576, 581 (applying strict scrutiny to voting restriction after federal courts had already adopted *Anderson-Burdick* test); *Johnson v. Killingsworth* (1995), 271 Mont. 1, 894 P.2d 272 (same).

B. Even if the federal *Anderson-Burdick* standard applied, it requires a fact-specific inquiry and is not the same as rational basis review.

As she has throughout this case, Defendant asks this Court to ignore binding precedent of the Montana Supreme Court and instead apply the federal *Anderson-Burdick* balancing test. This gambit must fail, as binding precedent is clear. Just two years ago, the Montana Supreme Court expressly declined to "set forth a *new* level of scrutiny" by applying the federal *Anderson-Burdick* framework to right to vote claims. *Driscoll*, ¶ 20 (emphasis added). Moreover, even were this Court to apply the federal standard, Defendant is still not entitled to summary judgment.

As a preliminary matter, *Anderson-Burdick* only applies to right to vote claims; even if this court were to find that *Anderson-Burdick* has applicability in Montana, Plaintiffs' other claims still would be examined under strict scrutiny. Second, even as to Plaintiffs' right to vote claim, applying the federal test would not result in a different outcome.

That test "requires strict scrutiny" when, as here, "the burden imposed [by the law] is severe." *Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018). And Defendant appears to be under the misapprehension that, if the challenged laws constitute a burden that is less than severe, rational-basis review applies. Yet, even for less than severe burdens, *Anderson-Burdick* is not a "rational basis test" but rather a "means-end fit framework" that requires more than speculative state concern. *Soltysik v. Padilla*, 910 F.3d 438, 449 (9th Cir. 2018); *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1025 (9th Cir. 2016) (rejecting the notion that *Anderson-Burdick* calls for "rational basis review"); *see also Ohio State Conference of NAACP v. Husted*, 768 F.3d

524, 545 (6th Cir. 2014), *vacated on other grounds*, *Ohio State Conference of NAACP v. Husted*, 2014 WL 10384647 (6th Cir. Oct. 1, 2014) (“*Ohio NAACP*”) (finding even regulations that do not impose “severe” burdens on right to vote still require the state to “articulate specific, rather than abstract state interests, and explain why the particular restriction imposed is *actually necessary*, meaning it actually addresses, the interest put forth.” (emphasis added)). Even a “minimal” burden “must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Ohio NAACP*, 768 F.3d at 538 (citations omitted). Defendant has failed to produce any evidence of even a “legitimate state interest.”

When assessing the severity of the burden on plaintiffs’ right to vote under *Anderson-Burdick*, “courts may consider not only a given law’s impact on the electorate in general, but also its impact on subgroups, for whom the burden, when considered in context, may be more severe.” *Pub. Integrity All.*, 836 F.3d at 1024 n.2. In fact, it is imperative that courts look at the effect on Plaintiffs and the groups they represent because the right to vote is “individual and personal in nature.” *Reynolds v. Sims*, 377 U.S. 533, 561 (1964); *see also Veasey v. Abbott*, 830 F.3d 216, 249 n.40 (5th Cir. 2016) (en banc) (“The right to vote is personal and is not defeated by the fact that 99% of other people can secure the necessary credentials easily.”) (citations omitted). The touchstone of the burden analysis, then, is how significantly the restriction threatens the right to vote for those voters who are harmed.

Here Plaintiffs have proffered sufficient evidence of the severity of the burden on Native American voters to find that the laws cannot pass muster. There is, at minimum, a genuine question of material fact as to the severity of the burdens HB 176 and HB 530 impose on WNV Plaintiffs. The evidence in the record shows that Native voters make disproportionate use of EDR, Street Aff. ¶¶ 4, 6, and that the burdens unique to Native voters make ballot assistance a particularly critical way that they are able to access the franchise, Street Rep. ¶¶ 7-15, 24-33; McCool Rep. ¶¶ 160, 165; Perez Dep. 113:1-16, 142:10-15; Gray Dep. 94:11-19, 96:3-18, 98:15-21, 118:6-119:1 (Ex. B); CSKT Dep. 173:3-5, 173:9-10, 192:19-193:1 (Ex. C); Northern Cheyenne Dep. 23:7-10, 27:3-9, 52:19-23, 55:16-19, 97:1-10, 97:18-98:5 (Ex. D); FBIC Dep. 215:11-216:12 (Ex. E); Horse Aff. ¶¶ 20-21, Gray Aff. ¶¶ 7, 9-10; McDonald Aff. ¶ 6; Spotted Elk Aff. ¶ 12; Weichelt Rep. ¶¶ 16, 23, 29, 51. The severity of these burdens on Native voters calls for the application of strict scrutiny even under the federal test, *see Short*, 893 F.3d at 677—but at a minimum, this analysis requires a close look at the factual record, which precludes summary judgment.

C. Defendant's recourse to Article IV, § 3, does not save HB 176.

Defendant correctly cites Article IV, § 3 of the Montana Constitution, but her analysis flails from there. The Section contemplates that the Legislature “may provide for a system of poll booth registration.” Mont. Const. art. IV, § 3. The Legislature did so when EDR was implemented. That is as far as the plain text takes us. The Constitution does not then contemplate that the Legislature may then revoke that system once it had been provided. There is a significant legal difference between the Legislature’s discretion to institute EDR and its discretion to *eliminate* it after Native Americans in Montana had come to rely on it after 15 years. *See Big Spring v. Jore*, 2005 MT 64, ¶ 18, 326 Mont. 256, 261, 109 P.3d 219, 222 (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”) (quoting *Bush v. Gore*, 531 U.S. 98, 104-05 (2000)); *Harper v. Va. State Bd. of Elec.*, 383 U.S. 663, 665 (1966) (finding that while “the right to vote in state elections is nowhere expressly mentioned . . . once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”)).

As this Court has already definitively held, the State’s authority to regulate elections must be exercised “within constitutional limits.” *Larson*, ¶ 21; *see also Wheat v. Brown*, 2004 MT 33, ¶ 27, 320 Mont. 15, 22-23, 85 P.3d 765, 770 (“the people, through the legislature, have plenary power, except in so far as inhibited by the Constitution”) (internal quotation marks and citations omitted); *State v. Savaria* (1997), 284 Mont. 216, 223, 945 P.2d 24, 29 (The Legislature may only exercise whatever discretion it has “subject . . . to constitutional limitations.”). To the extent the Legislature has discretion related to voter registration, it must exercise that discretion in a way that comports with the fundamental right to vote guaranteed in the state constitution.

Further, the same constitutional provision Defendant relies on here also gives the Legislature the right to regulate absentee ballots, *see* Mont. Const. art. IV, § 3; yet the Supreme Court found that the State could not exercise this right in a way that infringes on the constitutional right to vote. *Driscoll*, ¶ 23 (holding that the State’s regulation of absentee ballot collection “may unconstitutionally burden the right of suffrage, particularly with respect to Native Americans”). Under Defendant’s reading, the Legislature had the same (or greater) discretion to pass the Ballot Interference Prevention Act (“BIPA”) as it did HB 176, *see id.* ¶ 19, but the Supreme Court and two district courts within this district all determined that such legislative discretion could be exercised in ways that violate Montanans’ fundamental rights, *see id.* ¶ 23; *see also* Findings of

Fact, Conclusions of Law, and Order, *Western Native Voice v. Stapleton* (“*WNV I*”), No. DV 20-0377 (Mont. 13th Jud. Dist. Ct. Sept. 25, 2020); Findings of Fact, Conclusions of Law, and Order, *Driscoll v. Stapleton* (“*Driscoll I*”), Cause No. DV 20-408 (Mont. 13th Jud. Dist. Ct. Sept. 25, 2020).

D. Plaintiffs’ challenge to HB 530 is ripe, as Plaintiffs are presently harmed by HB 530.

Defendant incorrectly contends that Plaintiffs’ claims regarding HB 530 are not ripe. Plaintiffs are already injured by HB 530. Plaintiffs’ ballot collection activities require advanced planning, and, prior to the entry of the preliminary injunction, HB 530 itself was already harming Plaintiffs’ work in advance of the 2022 elections. *See* Horse Aff. ¶¶ 32–33; *see also WNV I*, No. DV-0377, ¶ 28.n. The passage of HB 530 caused WNV to stop its ballot collection activity, Perez Dep. 250:24-251:18, which is a critical component of its work. Defendant fails to acknowledge that, before the injunction was issued, HB 530 was already injuring WNV Plaintiffs.

Moreover, even were the Court to ignore the present injury to WNV Plaintiffs, ripeness “asks whether an injury that has not yet happened is sufficiently likely to happen or, instead, is too contingent or remote to support present adjudication.” *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 55, 365 Mont. 92, 117, 278 P.3d 455, 472. It is plain that, absent the injunction preventing enforcement of HB 530, the violative impacts of any administrative rule under HB 530 were highly likely to occur. It is mandatory that the Secretary implement the administrative rule, and the statutory text requires the rule to reach the activity of Plaintiffs, using numerous terms to capture all manner of prohibited activity related to absentee ballot assistance. *See* Horse Aff. ¶¶ 31-34. Testimony from Defendant’s own expert indicates that any rule adopted to implement HB 530 would reach the activities of WNV organizers who collect absentee ballots as part of their paid community organizing work. *See* Gessler Dep. 284:4-285:7 (Ex. F); *see also* Perez Dep. 60:3-14, 189:9-11, 191:8-15. The record reflects not that any effects are “speculative” but that the law itself has already chilled Plaintiffs’ activities. *See* Perez Dep. 250:24-251:18.

IV. HB 176 and HB 530 infringe on Plaintiffs’ fundamental right to vote.

Perhaps no segment of Montana voters is more burdened by HB 176 and HB 530 than Native American voters in rural tribal communities. A panoply of socioeconomic factors—including higher poverty and unemployment rates, worse health outcomes, worse educational outcomes, less internet access, lack of home mail delivery, less stable housing, higher

homelessness rates, and overrepresentation in the criminal justice system—make it more difficult for Native American voters in Montana to cast their ballots. McCool Rpt. ¶¶ 12-54; McDonald Dep. 54:12-23, 55:6-21, 61:6-62:11 (Ex. G); CSKT Dep. 169:21-24; Northern Cheyenne Dep. 59:13-21, 80:8-16; FBIC Dep. 41:20-42:4, 51:22-52:23, 55:18-22, 62:1-65:18, 79:2-5, 81:22-23, 82:12-83:9, 84:9-85:15, 191:3-19; Horse Aff. ¶¶ 20-21; Gray Aff. ¶¶ 7-8; Spotted Elk Aff. ¶ 7; McDonald Aff. ¶ 7. Additionally, Native Americans in Montana are more geographically isolated, less likely to have access to a car or gas money, face poor roads, and are more likely to live farther away from their registration sites than the general population. *See* McDonald Dep. 59:15-60:10, 65:13-19; CSKT Dep. 174:3-12; Spotted Elk Dep. 30:18-31:24, 44:16-19 (Ex. H); FBIC Dep. 71:23-72:3, 73:21-74:8, 90:10-91:6, 184:13-185:25, 187:22-190:21; Gray Dep. 94:7-19, 96:10-18, 98:15-21, 102:10-104:6, 105:2-13, 105:23-106:14, 118:6-119:1; Horse Aff. ¶¶ 20-21, Gray Aff. ¶¶ 7-10; McDonald Aff. ¶ 4; Spotted Elk Aff. ¶¶ 8-9; Weichelt Rpt. ¶¶ 16, 23, 29, 51; McCool Rpt. ¶¶ 19, 34-40, 53, 62-68, 71. Because of these obstacles, Native American voters living on reservations in Montana disproportionately use EDR compared to non-Native voters, Street Aff. ¶ 4, and consequently are burdened more greatly by HB 176. Likewise, the record demonstrates the particular importance of ballot collection services for Native American voters living on reservations in Montana compared to non-Native voters, and thus Native voters will be more greatly burdened by HB 530. *Id.* ¶ 7.

The record evidence shows that HB 176’s elimination of EDR infringes Plaintiffs’ and other Montanans’ fundamental right to vote. Election Day is the day that ensures that the most voters are able to exercise their right to vote, as interest and awareness peaks on that day. Street Rebuttal Rpt. 2 n.4, 6 n.13, 9-10 & tbl.1 (Dkt. 123, Ex. 2). Election Day is the single most popular day for use of late registration: in almost every election since 2006, the number of Montanans who used late registration on Election Day nearly matched the number who registered during the 29 other days of late registration combined. Mayer Rpt. at 10-11, 13 (Dkt. 69, Ex. 35). There are “approximately 23 times as many registrations on Election Day as there were during the average pre-election day under [same-day registration].” Street Rebuttal Rpt. at 8. Additionally, frequent changes in addresses and homelessness require Native Americans to update their registrations. Yet, many Native American voters do not understand that if their address changes they will need to re-register. Horse Aff. ¶ 28. Instead, these voters only find out on Election Day and rely upon EDR to register. *Id.*

Further, because of the challenges particular to voting on-reservation in Montana, it is particularly important for tribes and supporting organizations to have a single date—Election Day—around which to organize. Without EDR, members of Tribal Plaintiffs will have diminished opportunities to vote and advocate on behalf of their members. Gray Aff. ¶ 22; Spotted Elk Aff. ¶ 18. Members of the Blackfeet Nation especially rely upon EDR on the Blackfeet Reservation, where there is generally a satellite location allowing for registration and voting on Election Day. Gray Aff. ¶ 17.

The depressive effects on voter turnout of eliminating EDR are established by decades of political science research and are confirmed by Montanans’ use of EDR. Contrary to Defendant’s claim, research consistently shows that EDR is uniquely effective at increasing voter turnout. Street Rebuttal Rpt. at 5; McCool Rep. ¶ 57 (“The evidence on whether EDR augments the electorate is remarkably clear and consistent. Studies finding positive and significant turnout impacts are too numerous to list.”). And elimination of EDR has already disenfranchised otherwise eligible Montanans, including in the 2022 June primary. *See* Declaration of Elizabeth Fu Wrzesinski ¶¶ 9, 11 (June 23, 2022) (Ex. I); Miller Decl. ¶¶ 14, 21 (Dkt. 59); *see also* Seaman Decl. ¶ 8 (Dkt. 68); Semerad Decl. ¶ 7 (Dkt. 66). For voters such as these, the burden caused by HB 176 could not be more severe: they were wholly disenfranchised. During higher turnout elections, the number of voters disenfranchised by the elimination of EDR will undoubtedly be much higher. *See* McCool Rep. ¶ 60 & tbl.28 (showing 12,055 individuals used EDR in 2016, over 8,000 individuals did in both 2018 and 2020); Street Rpt. ¶¶ 20-23 & fig.1-2.

The evidence further establishes that HB 530 also places a severe burden on WNV Plaintiffs’ right to vote. First, undisputed evidence shows that HB 530 “will disproportionately affect the right of suffrage for . . . Native Americans.” *Driscoll*, ¶ 21. Because Native American voters already face high costs of voting—both in person and by mail—they rely disproportionately on third parties to collect and convey their ballots. Factors that contribute to Native American voters’ reliance on third party ballot collectors include the mail delivery system on reservations, their dependence on P.O. boxes, housing insecurity, decreased access to a vehicle or gas money, poor roads requiring suitable vehicles to traverse, the distance they are required to travel to access voting opportunities, and other socioeconomic factors that exacerbate these other barriers to voting. McCool Rpt. ¶¶ 18-21, 34-30, 53, 67 & tbls.32-33, 74-96, 165; Weichelt Rep. ¶¶ 16, 23, 29, 38-42, 51-52; Horse Aff. ¶¶ 16-17, 21; Gray Aff. ¶¶ 4, 7-10; Spotted Elk Aff. ¶¶ 4,

7-9; McDonald Aff. ¶¶ 4, 7-9; Rate PI Aff. ¶¶ 3-7; Ex. C-G (Dkt. 43); *see also WNV I*, No. DV 20-0377, ¶ 21.k. Because of this daunting set of voter costs, individual Native American voters in rural reservation communities rely more heavily on third parties to collect and convey their ballots than the general population. Western Native Voice collects ballots and delivers unvoted ballots to voters on all seven reservations in Montana. Horse Aff. ¶ 31; Gray Aff. ¶¶ 11-12; McDonald Aff. ¶¶ 12, 15; Spotted Elk Aff. ¶¶ 11-12.

Recognizing these burdens, less than two years ago, two Montana district courts held that a similar restriction on absentee ballot assistance unconstitutionally violated Montanans' fundamental right to vote. *See WNV I*, No. DV 20-0377, at 47, ¶ 14; *Driscoll I*, No. DV 20-0408, at 24, ¶ 8. The facts that informed those decisions have not changed. Thousands of voters have relied on ballot collection in Montana elections, Mayer Rpt. at 10-11, and for many, it made the difference between voting and not voting at all. In *Western Native Voice v. Stapleton*, the court found that restricting ballot collection "disproportionately harms . . . Native Americans in rural tribal communities" because "Native Americans living on reservations rely heavily on ballot collection efforts in order to vote in elections," in large part "due to lack of traditional mailing addresses, irregular mail services, and the geographic isolation and poverty that makes travel difficult" for these Native voters. *WNV I*, No. DV 20-0377, at 48, ¶¶ 18-20. In finding that the ballot collection restriction "infringes on Plaintiffs' fundamental right to vote," *id.* at 47, ¶ 14, the court noted that Native Americans residing on reservations in Montana "still live below the poverty line with limits to health care, government services, mail services and election offices," *id.* at 1. The record here is essentially identical.

To the extent Defendant does not concede the facts amply demonstrating the severe burdens caused by HB 176 and HB 530 on the right to vote, there are at minimum contested issues of material fact that are fatal to Defendant's motion for summary judgment.

V. HB 176 and HB 530 violate Plaintiffs' rights under the Montana Constitution's equal protection guarantee.

The record evidence shows that HB 176 and HB 530 infringe Plaintiffs' and other Montanans' fundamental right to vote. *See supra* Section IV. Likewise, the record reflects that this burden disproportionately falls upon Native American voters, so HB 176 violates Plaintiffs' right to equal protection. *Id.* So too for HB 530. *Id.*

Instead of contending with any of these disproportionate effects, Defendant focuses on the supposed absence of evidence of a clear discriminatory purpose. *See* Def. Br. 31, 50-51. But this is a distraction: when a facially neutral law unconstitutionally burdens a fundamental right, and that burden falls disproportionately on certain segments of the population, a discriminatory motive is not required. *See Snetsinger*, ¶ 17 (noting that, if the alleged differential treatment implicates a fundamental right, the challenged provision can only survive if the state can show that the law is “narrowly tailored to serve a compelling interest”).

Even if Plaintiffs were required to show that HB 176 was enacted in order to burden Montana’s most vulnerable voters, there is at minimum a genuine factual question about the motive for the legislation. The Legislature was aware of the disparate negative burdens of HB 176. *See* Rate PI Aff. ¶ 9, Ex. I, at 17:5-18 (Keaton Sunchild explaining why EDR is so important to Montana’s Native voters, including because they have to overcome long distances to travel and the tradition of voting in person), *id.* at 42:9-19 (Daliyah Killsback explaining that EDR alleviates burdens on Native voters connected to travel costs and distance to polling locations). Despite that knowledge, the Legislature intentionally repealed a critical method for accessing voting relied upon by Native voters. The legislative history thus suggests intentional discrimination against Native voters, and to the extent that Defendant objects to this conclusion, that objection alone precludes summary judgment. *See Prindel*, ¶ 19.

The evidence is even stronger for HB 530, given that a substantially similar law—BIPA—was invalidated less than two years ago on grounds that it violated the constitutional rights of Native Americans. Following the *Western Native Voice* and *Driscoll* litigation in 2020, the Legislature was plainly on notice of the discriminatory impact of HB 530 and other ballot assistance bans. During the legislative session, Representative Tyson Running Wolf explained that Section 2 of HB 530 “effectively ends the legal practice of ballot collection,” which is heavily relied upon by Native American voters in Montana and would result in “en masse” disenfranchisement.³ In his words, “[b]allot collection is a lifeline to democracy for rural and indigenous communities” because of social and economic barriers such as long distances to

³ *See* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/43525?agendaId=223947>; Keila Szpaller, *Election security bill heads to Gov. Gianforte’s desk*, Daily Montanan (Apr. 27, 2021), <https://dailymontanan.com/2021/04/27/election-security-bill-heads-to-gov-gianfortes-desk/>.

election offices and lack of access to transportation in Indian Country.⁴ Moreover, HB 530's immediate predecessor in the 2021 legislative session, HB 406, did not advance in the Legislature following testimony by Plaintiffs' groups and the chief legal counsel for the Office of Commissioner of Political Practices, who identified possible constitutional concerns. Rate PI Aff. ¶ 13; Ex. M, at 4-6. After the failure of HB 406, and in the same legislative session in which protections for Native American voting rights were rejected, HB 530 was advanced at the last moment without any committee hearings or opportunity for public comment. This irregular procedure is indicative of discriminatory intent. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role.") The legislative history of HB 530 and other laws restricting ballot collection suggests intentional discrimination against Native American voters, and to the extent that Defendant objects to this conclusion, there exists a genuine question of material fact that makes summary judgment inappropriate.

VI. HB 530 violates certain Plaintiffs' fundamental right to freedom of speech.

The relevant legal authority and record evidence also demonstrates that HB 530 unconstitutionally impedes the freedom of expression of WNV, CSKT, and Blackfeet Nation. Montana's free speech guarantee encompasses "the opportunity to persuade to action, not merely to describe facts." *Mont. Auto. Ass'n v. Greely* (1981), 193 Mont. 378, 387, 632 P.2d 300, 305. This includes communication and coordination with voters for ballot collection purposes. *See WNV I*, No. DV 20-0377, at 49, ¶ 27 (quoting *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988)). Defendant ignores the highly relevant and specific findings from decisions by this very court, and instead focuses on out-of-state federal cases. Defendant tries to insist that collection activities are not expressive, but the law does not support their contention. Encouraging people to participate in the political process, despite the barriers placed in front of them, is "the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer*, 486 U.S. at 421-22 (1988). The message cannot be split apart from Plaintiffs' expressive conduct in providing support to voters in the form of ballot assistance. *See id.* at 424 ("The First Amendment protects [the] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.").

⁴ *See id.*

In an effort to encourage civic engagement, CSKT, WNV, and Blackfeet Nation have all collected ballots for tribal members. Horse Aff. ¶ 14; McDonald Aff. ¶¶ 12-15; Gray Aff. ¶¶ 13-15. WNV engages in significant organization to communicate to tribal communities “the importance of civic engagement and encourage them to get involved in the political process.” Horse Aff. ¶ 36. CSKT and Blackfeet Nation have also coordinated extensively with WNV for the purpose of ballot collection in the service of encouraging civic engagement among their members. McDonald Aff. ¶¶ 12, 14-15; Gray Aff. ¶ 12.

HB 530, as enacted, burdens the ability of these Plaintiffs to engage in protected political activity. HB 530 outlaws WNV’s ballot collection efforts because they rely on paid organizers. Horse Aff. ¶ 32; Perez Dep. 60:3-14, 189:9-11, 191:8-15. That Defendant points to testimony from single individuals who might be able to conduct ballot collection without payment does not alter the factual record demonstrating that WNV, which conducts a large amount of the ballot collection on reservations in Montana, must rely specifically on paid organizers to conduct this work. Perez Dep. 60:3-14, 189:9-11, 191:8-15; *see also* Street Dep. 120:1-15; 122:6-19; 124:2-11 (Ex. J). This is particularly true for Native American populations, who face poverty at a much greater rate than other Montanans. McCool Rep. ¶¶ 18-21. WNV specifically hires organizers from the communities in which they do their work, Perez Dep. 211:10-21—*i.e.*, from the on-reservation Native American population who face poverty at much greater rate—and would thus be unable to undertake its work if it was forced to rely only upon those who are able to forgo wages.

Even if HB 530 falls short of banning all ballot collection efforts, “its terms nonetheless chill . . . [WNV’s] efforts due to the risk of substantial fines.” Horse Aff. ¶ 32; *see also* Perez Dep. 250:24-251:18. WNV and similarly situated organizations’ free speech rights are burdened because they must either risk substantial fines or scale back GOTV activities by terminating ballot collection operations, burdening their right to organize and engage in protected, political speech. *See* Horse Aff. ¶ 34. HB 530 burdens the organizations’ free speech rights by limiting their ability to communicate their mission and values to the voters that they serve.

VII. HB 530 violates Plaintiffs’ fundamental right to due process.

HB 530 is also unconstitutionally vague, and therefore infringes upon Plaintiffs’ due process rights. *See City of Whitefish v. O’Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025. Because “pecuniary benefit” is unclear, so too is whether tribal ballot collection would be permitted to continue under HB 530. For example, CSKT conducted taco feeds where ballot

collection occurred and paid employees staffed the feeds. McDonald Aff. ¶ 14; CSKT Dep. 125:14-22. With “pecuniary benefit” undefined, it is unclear whether these paid employees—whose duties encompassed more than just ballot collection—would be permitted to assist with ballots. And while HB 530 exempts a “governmental entity,” it does not specify that tribal governments are exempt. *See, e.g.*, Gray Dep. 179:22-181:2; CSKT Dep. 109:3-7; Northern Cheyenne Dep. 83:12-19. Nor does it explain whether third-party organizations like WNV that are authorized to conduct ballot collection on behalf of the tribe would fall under the exemption. *See, e.g.*, McDonald Aff. ¶¶ 12, 14-15; Gray Aff. ¶ 12; Spotted Elk Aff. ¶¶ 11-12. Indeed, the CSKT tribal council has already explained that “because HB 530 fails to adequately define the scope of its government exemption, CSKT is likely to be confused about who is restricted from picking up and dropping off ballots and the lack of clarity makes it difficult for CSKT to know whether it would run afoul of the law.” McDonald Aff., Ex. A. Though the Secretary gestures at the *possibility* of curing infirmities with HB 530 during the rulemaking process, *see* Def. Br. 46-47, she makes no factual showing that the rulemaking process has provided or will provide clarity. Moreover, prior to the injunction, the mere existence of HB 530 curtailed the activity of Plaintiffs, *see* Perez Dep. 250:24-251:18, so it is of no moment to say that the vagueness will be cured by further action by the Secretary as harms are currently being perpetrated. And testimony of Defendant’s own experts demonstrates the vagueness of the term “pecuniary benefit” and the latitude given to government actors in determining what activities HB 530 will reach. *See* Gessler Dep. 281:21-285:7; Trende Dep. 166:1-13 (Ex. K).

Defendant has had many opportunities—including, most recently, in her Motion here—to provide an adequate definition for any of the statutory ambiguities Plaintiffs have raised. Once again, she has failed to do so, acknowledging only that the administrative rulemaking process “designed to provide that clarity has yet to occur.” Def. Br. 47. By her own terms, then, Defendant acknowledges that the statutory language is ambiguous and that, at minimum, genuine issues of material fact remain outstanding as to Plaintiffs’ due process claim.

VIII. HB 176 and HB 530 are not justified by any sufficient government interest.

Defendant offers no admissible evidence that the challenged restrictions are narrowly tailored to a compelling state interest, nor has she proffered any support to show the restrictions are “actually necessary,” *Ohio NAACP*, 768 F.3d at 545, that is, the restrictions actually target

Montana’s expressed concerns about election integrity, efficiency, and uniformity. The failure to make this showing is fatal to Defendant’s Motion.

There is a genuine dispute about whether and to what extent HB 176 and HB 530 further any genuine state interests. Defendant points to supposed interests in ensuring confidence in elections, preventing voter fraud, intimidation, and coercion, ameliorating administrative burdens, and lessening long lines at polling locations. Def. Br. 33-35, 51-54. At bottom, Defendant’s arguments rely entirely upon vague and hypothetical assertions as to state interests and the impacts of the laws. But to survive even Defendant’s preferred level of constitutional scrutiny, Defendant must provide competent evidence of the specific problem justifying the restriction. *See, e.g., Driscoll*, ¶ 22 (finding BIPA could not be justified under any standard because the Secretary “did not present evidence” supporting his alleged interests); *Soltysik*, 910 F.3d at 448 (“[S]peculative concern[s]” are not “sufficient as a matter of law to justify any regulation that burdens a plaintiff’s right, especially where that burden is more than de minimis.”) (internal citation omitted); *Ohio NAACP*, 768 F.3d at 547 (finding “a handful of actual examples of voter fraud” and “general testimony regarding the difficulties of verifying voter registration” insufficient to establish voting restriction was actually necessary). And even with evidence of an actual problem, Defendant must also demonstrate that HB 176 and HB 530 are “actually necessary” to resolve that problem, and that they will do so effectively. *See Obama for Am. v. Husted*, 697 F.3d 423, 434 (6th Cir. 2012) (finding state failed to offer evidence that local election officials actually struggled to cope with the period of early voting that the state eliminated, fatally undermining its “vague interest” in smooth election administration); *Ohio NAACP*, 768 F.3d at 547 (finding state failed to show that the particular type of fraud about which it expressed concern was “logically linked” to the restriction on early voting and registration at issue, and further failed to explain how the restriction would prevent the fraud).

Whether HB 176 and HB 530 actually promote Defendant’s purported interests, and whether they will do so effectively, are questions of fact. *Armstrong v. State*, 1999 MT 261, ¶ 16, 296 Mont. 361, 368, 989 P.2d 364, 370; *see also id.* ¶ 62 (relying on the extensive factual record to conclude that “the legislature has no interest, much less a compelling one, to justify its interference with an individual’s fundamental . . . right” in case involving constitutional challenge to state statute requiring pre-viability abortions to be performed by physicians); *Duke v. Cleland*, 5 F.3d 1399, 1405 n.6 (11th Cir. 1993) (“The existence of a state interest . . . is a matter of proof.”).

Because Defendant offers no substantive evidence—let alone evidence that is beyond dispute—that the Challenged Restrictions will actually and effectively address Defendant’s purported interests, she has not demonstrated that she is entitled to judgment as a matter of law.

A. HB 176 is not necessary to ameliorate administrative burdens.

The record reflects that if EDR leads to additional work for election administrators, it is only because it boosts voter turnout: as noted by Audrey McCue, the Elections Department Supervisor in Lewis and Clark County, when she testified in opposition to HB 176, “any time somebody registers and vote[s], it’s more work for us.” Rate PI Aff. ¶ 9, Ex. J at 11:2-6. Defendant’s own designee admitted the same. SOS-30(b)(6) Dep. 115:8-20 (Ex. L). And it is well established that Defendant’s interest in easing administrative burdens on some election officials cannot outweigh the fundamental right to vote. *See, e.g., Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (“There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by [the Secretary of State’s] office and other state and local offices involved in elections.”); *United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2012) (finding that administrative, time, and financial burdens on the state are “minor when balanced against the right to vote, a right that is essential to an effective democracy”).

Moreover, there is a genuine issue of material fact about whether EDR actually adds to the burden on election administrators. Defendant submitted testimony from three election administrators who claim that EDR increases their workload on Election Day. But these election administrators merely speculate about the effects of ending EDR—only one of them has administered even *a single* election prior to the enactment of EDR, *see* Eisenzimer Decl. ¶ 2 (Dkt. 86) (noting that her career in election administration began in 2005, the year before EDR was enacted); Ellis Dep. 126:15-19 (Ex. M) (Broadwater County administrator testifying he had never administered an election without EDR), and another essentially has had no experience with EDR during her tenure, *see* Tucek Dep. 95:16-96:2 (Ex. N) (testifying she has had only one or two uses of EDR in any election with in-person voting during her entire tenure as a county election official).

The record reflects that several election administrators testified that EDR did not impose significant administrative burdens and that ending EDR might actually make things harder for them. Ms. McCue testified that ending election day registration would “not [be] helpful administratively” and “will not help [her]” in her job administering elections. Rate PI Aff. ¶ 9; Ex. J at 9-11. Eric Semerad, Gallatin County Clerk and Recorder, testified that EDR was “not causing

additional burden” in his county, and that it was a “mistake” to repeal EDR because it will disenfranchise voters. Semerad Decl. ¶¶ 5, 9. Similarly, Bradley Seaman, Missoula County Elections Administrator, testified that his staff was “prepared to accommodate Election Day registration” and that EDR “has been an important facet of Montana law that has acted as a failsafe for many voters to cast their vote.” Seaman Decl. ¶¶ 3, 7. Mr. Seaman’s declaration in particular invalidates Defendant’s unsupported claim that HB 176 may prevent mistakes by election staff. Def. Br. 26. If anything, EDR ensures that voters and staff can catch mistakes and ensure they do not result in disenfranchisement. Indeed, the former Secretary of State has explained, “[v]irtually everyone supported [EDR]” because “Election Day voter registration is the ultimate failsafe.”⁵

Even if HB 176 reduced these purported administrative burdens on election administrators, the bill is not tailored to meet this goal. The declarations Defendant submitted on behalf of election administrators nowhere suggest that repealing HB 176 is the only way to reduce the administrative burdens facing them and their staff. In fact, there are myriad ways for the State to reduce any administrative burdens on elections officials—including hiring more poll workers on Election Day and modernizing election equipment, to which Defendant’s own witnesses admit. *See* Ellis Dep. 149:8-150:6. All these options would achieve similar goals without significantly increasing voter costs and decreasing turnout, as repealing EDR would. Defendant points to nothing in the legislative record or otherwise to suggest that the Legislature considered these other options, or that they are impossible. As such, even if HB 176 reduced any administrative burdens on election administrators, there is no evidence that it is narrowly tailored to do so.

B. HB 176 will not reduce lines at polling locations.

Defendant also claims that ending EDR will reduce wait times for voters on Election Day. As an initial matter, there is a genuine dispute about whether EDR even leads to longer lines and wait times at the polls, and whether ending EDR would decrease wait times. In fact, EDR cannot increase lines at most polling locations because EDR occurs at a centrally designated location, often county clerk’s offices, not at polling places. *See* Mont. Admin. R. 44.3.2015(1)(b)(iv)(EDR occurs at the county election administrator’s office or a central location designated by the county election administrator); Street Rebuttal Rep. at 11; Semerad Decl. ¶ 5 (explaining that EDR did not happen at polling location). Indeed, Defendant’s own declarant testified that non-EDR voters

⁵ Lisa Baumann, *Ending Election Day registration sees little support*, Great Falls Tribune, (Oct. 19, 2014, 4:17 PM), <https://www.greatfallstribune.com/story/news/local/2014/10/19/ending-election-day-registration-sees-little-support/17583087/>.

do “not typically” wait in line to vote on Election Day. Ellis Dep. 88:10-15. Defendant provides no evidence that EDR itself causes long lines; her own declarants state that registering a new voter takes mere minutes. Tucek Dep. 83:14-23 (registering new voter “[u]sually” takes “less than five minutes”); Eisenzimer Dep. 50:5-7 (Ex. O) (registering a new voter on Election Day “takes between five to ten minutes”). Moreover, as Ms. McCue testified, repealing EDR and moving the last day to register to vote would not reduce lines, but simply make them longer on an earlier date in the early-voting period. Rate PI Aff. ¶ 10, Ex. J, at 11, 36-39. And again, any reduction in wait times resulting from reduced turnout is hardly salutary.

And voter wait times in Montana are generally low. Only 10% of all in-person voters waited more than ten minutes to vote in 2020. *See* Street Rebuttal Rpt. at 12-13 & tbl.2. During the past decade, as EDR has become increasingly popular, wait times at the polls in Montana have *decreased*, likely because a greater percentage of Montanans vote using absentee ballots. *Id.* at 13. Montana’s wait times are far lower than the national average. *Id.*

Because “the data indicate that election day registration is not associated with long wait times in Montana,” Mayer Rpt. at 9, there is a genuine issue regarding whether the abolition of EDR is necessary to serve the interest of decreasing wait times. The purpose of reducing wait times is to prevent people from dropping out of line and thus being unable to vote. HB 176 is thus completely self-defeating as to its stated purpose, given the overwhelming evidence, discussed *supra*, that HB 176 will increase voter costs and decrease turnout. As is clear, “*extremely* unusual circumstances would need to hold in order for HB 176 to cause additional turnout, let alone for it to cause enough additional turnout to fully offset or exceed the negative effect on turnout of removing EDR.” Street Rebuttal Rpt. at 11. Defendant’s invocation of lines in Indian Country is likewise self-defeating. The lines discussed in WNV’s document cited by Defendant (Dkt. 82, Ex. 1-24) were lines at the county election office, necessary for those folks to be able to register to vote and vote at all. In other words, that line does not affect non-EDR voters. As noted *supra*, there are many ways to reduce wait times at polls that would benefit Native American voters and Montana voters generally and would not decrease turnout.

And there is certainly a genuine issue regarding whether the interest in reducing wait times—which are already almost entirely under 30 minutes—is sufficient legitimate and weighty to justify HB 176’s burdens to voting.

C. HB 176 and HB 530 are not justified by concerns about voter confidence.

An interest in preserving public confidence in elections cannot justify the severe burdens imposed by HB 176 and HB 530. Less than two years ago, the then-Secretary's expert witness testified that "Montana's strong election ecosystem encourages and supports voter participation and results in generally high turnout *and high voter confidence*." Declaration of Lonna Atkeson, Expert Witness for Montana Secretary of State, *Driscoll*, No. DV 20-0408 (Mont. 13th Jud. Dist. Ct. July 24, 2020) (emphasis added). Not much has changed since then. Overall, voter confidence in Montana has been relatively high, and remarkably stable over time—74% of Montana voters in 2012, 76% of Montana voters in 2016, and 72% of Montana voters in 2020 were "very confident" that their vote had been counted as intended. *See* Street Rebuttal Rpt. at 19-20.

To the extent there is a problem of voter confidence in Montana, HB 176 and HB 530 will not actually address that problem. There is no evidence in the record that any decrease in confidence is related to paid ballot collection or EDR. *See* Def.'s Renewed Stmt. of Undisputed Facts ("Def. SUF") ¶¶ 1-24. And Defendant's own designee admits that even having been in effect for a year, they have no idea if the challenged laws have impacted voter confidence. SOS 30(b)(6) Dep. 191:10-192:15; 245:17-246:13. There is utterly no evidence to support Defendant's assertion that voter confidence is served by these laws.

In fact, the only evidence in the record on voter confidence shows that it is driven largely by two things that have nothing to do with the challenged laws: (1) cues from party leaders, and (2) the "winner's effect," wherein people are more likely to express confidence in elections when their preferred candidate wins and less likely when their preferred candidate loses. *See* Street Rebuttal Rpt. at 16-19. A recent study shows that particularities of state voting laws have no impact on voter confidence, and that confidence is instead shaped by partisanship and ideology. *See id.* at 16. Social science research also indicates that voters use voter confidence surveys to "cheerlead for the stance of their preferred party" rather than express their actual beliefs about voter confidence. *Id.* at 18. Echoing this research, data from Montana and the broader United States suggest that the "winner's effect" and political polarization are the main drivers of any changes in voter confidence. In Montana, survey data show that Democrats express much higher levels of voter confidence when a Democrat wins the presidency as opposed to a Republican, and vice versa for Republicans. *See id.* at 19-21. In 2020, the political polarization around voter confidence is so stark principally because of the "Big Lie" propagated by former-President Trump and his allies.

Legislative sponsors and other state actors cannot be permitted to manufacture a governmental interest to justify voting restrictions by sowing public doubt through unsubstantiated—and in some cases, demonstrably false—allegations about misconduct committed by people providing ballot collection services. Such tactics create perverse incentives and cannot justify the significant burdens imposed by laws like HB 176 and HB 530. *See, e.g., Weinschenk v. State*, 203 S.W.3d 201, 218 (Mo. 2006) (“if this Court were to approve the placement of severe restrictions on . . . fundamental rights owing to the mere perception of a problem . . . , then the tactic of shaping public misperception could be used in the future as a mechanism for further burdening the right to vote or other fundamental rights.”).

D. HB 530 is not necessary to prevent voter fraud in Montana.

Relying on vague and unsubstantiated anecdotes and “expert” testimony about isolated allegations of election fraud in *other states*, Defendant argues that the hypothetical risk of voter fraud in Montana justifies HB 530. Def. Br. 47, 51-52. But voter fraud in Montana is vanishingly rare. *See* Mayer Rpt. at 6-8; McCool Rpt. ¶¶ 106-08. Defendant provides just *two* examples of any voter fraud convictions in Montana’s history, neither of which implicate ballot collection or EDR, *see* Def. SUF ¶¶ 36-39. Indeed, Defendant’s 30(b)(6) designee needed to visit the Montana Historical Society to locate any evidence of voter fraud in this state. SOS 30(b)(6) Dep. 193:13-197:17, 331:7-22, 343:1-15, 344:3-7. Moreover, no fraud was identified in Montana’s 2020 post-election audit. McCool Rpt. ¶ 106. In connection with last year’s BIPA litigation, the Cascade County Clerk testified that no counties in Montana have “ever had any cases of voter fraud.” *Id.* ¶ 108. As even Defendant’s own declarants testified, they “don’t believe there’s voter fraud in any of the counties.” Ellis Dep. 121:1-4; *see also* Eisenzimer Dep. 83:14-22; Tucek Dep. 106:15-108:4; Trende Rpt. at 12 (Dkt. 89) (Defendant’s expert testifying he is “not convinced that voter fraud is a substantial problem in Montana.”). As such, Defendant has failed to show essentially any evidence of voter fraud in Montana, let alone any fraud that HB 530 would remedy.

The rate of voter fraud is also infinitesimally small in the United States. More fraud exists in states that *ban* ballot assistance than in those that permit ballot assistance. *See* McCool Rpt. ¶ 111. According to the conservative Heritage Foundation, voter fraud constitutes “about 0.00006 percent of the total votes cast” in the United States. *Id.* ¶ 109. A recent analysis of three states with all vote-by-mail elections calculated that the number of “possible cases” of voter fraud was 0.0025 percent of all votes cast. *Id.* Defendant does not contest *any* of this evidence.

There is no evidence that HB 530 will effectuate the State’s asserted interest in preventing voter fraud. As noted *supra*, Defendant cites no voter fraud convictions in Montana related to ballot collection, and states that ban ballot collection have higher rates of voter fraud than states that allow it, McCool Rpt. ¶ 111. Defendant’s expert witness, Scott Gessler, suggests that paid ballot collection “creates a temptation [for ballot collectors] to cut corners or perhaps blatantly violate the law,” because of the financial motive. Gessler Rpt. at 26 (Dkt. 87). But Mr. Gessler provides no evidence—empirical or otherwise—to support this contention. *See* Street Rebuttal Rpt. at 14. Even setting aside the fact that WNV does not pay its organizers per ballot, Horse Aff. ¶¶ 9-10, HB 530 is wholly unnecessary to address these vague concerns because Montana has a panoply of criminal statutes that penalize the sort of conduct Mr. Gessler envisions. *See* Street Rebuttal Rpt. at 14-15. In other words, the conduct Mr. Gessler says HB 530 addresses is already unlawful under Montana law, and there is no evidence that making it *more* unlawful would have any additional deterrent effect.

E. HB 530 is not necessary to prevent voter coercion and intimidation.

Defendant asserts that HB 530 furthers an interest in ensuring election integrity and fairness by “regulating the connection between money and ballot collection.” Def. Br. at 53. But HB 530 is not necessary to serve that interest. State laws already prohibit voter coercion and intimidation in a broad manner that also covers ballot collection, and there is no evidence that fraud is more likely to occur when a pecuniary benefit for ballot collection is involved. *See, e.g.*, § 13-35-103, MCA; § 27-1-1501, MCA *et seq.*

Once again, Defendant here fails to identify any evidence of voter coercion or intimidation in Montana, let alone any evidence that links such practices to organized ballot collection, and instead merely relies on the testimony of the bill sponsor, who failed to present evidence that paid ballot collection threatens election integrity. Moreover, there is no historical evidence of voter coercion and intimidation related to ballot collection in Montana. *Driscoll*, ¶ 22; *WNV I*, No. DV 20-0377, ¶¶ 99 (“[U]niform testimony by election administrators and State of Montana officials was that . . . ballot collection and ballot interference was not and has never been a problem in Montana.”). Multiple election administrators testified that they have observed no fraud in ballot collection, *Semerad Aff.* ¶ 12; *Seamen Aff.* ¶ 11, including Defendant’s own witnesses, *see* Ellis Dep. 121:1-4; Eisenzimer Dep. 83:14-22; Tucek Dep. 106:15-108:4. At the very least, this testimony—and the glaring lack of evidence of voter fraud, as described *supra*—creates a genuine

issue of material fact as to whether restricting ballot collection responds to a compelling state interest in election integrity.

Moreover, Montana has a comprehensive statutory scheme that regulates election security and prohibits coercion and intimidation, including the criminalization of election code violations, a clear anti-intimidation law, and strict regulations on political contributions and expenditures. *See, e.g.*, § 13-35-103, MCA; § 27-1-1501, MCA *et seq.*; *see also WNV I*, No. DV 20-0377, ¶¶ 105-08 (finding Montana’s anti-intimidation law more protective than BIPA because it “would apply to all acts of intimidation when collecting a ballot, whether a ballot was delivered in person or by mail”). For example, using duress or fraud to compel a voter to either vote or refrain from voting is prohibited. Street Rebuttal Rpt. 15 (citing § 13-35-218, MCA), and penalties for violating these laws are substantial, including misdemeanor or felony charges, imprisonment for up to 10 years, or fines up to \$50,000. *Id.* Defendant provides no evidence that the current laws prohibiting intimidation or coercion with respect to elections is insufficient to ensure election integrity nor any evidence that HB 530 fills in any regulatory gaps created by these laws.

IX. The Elections Clause of the federal Constitution does not unmoor legislative action from the very Constitution that establishes the Montana Legislature.

Defendant advances a truly radical reading of the Elections Clause of the federal Constitution in an effort to unmoor any legislative action related to voting from the very Constitution that created our Legislature. In so doing, Defendant obfuscates that she is seeking a reading of the Elections Clause at odds with centuries of federal and state precedent. Indeed, to adopt Defendant’s position, this Court would need to ignore seminal U.S. Supreme Court decisions *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Smiley v. Holm*, 285 U.S. 355 (1932). *Wesberry* and *Smiley* expressly rejected the interpretation advanced by Defendant here: that the Election Clause’s references to the state “Legislature” and “Congress” give those entities unchecked power to regulate federal elections. The Supreme Court has repeatedly held that, consistent with the U.S. Constitution, state courts may enjoin state election laws on state constitutional grounds.

In *Wesberry*, a foundational decision establishing the principle of one-person, one-vote, the Supreme Court held that the text of the Elections Clause does not preclude courts from exercising their ordinary judicial review function with respect to laws regulating federal elections. That Court rejected a reading of the Elections Clause that Defendant now advances—one which had been previously endorsed by three justices in *Colegrove v. Green*, 328 U.S. 549 (1946)—that

would have given state legislatures and Congress “exclusive authority” to regulate elections. *Wesberry*, 376 U.S. at 5-8. As that decision explained, “*nothing* in the language of [the Elections Clause] gives support to a construction that would immunize state [election] laws . . . from the power of courts to protect the constitutional rights of individuals from legislative destruction.” *Id.* at 6-7 (emphasis added). “The right to vote is too important in our free society to be stripped of judicial protection by such an interpretation of Article I.” *Id.* at 7. Defendant ignores clear precedent from the majority decision in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015), where the Court held that “[n]othing in [the Elections] Clause instructs, nor has this Court ever held, that a state legislature may prescribe regulations on the time, place, and manner of holding federal elections in defiance of provisions of the State’s constitution.” *Id.* at 817-18. It is the place of the state judiciary, including this Court, to make clear the contours of this State’s constitution.

The federal Constitution takes state legislatures as it finds them, as part of a holistic system of state governance whose actions are reviewed by the equal branch of governance, the judiciary of each state. In *Smiley*, the Court held that the Elections Clause does not “endow the Legislature of the state with power to enact laws in any manner other than that in which the *Constitution of the state* has provided.” 285 U.S. at 368 (emphasis added). In Montana, the legislature, executive, and judiciary all have a role. *Powder River Cnty. v. State*, 2002 MT 259, ¶ 112, 312 Mont. 198, 231, 60 P.3d 357, 380 (“Each branch of government is made *equal*, coordinate, and independent.” (emphasis added)). And our “Constitution vests in the courts the *exclusive* power to construe and interpret legislative Acts.” *In re License Revocation of Gildersleeve* (1997), 283 Mont. 479, 484, 942 P.2d 705, 708 (emphasis added).

Not only are state courts permitted to judge the validity of state laws regulating federal elections under state constitutions, the Supreme Court’s decision in *Grove v. Emison*, 507 U.S. 25 (1993), makes clear that state court review is preferable to federal court review. There, the Court admonished the federal district court for failing to defer to Minnesota’s state courts in matters of congressional apportionment, based on “the mistaken view that federal judges need defer only to the Minnesota Legislature *and not at all to the State’s courts.*” *Id.* (emphasis added). The Supreme Court expressly recognized “[t]he power of the judiciary of a State to require valid reapportionment,” *id.* at 33, a statement that would make no sense if state courts lacked the

authority to exercise judicial review to determine whether state laws related to voting comply with the state constitution.

Moreover, the laws challenged by Plaintiffs apply to all Montana elections—federal, state, and local—and so even Defendant’s truly radical argument does not preserve them, as HB 176 and HB 530 equally apply to state and local elections.

CONCLUSION

For the reasons stated above, this court should deny Defendant’s renewed motion.

DATED THIS 24th day of June, 2022.

Respectfully submitted,

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
1514 P Street N.W. (Rear) Suite D
Washington, D.C. 20005
(202) 785-4166
kelty@narf.org

Theresa J. Lee*
ELECTION LAW CLINIC, HARVARD LAW SCHOOL
6 Everett Street, Suite 5112
Cambridge, MA 02138
(617) 998-1010
thlee@law.harvard.edu

/s/ Alex Rate

Alex Rate (MT Bar No. 11226)
Akilah Lane
ACLU OF MONTANA
P.O. Box 1968
Missoula, MT 59806
406-224-1447
ratea@aclumontana.org
alane@aclumontana.org

Alora Thomas-Lundborg*
Jonathan Topaz*
Dale Ho*
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
(212) 519-7866
(212) 549-2693
jtopaz@aclu.org
athomas@aclu.org
dale.ho@aclu.org

* admitted *pro hac vice*

Attorneys for WNV Plaintiffs

CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify on this date I emailed a true and accurate copy of the foregoing document 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
David F. Knobel
William "Mac" Morris
Ian McIntosh
CROWLEY FLECK, PLLP
900 North Last Chance Gulch, Suite 200
Helena, MT 59601
P.O. Box 797
Helena, MT 59624-0797

Peter M. Meloy
P.O. Box 1241
Helena, MT 59624

Matthew Gordon
Perkins Coie LLP
1201 Third Avenue, Ste 4900
Seattle, WA 98101-3099

John Heenan
Heenan & Cook PLLC
1631 Zimmerman Trail
Billings, MT 59102

Rylee Sommers-Flanagan
Upper Seven Law
P.O. Box 31
Helena, MT 59624

DATED: June 24, 2022

/s/ Alex Rate
Alex Rate

Alora Thomas-Lundborg*
Jonathan Topaz*
Dale Ho*
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
(212) 519-7866
athomas@aclu.org
jtopaz@aclu.org
dale.ho@aclu.org

Alex Rate (MT Bar No. 11226)
Akilah Lane
ACLU OF MONTANA
P.O. Box 1968
Missoula, MT 59806
406-224-1447
ratea@aclumontana.org
alane@aclumontana.org

Attorneys for *WNV* Plaintiffs
*admitted *pro hac vice*

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
1514 P Street N.W. (Rear) Suite D
Washington, D.C. 20005
(202) 785-4166
kelty@narf.org

Theresa J. Lee*
ELECTION LAW CLINIC, HARVARD LAW SCHOOL
6 Everett Street, Suite 5112
Cambridge, MA 02138
(617) 998-1010
thlee@law.harvard.edu

**IN THE 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,

v.

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

Defendant.

Consolidated Case No. DV 21-0451

**DECLARATION OF ALEX RATE
IN SUPPORT OF *WESTERN
NATIVE VOICE* PLAINTIFFS'
OPPOSITION TO DEFENDANT'S
RENEWED MOTION FOR
SUMMARY JUDGMENT**

I, Alex Rate, declare as follows:

I submit the following Declaration in support of the *Western Native Voice* Plaintiffs' opposition to Defendant's renewed motion for summary judgment. I am the Legal Director of the American Civil Liberties Union of Montana (ACLU-MT). I am admitted to practice law in the State of Montana and am counsel to the *Western Native Voice* Plaintiffs in the above-captioned case. I am familiar with the documents attached to this Declaration. If called upon to testify, I could competently testify to the matters set forth in this Declaration.

1. Exhibit A is a true and correct copy of excerpts of the deposition transcript of Ta'jin Perez, as the 30(b)(6) designee for Western Native Voice, taken on May 17, 2022.

2. Exhibit B is a true and correct copy of excerpts of the deposition transcript of Dawn Gray, as the 30(b)(6) designee for Blackfeet Nation, taken on May 27, 2022.

3. Exhibit C is a true and correct copy of excerpts of the deposition transcript of Robert McDonald, as the 30(b)(6) designee for Confederated Salish and Kootenai Tribes, taken on April 19, 2022.

4. Exhibit D is a true and correct copy of excerpts of the deposition transcript of Lane Spotted Elk, as the 30(b)(6) designee for Northern Cheyenne Tribe, taken on April 20, 2022.

5. Exhibit E is a true and correct copy of excerpts of the deposition transcript of Delina Cuts the Rope, as the 30(b)(6) designee for Fort Belknap Indian Community, taken on May 3, 2022.

6. Exhibit F is a true and correct copy of excerpts of the deposition transcript of Scott Gessler, taken on April 22, 2022.

7. Exhibit G is a true and correct copy of excerpts of the deposition transcript of Robert McDonald, taken on April 19, 2022.

8. Exhibit H is a true and correct copy of excerpts of the deposition transcript of Lane Spotted Elk, taken on April 20, 2022.

9. Exhibit I is a true and correct copy of the Declaration of Elizabeth Fu Wrzesinski, dated June 23, 2022.

10. Exhibit J is a true and correct copy of excerpts of the deposition transcript of Alexander Street, Ph.D., taken on February 18, 2022.

11. Exhibit K is a true and correct copy of excerpts of the deposition transcript of Sean Trende, taken on April 21, 2022.

12. Exhibit L is a true and correct copy of excerpts of the deposition transcript of Austin James, as the 30(b)(6) designee for the Secretary of State, taken on May 26, 2022.

13. Exhibit M is a true and correct copy of excerpts of the deposition transcript of Doug Ellis, taken on April 20, 2022.

14. Exhibit N is a true and correct copy of excerpts of the deposition transcript of Janel Tucek, taken on April 13, 2022.

15. Exhibit O is a true and correct copy of excerpts of the deposition transcript of Monica Eisenzimer, taken on April 13, 2022.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated this 24th day of June, 2022, and signed in Livingston, Montana.

/s/ Alex Rate
Alex Rate

EXHIBIT A

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

Montana Democratic Party)
and Mitch Bohn,)

Plaintiffs,)

Western Native Voice, et al.,)

Plaintiffs,) Case No.
) DV 21-0451

Montana Youth Action, et al.,)

Plaintiffs,)

vs.)

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

30(B)(6) DEPOSITION OF TA'JIN PEREZ ON BEHALF OF
WESTERN NATIVE VOICE TAKEN VIA ZOOM

On the 17th day of May, 2022, beginning at
9:00 a.m., the deposition of TA'JIN PEREZ, appearing
at the instance of Defendant, was heard via Zoom,
before Lisa R. Lesofski, Registered Professional
Reporter, Notary Public.

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

APPEARING ON BEHALF OF PLAINTIFFS WESTERN
VOICE, ET AL.:

ALEX RATE (Via Zoom)
Legal Director
ACLU of Montana
P.O. Box 1968
Missoula, Montana 59806
ratea@aclumontana.org

APPEARING ON BEHALF OF THE DEFENDANT:

WILLIAM (MAC) MORRIS (Via Zoom)
Attorney at Law
Crowley Fleck
1915 South 19th Avenue
Bozeman, Montana 59718
wmorris@crowleyfleck.com

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By Mr. Morris 5

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<p style="text-align: right;">Page 57</p> <p>1 the doors. But we do give guidance on how to keep 2 a, how to start a question, how to keep it, how to 3 integrate the questions that are on the Reach app 4 into a normal conversation.</p> <p>5 Q. And do you have a document that would 6 reflect sort of the questions, at least a list of 7 questions that you want canvassers to go through?</p> <p>8 A. I don't believe I have a list, but it 9 could be made available.</p> <p>10 Q. Okay. Yeah, that would be great if after 11 this deposition we could get a copy of that. I 12 don't think it's been produced.</p> <p>13 But are you familiar with the questions on 14 that list?</p> <p>15 A. Yes.</p> <p>16 Q. Can you just give me to your best 17 recollection what those questions are?</p> <p>18 A. Yes. So I believe the first question is 19 do you have a plan to vote this year. I believe 20 that's how it's phrased. And then some of the other 21 questions I believe include tribal affiliation, 22 whether they're Native or not, if they need 23 assistance in getting their ballot to a polling 24 location or the county seat, if they need a ride to 25 the polls. Those are some of the questions that I</p>	<p style="text-align: right;">Page 59</p> <p>1 the summertime.</p> <p>2 Q. All right. And besides staff organizers, 3 do you have volunteers that do that canvassing?</p> <p>4 A. Not at the moment.</p> <p>5 Q. In past elections have you used volunteers 6 for that canvassing work?</p> <p>7 A. We've used volunteers in the past, yes.</p> <p>8 Q. And what's sort of the breakdown in terms 9 of paid organizers that are on staff versus 10 volunteers in terms of just certain percentages or 11 ratio?</p> <p>12 MR. RATE: Object to the form. Go ahead, 13 Ta'jin.</p> <p>14 A. Okay. Percentages, it's hard to put 15 together a percentage on this. I would say that the 16 majority of the money -- actually, our volunteers 17 aren't paid, so I would say that the only people 18 that are getting paid are the organizers that are 19 doing this.</p> <p>20 Q. (By Mr. Morris) Yeah. Sorry. And like 21 on a ratio basis, what's your sense of how many paid 22 organizers on staff there are compared to the number 23 of volunteers that have done the canvassing work you 24 described?</p> <p>25 MR. RATE: Object to the form.</p>
<p style="text-align: right;">Page 58</p> <p>1 can recollect at this time.</p> <p>2 Q. Okay. Any others you can recall?</p> <p>3 A. Not at this time.</p> <p>4 Q. All right. So then what -- you referred 5 also to a disposition that the canvassers would mark 6 down. What does that mean?</p> <p>7 A. Right. So each entry in the Reach app 8 will have different tags or dispositions that you 9 can place on them. So, for example, not at home or 10 left a message if it's a phone call that was made, 11 requested ride, requested ballot pickup, ballot 12 delivered, ride given, those kind of things to help 13 tag the individuals for our purposes and data 14 collection to keep track of who we've been in 15 contact with and who has asked for assistance and to 16 make sure that that assistance has been rendered.</p> <p>17 Q. Okay. And when do you start this process 18 in an election year typically of canvassing?</p> <p>19 A. Typically it's after the primary election. 20 Right now we're doing something new where we have a 21 few organizers on staff ahead of the June primary 22 and so -- and we hope that some canvassing is being 23 done out there and we have the tools in place 24 already to, for that data collection. But typically 25 in the past it's been after the primary election in</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. (By Mr. Morris) If you don't understand, 2 just let me know.</p> <p>3 A. I think -- I think what you're trying 4 to -- or at least what I understand your question as 5 is how many of the people that are out canvassing 6 are the organizers versus the volunteers.</p> <p>7 Q. Yeah, that's it.</p> <p>8 A. And while I can't give you a percentage, 9 that I would say, again, the majority of the people 10 that are out canvassing at any given point on most 11 election years typically are the organizers.</p> <p>12 Q. The paid organizers as opposed to 13 volunteers make up the majority?</p> <p>14 A. Yes.</p> <p>15 Q. What are turf lists?</p> <p>16 A. Turf lists in the context of canvassing 17 are lists of an area that includes houses, 18 domiciles, that is selected to be used for the 19 purposes of targeted canvassing. So the idea is 20 that you take a large area, for example, a city or a 21 county or municipality, and knowing that there is, 22 could be potentially, depending on where you are, 23 dozens to hundreds of doors to get to, you want to 24 make smaller chunks or turfs that are more 25 manageable for an individual who's canvassing.</p>

<p style="text-align: right;">Page 113</p> <p>1 know, just the truth of it. But that that kind of 2 isn't as attractive to some individuals as some, I'm 3 sure some of the other co-plaintiffs have explained 4 that the mail system isn't trusted and oftentimes 5 they won't have a stamp to put on their ballot and 6 so that's -- I mean, those are obstacles. However 7 small they may seem to folks that live outside of 8 these communities, it can be a deterrent for those 9 individuals to cast their ballot and, frankly, over 10 the years our organization has built a reputation of 11 trust and integrity with community members and 12 voters that when they hand their ballots to our 13 organizers that those actually are delivered. And 14 we can say that there have been no complaints of, 15 you know, any misdoings or wrongdoings when it comes 16 to that service in particular.</p> <p>Q. Does Western Native Voice explain to voters when they're registering to vote that if you register to vote absentee your ballot comes in the mail and serves as a reminder that there is an election that the voter can vote in?</p> <p>A. Yeah, we say that the mail comes directly to them to their mailing address and that if that's something that they want to happen, if that's something that is feasible for them that, you know,</p>	<p style="text-align: right;">Page 115</p> <p>1 Absolutely, because we give a rounded view of 2 everything and we understand that voters are 3 intelligent and that they know themselves and 4 they'll make the right choice for themselves. We 5 don't assume that our voters are ignorant or, you 6 know, anything like that.</p> <p>Q. (By Mr. Morris) You said that in some instances you've encountered mistrust of the mail system?</p> <p>A. Yes.</p> <p>Q. And what does Western Native Voice tell voters when they hear from them that the voter mistrusts the mail system?</p> <p>A. We say we totally understand, I mean, we get it. It's just something that we want to talk about with you today. If you don't want to opt in, that's perfectly fine. You don't have to. It's not required. So we acknowledge that reality in the conversation.</p> <p>Q. Does Western Native Voice indicate to voters that the mail system is unreliable?</p> <p>A. I don't know that we've ever instructed our organizers to explicitly say, you know, tell people that the mailing system is unreliable. We're not here to spread any of that information around.</p>
<p style="text-align: right;">Page 114</p> <p>1 they can think about it and check off that box but 2 otherwise we -- if they're not interested in that, 3 we leave it alone.</p> <p>Q. And does Western Native Voice explain to voters that when a ballot arrives in the mail the voter has more time to evaluate the ballot and think about how he or she wants to vote?</p> <p>A. Sure, yeah. That's something that we say that that is a plus of that is that you have the ballot, you can see who's on it, look them up if you want to, and you know while at the same time understanding that there is cons to that system as well. So, I mean, on balance we're not here to say absentee ballot is bad and don't ever use them because somebody might want to and that's perfectly fine.</p> <p>Like I said before, our main goal is to make sure that people are registered to vote and are voting in the best way that they want to.</p> <p>Q. And in canvassing, that sort of thing, are you informing voters of the advantages of absentee voting?</p> <p>MR. RATE: Objection, form. Go ahead, Ta'jin.</p> <p>A. Are we informing them of that piece of it?</p>	<p style="text-align: right;">Page 116</p> <p>1 We do, however, acknowledge when people share their 2 personal negative experience with the mail system 3 and we want to empathize with them. But we're not 4 going around with a bullhorn and saying don't trust 5 the mail. I think that's a mischaracterization of 6 what we do.</p> <p>Q. Yeah, in other words, you wouldn't discourage voters from using the mail to return an absentee ballot, right?</p> <p>MR. RATE: Object to the form. Go ahead.</p> <p>A. I think that what would be most accurate is that we take a balanced view of the way that voters can vote and is letting, informing them that if they're absentee that they can go to the mail and mail it, absolutely, because that's part of the options. I mean, that's just the reality. It's not you know, some hush-hush thing that we don't talk about or anything like that.</p> <p>Like I said, we give the most complete information at our disposal that we have at the time and allow the individual voter to make their determination and their own decision on that.</p> <p>Q. (By Mr. Morris) Do you know whether or not the use of absentee voting is increasing among Native Americans living within the boundaries of</p>

1 A. That's my understanding, yes.

2 **Q. So in the other reservations if there is**
3 **no satellite or alternative voting location on the**
4 **reservation, the voters that -- or the individuals**
5 **that haven't yet registered need to drive off the**
6 **reservation in order to register and vote, right?**

7 MR. RATE: Object to form. Go ahead,
8 Ta'jin.

9 A. That's typical.

10 **Q. (By Mr. Morris) Any other place you can**
11 **think of where a voter or an individual could**
12 **register to vote besides the county seat or the**
13 **county election office on election day?**

14 A. I can't think of any.

15 **Q. And have you ever given a ride to a person**
16 **living on a reservation to a county election office**
17 **on election day?**

18 A. The organization has, yes.

19 **Q. And in your experience do Native Americans**
20 **enjoy driving off the reservation to county election**
21 **offices on election day?**

22 A. Do they enjoy it?

23 **Q. Yeah. Do they enjoy having to go to the**
24 **county election office for registration on election**
25 **day?**

1 MR. RATE: Object to the form. Go ahead,
2 Ta'jin.

3 A. Yeah, I can't speak to that.

4 **Q. (By Mr. Morris) Is it Western Native**
5 **Voice's position that Native Americans at county**
6 **election offices experience problems in these county**
7 **seats outside of the boundaries of the reservation?**

8 A. Yes, it is.

9 **Q. Like what?**

10 A. Like refusal of services for one. It's
11 common and, you know, border town racism and
12 discrimination in general. Most of these offices
13 are located in a county courthouse that also has
14 sheriff's deputies and other police and that can be
15 an intimidating experience for people.

16 **Q. Anything else?**

17 A. I mean, I can't speak to the personal
18 strife that individuals have with an elected county
19 administrator, you know, if there is any personal
20 issues there that I'm unaware of, but generally
21 speaking that's the bulk of it.

22 **Q. And when have you seen -- have you**
23 **personally observed refusal of services by counties?**

24 A. Have I as an individual personally seen
25 it? No.

1 **Q. What are you referring to in terms of**
2 **Western Native Voice's experience with observing**
3 **refusal of services at counties?**

4 A. So oftentimes it's a voter who talks to
5 the community organizer about the experience and
6 then that gets relayed to us in the home office.

7 **Q. Such as what?**

8 A. One example that comes to mind, I believe
9 it was in 2018 on Fort Peck.

10 **Q. What happened there?**

11 A. During a satellite election office stay an
12 individual requested a ballot replacement because
13 they lost access to their P.O. box and the
14 replacement ballot was refused.

15 **Q. Okay. Anything else?**

16 A. That I can recollect, that's the most
17 specific one that I have. I've heard of just
18 anecdotally genetic things, just sentiments and
19 general bad experiences.

20 **Q. And like what?**

21 A. Curtness, microaggressions, just lack of
22 enthusiasm to perform services, flippant behavior,
23 things that aren't quantifiable really but are under
24 that vein of microaggressions.

25 **Q. And do you know the circumstances in which**

1 **these instances occurred?**

2 A. I don't.

3 **Q. You mentioned border town racism at county**
4 **election offices. What are you referring to there?**

5 A. I'm referring to the phenomenon that when
6 Native people and non-Native people are living in
7 proximity to each other on a non -- in a non-Native
8 town right off the reservation, there is animosity
9 between those two groups and that a lot of that is
10 based on historical transgressions.

11 **Q. Are you saying that it occurs specifically**
12 **at county election offices?**

13 A. I'm saying that this happens in the towns
14 that they're housed and could lead to the hesitation
15 for those individuals to visit the town itself,
16 which, of course, the office is within the town.

17 **Q. And are you aware of anything like that**
18 **occurring actually on election day?**

19 A. At this time I can't recollect any
20 specific examples of that.

21 **Q. All right. And are you saying that this**
22 **border town racism, is it Western Native Voice's**
23 **position that this border town racism actually**
24 **occurs on election day for voters?**

25 A. It's not out of the question.

<p style="text-align: right;">Page 189</p> <p>1 Voice hire that collect ballots in a given election?</p> <p>2 A. How many people do we hire to collect</p> <p>3 ballots?</p> <p>4 Q. Yes.</p> <p>5 A. Just ballots?</p> <p>6 Q. Yes.</p> <p>7 A. We hire zero people to collect just</p> <p>8 ballots.</p> <p>9 Q. And do you hire organizers or volunteers</p> <p>10 that part of what they do is collect ballots?</p> <p>11 A. Yes.</p> <p>12 Q. And to collect ballots do you need to have</p> <p>13 any special qualifications as compared to an</p> <p>14 organizer who might just make a phone call to</p> <p>15 someone or send a text message?</p> <p>16 A. Well, we prepare them for, for it with</p> <p>17 training. There is not like a -- there is not a</p> <p>18 degree that you could earn in ballot collection but</p> <p>19 we do provide instruction on best practices and the</p> <p>20 applicable laws on that practice.</p> <p>21 Q. And is anybody that is a volunteer</p> <p>22 eligible to collect ballots?</p> <p>23 A. Yes.</p> <p>24 Q. And what's the vetting process for</p> <p>25 volunteers, not hires, but volunteers? Is there</p>	<p style="text-align: right;">Page 191</p> <p>1 A. On average, I mean, sometimes the</p> <p>2 conversations go longer than that. There really</p> <p>3 isn't a whole lot to it to make sure that it's done</p> <p>4 right so, yeah.</p> <p>5 Q. Does Western Native Voice use only paid</p> <p>6 ballot collectors?</p> <p>7 A. No.</p> <p>8 Q. What percentage of individuals that</p> <p>9 collect ballots are paid versus unpaid?</p> <p>10 MR. RATE: Object to the form. Go ahead.</p> <p>11 A. Well, we don't hire anyone specifically to</p> <p>12 do ballot collection. So the same answer that I</p> <p>13 gave for community organizers previously. We hire</p> <p>14 community organizers to do the work that includes</p> <p>15 that and our volunteers aren't paid.</p> <p>16 Q. (By Mr. Morris) And I think earlier we</p> <p>17 were talking about canvassing and community</p> <p>18 organizers and I think you indicated with respect to</p> <p>19 canvassing at least you got more pay canvassers or</p> <p>20 community organizers than you do volunteers. Do I</p> <p>21 have that right?</p> <p>22 A. Yes.</p> <p>23 Q. Is that the same thing for ballot</p> <p>24 collection where you've got more individuals who are</p> <p>25 paid community organizers doing ballot collection</p>
<p style="text-align: right;">Page 190</p> <p>1 one?</p> <p>2 A. In 2020 it was personal contacts with the</p> <p>3 organizers, so people within their family, people</p> <p>4 that they knew for -- again, these are individuals</p> <p>5 that have often lived in these communities their</p> <p>6 whole lives. So they would pick people that they</p> <p>7 trusted and train them themselves on the information</p> <p>8 we provided the organizers, so it was a trickle-down</p> <p>9 of the training.</p> <p>10 Q. So the training, you say that Western</p> <p>11 Native Voice gives training to people who collect</p> <p>12 ballots?</p> <p>13 A. Yes.</p> <p>14 Q. What does that consist of?</p> <p>15 A. It generally consists of in 2020 to do a</p> <p>16 Zoom meeting like this when we talked about the</p> <p>17 applicable laws, best practices like I mentioned</p> <p>18 before on the ballot collection and delivery and</p> <p>19 promptness and those kinds of things.</p> <p>20 Q. Is that just a pretty short little talk?</p> <p>21 A. It's about an hour long, like a standard</p> <p>22 training.</p> <p>23 Q. Are you saying that Western Native Voice</p> <p>24 does an hour-long training for all its ballot</p> <p>25 collectors as to ballot collection?</p>	<p style="text-align: right;">Page 192</p> <p>1 than you do volunteers that are?</p> <p>2 A. Yes.</p> <p>3 Q. And how many paid community organizers</p> <p>4 that collected ballots did Western Native Voice have</p> <p>5 in 2020?</p> <p>6 A. Paid community organizers we had -- I'm</p> <p>7 trying to think. On election day or outside of</p> <p>8 election day?</p> <p>9 Q. I guess both, and specifically that at</p> <p>10 least part of their duties would involve ballot</p> <p>11 collection.</p> <p>12 A. I would estimate that in 2020 we paid</p> <p>13 individuals that would be on some level involved</p> <p>14 with ballot collection, we paid anywhere from 20 to</p> <p>15 40 individuals would be a rough estimate.</p> <p>16 Q. And then do you have a rough estimate in</p> <p>17 2020 of the number of volunteers that also did</p> <p>18 ballot collection?</p> <p>19 A. I don't. We did a really poor job of</p> <p>20 keeping data on volunteers that we used that year.</p> <p>21 Q. And do you have payment records for the 20</p> <p>22 or 40 individuals that did ballot collection at</p> <p>23 least as part of their duties in 2020?</p> <p>24 A. We have payment information for all the</p> <p>25 people that we hired even just for one day for the</p>

1 understand. So earlier I think you told me that any
2 volunteer was eligible to collect ballots, right?

3 A. Yes, and that's with the understanding
4 that these are trusted individuals that the
5 organizers are asking to volunteer with them.

6 Q. Okay. So any volunteer who participates
7 in -- I mean, any volunteer that a community
8 organizer gets involved is considered a most trusted
9 volunteer?

10 A. Yes.

11 Q. Okay. And there is no distinction between
12 volunteers as to whether or not certain ones are
13 more trusted than others?

14 A. No, because in this context the volunteers
15 that are hand-picked by our organizers, we trust our
16 organizers and staff that they make a good judgment
17 on the people that they bring in, so that's good
18 enough for us.

19 Q. Okay. And so this statement here about
20 staff and your most trusted volunteers is really
21 just all-encompassing, it's basically -- it could
22 just read only staff and any volunteer should be
23 allowed to collect ballots. Is that correct?

24 A. I think that's an overgeneralization, but
25 I suppose so. I can't pretend what other

1 organizations do and since I don't know whose this
2 is, I have no way of knowing for sure.

3 Q. Do you see the footnote with respect to
4 that best practice in bullet point one and most
5 trusted volunteers? And I can zoom in if you can't
6 see it.

7 A. I can see it.

8 Q. Okay. So this talks about -- it says,
9 "Remember that serving as a volunteer is a low
10 barrier entry point for people interested in
11 infiltrating your organization." Do you see that?

12 A. Yes.

13 Q. And it says, "Volunteer repeatedly asked
14 about ways to collect ballots that are prohibited.
15 That interaction should be flagged for your
16 organization's leadership and the volunteer should
17 be reassigned or temporarily disengaged." Do you
18 see that?

19 A. I do see that.

20 Q. So Western Native Voice is aware and
21 sensitive to the fact that volunteers can be sort of
22 bad actors and do things that are inconsistent with
23 the best practices that Western Native Voice strives
24 to have?

25 MR. RATE: Object to the form. Go ahead.

1 A. I mean, that's incredibly vague. It's
2 possible.

3 Q. (By Mr. Morris) Well, is Western Native
4 Voice concerned with the potential for people
5 interested in infiltrating the organization and
6 particularly with respect to its ballot collection
7 activities?

8 A. Yes.

9 Q. And what's the concern?

10 A. The concern is mostly from people who are
11 outside of the known people from communities coming
12 in and trying to create situations that then become
13 an issue. So, you know -- but I think what needs to
14 be reminded here is that our organizers are rooted
15 in the community and people -- these are small
16 communities that we're talking about. People know
17 each other and it's not like, you know, they get a
18 volunteer from Billings to go into Rocky Boy to
19 do -- that's not how we do things.

20 We're insular, just like our communities
21 are. So it's hard to not know who the people who
22 are working for you are, what they do and who they
23 are. So I think that this is a reminder for other
24 organizations potentially that don't have that deep
25 connection with communities, but for us it's a

1 concern that we have from, you know, bad actors that
2 have political agendas outside of our organization
3 but within our organization we don't have the, a
4 strong concern.

5 Q. Okay. You said earlier that you have
6 already hired for 2022 community organizers, right?

7 A. Some.

8 Q. And one of them is designated to work in
9 Missoula; is that right?

10 A. No. Billings.

11 Q. Billings. You wouldn't characterize
12 Billings as a small insular community, would you?

13 A. No.

14 Q. So the potential for infiltration by bad
15 actors in areas like Billings is still there, right?

16 A. Well, since our definition of Native
17 American is Native American within tribal nations,
18 that's the definition that we're focusing on, so...

19 Q. But you're not suggesting that Western
20 Native Voice only hires volunteers or staff members
21 to collect ballots from tribal nations or on
22 reservation, within the boundaries of the
23 reservation, right?

24 A. No, but I think addressing that the scope
25 of this deposition is for that area.

1 A. No.

2 **Q. Anything else about HB 530 Section 2 that**
3 **Western Native Voice claims is ambiguous?**

4 A. The -- I think there is a government
5 entity issue and how it doesn't specifically lay out
6 tribal governments specifically in the statute.

7 **Q. Okay. And has Western Native Voice made**
8 **any efforts to determine whether or not a tribal**
9 **government would be considered a governmental entity**
10 **under HB 530 Section 2?**

11 A. No.

12 **Q. Are you aware that HB 530 Section 2**
13 **requires the Secretary of State to write an**
14 **Administrative Rule?**

15 A. I'm aware that's a step.

16 **Q. And did Western Native Voice -- has**
17 **Western Native Voice ever participated in the**
18 **administrative rulemaking process with respect to**
19 **any election laws?**

20 A. We're neither made aware of this nor have
21 we been invited to participate.

22 **Q. Is Western Native Voice aware of the**
23 **opportunity with respect to administrative**
24 **rulemaking to offer public comment?**

25 A. We're unaware that this process has even

1 collection activities?

2 A. Yes.

3 **Q. And has Western Native Voice engaged in**
4 **any ballot collection activities since passage of**
5 **HB 530?**

6 A. No.

7 **Q. And is that just a function of the**
8 **schedule or is that as a result of the passage of**
9 **the law?**

10 A. Both.

11 **Q. And is it Western Native Voice's**
12 **understanding that upon passage HB 530 was**
13 **enforceable against Western Native Voice or anyone**
14 **else that engaged in ballot, paid ballot collection**
15 **in Montana?**

16 MR. RATE: Object to the form. Go ahead.

17 A. We understood that while it was in place
18 it was enforceable.

19 **Q. (By Mr. Morris) And has it ever been**
20 **enforced to Western Native Voice's knowledge against**
21 **any group or entity, including Western Native Voice?**

22 A. No.

23 **Q. Does Western Native Voice contend that**
24 **there is no voter fraud in Montana?**

25 A. Our contention is that the allegations of

1 started.

2 **Q. And I don't mean specifically with respect**
3 **to HB 530 Section 2, I'm speaking more generally**
4 **about the administrative rulemaking process. Is**
5 **Western Native Voice aware of the administrative**
6 **rulemaking process and the opportunity to provide**
7 **public comment in that process?**

8 A. If this is separate from providing public
9 comment to the legislature then no, we're not aware.

10 **Q. Did Western Native Voice understand that**
11 **with respect to HB 530 Section 2, at least when it**
12 **was first implemented, there was going to be an**
13 **administrative rulemaking process?**

14 A. I was not aware of that.

15 **Q. And did Western Native Voice ever discuss**
16 **participating in an administrative rulemaking**
17 **process with respect to HB 530 Section 2?**

18 A. No.

19 **Q. Is it Western Native Voice's testimony**
20 **that it has never participated in its history in the**
21 **administrative rules making process with respect to**
22 **any legislation passed in Montana?**

23 A. That's correct.

24 **Q. After HB 530 Section 2 was passed, did**
25 **Western Native Voice cease all of its ballot**

1 widespread organized voter fraud are nonexistent and
2 that, you know, small instances of people
3 accidentally voting twice are very, very small and
4 that there are to our knowledge no reported cases of
5 verifiable voter fraud in the state.

6 **Q. Would falsifying a registration form**
7 **constitute voter fraud in the state of Montana?**

8 MR. RATE: Objection, foundation, form.

9 Go ahead.

10 A. It sounds like it's just regular fraud and
11 there was a statute for that.

12 **Q. (By Mr. Morris) I'm sorry. I don't think**
13 **I fully understood your testimony. What do you mean**
14 **by just regular fraud?**

15 A. Just standard fraud, falsifying
16 information, and it didn't seem to me that there is
17 consequences for people who engage in fraud already.

18 **Q. In terms of Western Native Voice's**
19 **position in this case with respect to no documented**
20 **instances of voter fraud in Montana, does Western**
21 **Native Voice include within its definition of voter**
22 **fraud in Montana instances where a voter falsified**
23 **information on their voter registration application?**

24 A. I don't think that that's -- I don't know.

25 I don't know. That's not how our organization would

EXHIBIT B

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Consolidated Case 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,

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

Plaintiffs,

vs.

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

Defendant.

VIDEOCONFERENCE, VIDEO-RECORDED 30(b)(6) DEPOSITION OF
BLACKFEET NATION

DAWN GRAY

Taken from:

Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
May 27, 2022
10:05 a.m.

1 states that: "Many lack access to a reliable
2 vehicle."

3 And I asked you about the basis for that
4 contention a moment ago and you referred me to these
5 transit numbers; is that right?

6 A. Oh, yes; yes.

7 Q. Besides the transit numbers, are there
8 other facts that support this contention about many
9 people lacking access to a reliable vehicle on the
10 Blackfeet lands.

11 A. Yeah, so our housing report, too,
12 indicates a waiting list of individuals that are
13 homeless or just -- so they're living -- they're
14 multigenerational families that are living in a house.

15 And so in most cases -- and a lot of them are
16 not working. There may be one or two that are working
17 in the house, and so those members from the housing
18 also, based upon the poverty level and wait list,
19 there's, obviously, no income for a vehicle. So it's
20 -- that's one other indicator we used. I can't
21 remember what that was.

22 Q. Okay. So you haven't done, Blackfeet
23 Tribe hasn't done any studies as to how many people
24 that live in a multigenerational housing situation
25 lack access to a vehicle, right?

1 junk vehicle doesn't tell us whether or not they also
2 own a reliable vehicle, right?

3 A. Well, I know a junk vehicle is not
4 reliable.

5 Q. Right, but you're not suggesting that the
6 fact that a person has a junk vehicle means that they
7 also lack a reliable vehicle, right?

8 MS. KELTY: Objection; mischaracterizes
9 testimony.

10 THE WITNESS: From my observation, having
11 a junk vehicle was their attempt to try to have
12 reliable transportation. I don't know of many people
13 that are on the poverty level that are going to then
14 be able to access another vehicle. They just pile up
15 here because they're unreliable. They're junk
16 vehicles. They have more than one. Many people can't
17 get a loan for a vehicle, a new car, let alone, so
18 they go with whatever they can get.

19 Q. (By Mr. Morris) And Blackfeet Nation
20 doesn't have any data or empirical evidence that
21 correlates those two things, correct?

22 A. I think EPA and housing might have those
23 numbers.

24 Q. Sure. And that hasn't been produced in
25 this litigation, correct?

1 **rare." Do you see that?**

2 A. Yes.

3 **Q. And Blackfeet Nation is not aware of any**
4 **data or empirical evidence to support that assertion,**
5 **correct?**

6 A. There is, like I said, evidence that
7 relates to the poverty and employment level here,
8 which correlates to being able to have that dependable
9 vehicle.

10 **Q. And is that just your personal opinion,**
11 **that those two data points correlate?**

12 A. My personal opinion, it is that, and it's
13 also, like I said, was that discussion we had with
14 Manpower as to the poverty rate.

15 In looking back at the previous sentence there,
16 and that's really in relation to the weather. So I
17 can, you know, drive a junk vehicle down a road, but I
18 can't drive it through a drift of snow, so it's not a
19 dependable vehicle in that sense. But nobody can
20 afford, you know, those newer-type, dependable
21 vehicles for the weather if they're not working.

22 **Q. And you, personally, aren't a data analyst**
23 **or have any qualifications that would allow you to**
24 **make connections between data points like you've**
25 **offered just now, correct?**

1 MS. KELTY: Objection; misstates prior
2 testimony.

3 MR. MORRIS: I'm trying to understand it,
4 Counsel.

5 THE WITNESS: Okay. So this is a very
6 difficult, complex area. And the reason -- and so
7 your question is "the Montana Department of
8 Transportation," so you're talking Highway 2?

9 Q. And 89.

10 A. And 89. So we're looking at that road
11 from Cut Bank through Browning to East Glacier; and
12 then we're looking at the road from Browning through
13 Two Medicine up through, heading towards the
14 Valier-Choteau area. So those ones are the
15 responsibility of the Montana Department of
16 Transportation.

17 And so, and this is from my personal observation
18 driving from Cut Bank to Browning every single day
19 even in the wintertime, the road from Cut Bank to
20 Browning in the wintertime is not consistently plowed
21 for the reasons of -- I'll just say this, you know,
22 that it's dangerous for plows out there so they have
23 to wait until the weather passes.

24 They also do lack manpower to get out there, so
25 when we're in those treacherous times, it's all hands

1 on deck with whoever you've got. So we might not have
2 those roads plowed consistently as we would like, and
3 we've had a lot of schools shut down because of that.
4 Now, that's those two roads.

5 Now, we get into the other roads that the BIA is
6 supposed to maintain, and because of lack of resources
7 and manpower there, we've had school shutdowns and
8 office closures because those roads have not been
9 plowed. And that's the BIA inventory roads. So Route
10 1, the one to Heart Butte, those ones are not
11 consistently plowed and are very dangerous. And that
12 includes all those other routes of the BIA inventory.

13 The last I knew, just this spring, we only had
14 one plow for Heart Butte and it wasn't, to me, it
15 wasn't reliable public access for anything, and
16 there's no way of getting a car out there at all.

17 And just to kind of add to that with Heart
18 Butte, that's one of the reasons we're trying to get a
19 store built out there so that people can access just
20 food because even if they had a car, they're not going
21 to get out. And we have those unusual snow years that
22 it's just treacherous out there.

23 So the plowing issue is not available to us like
24 we would like for other cities and counties and towns
25 in the state of Montana. We don't get those taxes.

1 We don't get PILT money for any of that. The counties
2 eat up all of that Valier and Cut Bank. And there's a
3 lot of things in the paper with our legislators that
4 are trying to advocate that we get that PILT money;
5 otherwise, it's BIA or the tribe, and we just -- we
6 lack resources for plowing.

7 **Q. Gotcha. So the plowing that occurs**
8 **between Cut Bank and Browning, I think you said can be**
9 **irregular in the winter, right?**

10 A. Yes.

11 MS. KELTY: Objection; mischaracterizes
12 testimony.

13 THE WITNESS: Yeah, you wouldn't know from
14 day to day if it's plowed or not.

15 **Q. (By Mr. Morris) Okay. And, then, was any**
16 **of your testimony relating to plowing on Highway 89**
17 **indicating that that was also irregularly plowed; so,**
18 **in other words, between Browning and Babb, for**
19 **instance?**

20 A. Well, which highway?

21 **Q. Eighty-nine.**

22 A. But you said "Babb."

23 **Q. Yeah, isn't that Babb up 89?**

24 A. Yeah, so it's a long stretch of road, so
25 are you just talking about one section of Babb?

1 **Q. Yeah, it is a long section.**

2 A. Babb is the worst. They're the last place
3 that anybody's going to think about getting out.
4 Their whole thing is: We're not going to do it until
5 the snow quits.

6 And if you look at some of those pictures, it's
7 way above the vehicles. They have to plow in there
8 and there's walls of snow. It's the most treacherous,
9 dangerous area out there. I mean, we wouldn't even --
10 the plow drivers won't go out there unless it's
11 cleared for them to do their job safely, so they're
12 totally closed in when we're having one of those
13 events.

14 **Q. Okay. I think you also mentioned "Heart**
15 **Butte."**

16 A. Yes.

17 **Q. Are you referring to the Heart Butte road**
18 **that goes to Dupuyer?**

19 A. No, no, so that's past Heart Butte. And,
20 actually, Dupuyer is off reservation.

21 **Q. Right, I was trying to understand what**
22 **road you were referring to in your testimony --**

23 A. So Route 1, that's the one that we have a
24 lot of difficulty with, including that one Highway 89
25 between Browning and that turnoff to go to Valier.

1 What makes those two roads really difficult is
2 the wind and the blizzard. That's where you see all
3 of the big tankers blow over or run off because the
4 wind hits them, side blinds them, and you can't see
5 because of the blizzard conditions. It's easier to
6 come from Cut Bank to Browning in a blizzard because
7 everything's blowing against you or with you, you're
8 not hitting that crosswind.

9 But those two roads, you're getting it
10 crosswise, and so those two are the most dangerous, I
11 would say, in the way of daily traffic through those
12 kind of weather conditions. And then if you're going
13 to East Glacier, don't even think about it. I think
14 they totally close that road.

15 **Q. Does Blackfeet Nation have particular**
16 **examples of problems with roads around a general**
17 **statewide or federal election?**

18 A. What do you mean like a problem with
19 roads?

20 **Q. Yeah. So we were talking about at times,**
21 **there's inconsistent plowing between Browning and Cut**
22 **Bank. And I'm trying to get a handle on whether or**
23 **not any of those occasions has coincided with**
24 **elections or election activity in late October or**
25 **early November.**

1 **Blackfeet's contention that the fact that there is**
2 **shared housing by Blackfeet members has an effect on**
3 **Blackfeet members' availability to vote. Do I have**
4 **that right?**

5 A. Yes.

6 Q. So how does the fact that there is shared
7 housing affect the ability of those people to vote?

8 A. So that's an indicator of low income,
9 first of all. And, normally, the person that's on the
10 lease for housing typically has some kind of income,
11 which may be that car to get to the post office. And
12 for the post office purposes, that's the person that's
13 going to have the mailbox.

14 And so if you have people that are bunking with
15 you, I guess, because they're homeless or are not a
16 part of that lease will have less ability to create
17 their own mailbox or access that vehicle to get to
18 that mailbox.

19 Q. Okay. Anything else?

20 A. It depends on where you live, too. So,
21 like I said, if it's in those Heart Butte areas or
22 those more rural areas, if you're in a situation where
23 you have to live with somebody because you can't
24 afford your own housing or you're on a wait list, it
25 makes the chances of getting out more -- less ability

1 to do so, even just for basic needs.

2 Q. Ms. Gray, are you looking at something
3 right now?

4 A. Yeah, I'm trying to make some sense of
5 these lists. I don't know if you have them, but we
6 have several tabs to that. And so just looking at --
7 so the applicants - I wanted to be clear, I think we
8 said 114 - it's more than that that are homeless
9 because we've got 63 people that are on the
10 one-bedroom list, so we could say that that's one
11 person, but when you move to these other lists - two-
12 three-, four-bedroom, five-bedroom, now elderly
13 voucher, those include their families.

14 So, obviously, there's more people associated
15 with this, so I just wanted to make sure that that's
16 clear. It's more than 114. That's just the
17 applicant.

18 Q. Okay. Thanks for that clarification.

19 A. Yeah, yeah.

20 Q. And there's, I think you said, of that
21 114, there's 63 that are just looking for a one room?

22 A. For a one-bedroom, yes. And, yes, I am
23 not a data person so it took me a little bit of time.

24 Q. That's okay. Well, you don't need to pore
25 over that report --

1 up that said: Call this number if you have a ballot
2 to turn in and no ride. And then we had folks just
3 going around, kind of knocking on the doors, saying,
4 "Hey, did you vote?"

5 **Q. Do you know where, where they went to**
6 **knock on doors?**

7 A. I think mostly in the Browning area. I
8 could be wrong, though. He might have had some folks
9 out in the outlying communities as well.

10 **Q. One of the laws that's challenged in this**
11 **case by Blackfeet is HB 530, and in particular,**
12 **Section 2 of HB 530. Are you familiar with that law?**

13 A. I'm trying to get familiar by number, but
14 if you can remind me what the text of that is again.

15 **Q. Yeah. It's a law that requires the**
16 **secretary of state to write an administrative rule and**
17 **substantially the form -- and substantially a**
18 **particular form that relates to ballot collection and**
19 **prohibits paid ballot collection. Is that ringing a**
20 **bell?**

21 A. Yes.

22 **Q. Does Blackfeet Nation contend that there**
23 **are parts of HB 530.2 that are ambiguous?**

24 A. Yes. And if I could have the text of
25 that, I could probably explain a little bit more. I

1 think it's who -- what does that exactly mean as far
2 as who can collect?

3 Q. Sure. So one of the terms in HB 530 is
4 governmental entities are exempted from the
5 prohibition --

6 A. Yeah.

7 Q. -- is that what you recall?

8 A. Yeah, and so I think the issue there is:
9 What is a governmental entity?

10 Q. Blackfeet Nation is a sovereign and has a
11 governmental entity, correct?

12 MS. KELTY: Objection; calls for a legal
13 conclusion.

14 Q. (By Mr. Morris) So is it Blackfeet
15 Nation's position in this case that it doesn't know
16 whether or not it will qualify as a governmental
17 entity --

18 A. Right.

19 Q. -- under HB 530?

20 A. Under 2(B)?

21 Q. Why is that?

22 A. You're talking 530 --

23 Q. I'm sorry. Why is that?

24 A. Just because it's not clear in the text.
25 It calls for a state agency, government entity. It

1 would have been good if it said "tribal governments"
2 as well.

3 Q. I'm going to share my screen with you.
4 Can you see, again, this is Deposition Exhibit 2, and
5 the Response for Production No. 4?

6 A. Okay.

7 Q. And Blackfeet Nation, as it states there,
8 is a fully functioning, sovereign government. That's
9 accurate, right?

10 A. Wait, now, the response to Request for
11 Production No. 4?

12 Q. Yes.

13 A. And it says what?

14 Q. I'm sorry, I'll have --

15 A. "A fully functioning sovereign
16 government," that's what it says, yes.

17 Q. And that's accurate, isn't it?

18 A. Yes.

19 Q. And Blackfeet Nation passes laws, correct?

20 A. Yep.

21 Q. And handles legal disputes and provides
22 its members with emergency services, social programs,
23 land management, and infrastructure. All that's
24 accurate, right?

25 A. Yes.

EXHIBIT C

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Consolidated Case 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,

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

Plaintiffs,

vs.

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

Defendant.

VIDEOCONFERENCE VIDEO-RECORDED 30(b)(6) DEPOSITION OF
CONFEDERATED SALISH AND KOOTENAI TRIBES

ROBERT McDONALD

Taken at:

Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 19, 2022
9:02 a.m.

1 A. Okay. Well, it's starting to echo here.
2 It went away.

3 The wording muddies the process. The words
4 themselves are understood, but it would leave the
5 question to how they're applied, interpreted; muddies
6 the situation, which is already tense; and creates
7 difficulty for us in carrying out our duties.

8 Q. Fair enough. I'd like to refer us now
9 just briefly back to Exhibit 59, which is the
10 authorized print version of HB 530.

11 And I'm going to refer us to Section 2 here,
12 sir, and specifically Section 2(1), which states:

13 "On or before July 1, 2022, the secretary
14 of state shall adopt an administrative rule in
15 substantially the following form."

16 Has the CSKT participated in the State of
17 Montana's administrative rulemaking process?

18 A. Could you define "administrative
19 rulemaking process"?

20 Q. Sure. So under the Montana Administrative
21 Procedures Act and different regulations adopted,
22 depending upon the state agency, most state agencies
23 have a specific process by which they solicit public
24 feedback, they incorporate that public feedback, and
25 they promulgate rules or regulations under the

1 **Q. Okay. How are those best practices told**
2 **to CSKT employees that engage in ballot collection?**

3 A. How are best practices communicated to
4 tribal membership and the community, best practices on
5 ballot -- I don't believe there's any such
6 communication that happens along that sort.

7 **Q. Okay. So is it accurate that the CSKT**
8 **generally has practices for ballot collection?**

9 **MS. DE LEÓN: Objection; misstates**
10 **testimony.**

11 MR. PHILLIPS: Okay, I'll strike that.

12 **Q. (By Mr. Phillips) Does the CSKT have**
13 **practices for ballot collectors?**

14 A. We held events and asked people to come.
15 And I'm not sure how you're defining "ballot
16 collectors" in this context. Are you saying someone
17 who makes fry bread and serves it to a couple aunties
18 and their yaya and they put their ballots into a box.

19 Are those ballot collectors? Because they're
20 not hired on contract, per se, as a ballot collector,
21 they're an event organizer. I'm slightly confused as
22 to --

23 **Q. Sure. Let's get more specific. Does the**
24 **CSKT pay its employees to engage in ballot collection?**
25 **And "ballot collection" here being defined as taking a**

1 than it was in 2014?

2 A. Yes.

3 Q. Okay. And does the CSKT describe the rate
4 of poverty among the CSKT members on the Flathead
5 Reservation as "high"?

6 A. Yes.

7 Q. And is the rate of poverty among the CSKT
8 members on the Flathead Reservation higher now than it
9 was in 2014?

10 A. I haven't seen updated records. I don't
11 know.

12 Q. Okay. To the CSKT's knowledge, do most
13 Native Americans residing on the Flathead Reservation
14 lack internet access?

15 A. Do most lack internet access?

16 Q. Hm-hmm [affirmative].

17 A. I believe we're struggling to answer that
18 question. It is, access is a definite issue. "Most,"
19 I can't say; it's a lot.

20 Q. Okay. To the CSKT's knowledge, do members
21 of the CSKT residing on the Flathead Reservation have
22 limited access to broadband internet services?

23 A. CSKT members have limited access to
24 broadband, yes.

25 Q. Is that access more limited now than it

1 long lines at the election office on the Flathead
2 Reservation in the general election of 2020?

3 A. Election Day registration is something
4 that our community's relied upon for more than a
5 decade.

6 Q. And did it result in long lines at polling
7 places in the general election in 2020 on the Flathead
8 Reservation?

9 A. If you're asking if it brought people
10 there, it did.

11 Has it always had previously? I don't know, I
12 think larger forces brought additional people on top
13 of that group.

14 Q. And in the CSKT's opinion, does Election
15 Day registration result in long lines at election
16 offices on Election Day at the -- on the Flathead
17 Reservation?

18 A. Is it one factor? Yes, but it was an
19 extraordinary election with extraordinary national
20 attention, one that doesn't come around very often.

21 Q. Okay. In the CSKT's opinion, is voting by
22 mail preferable to voting in person?

23 A. It's a mixed answer because of the
24 complication by voting through mail at times.

25 Q. Okay. Can you describe for me a little

1 bit of what you're thinking about when you say it's a
2 mixed, mixed answer?

3 A. Transportation is a huge issue on the
4 Reservation, access to transportation, reliable
5 transportation, transportation you can plan on days
6 ahead with multiple family members tugging at needs.
7 There's competing needs.

8 So in a lot of the households where there are
9 many things to navigate, from job, to school, to
10 medical, multiple generations, and then you add on one
11 other thing, which happens to be the election, it can
12 complicate access to the post office.

13 And then concern of whether or not a person is
14 going to be having their vote counted. Will it be
15 thrown out? In person, one who harbors distrust of
16 the system can ensure that they're registered and the
17 vote is turned in on that day.

18 Q. So is it the CSKT's opinion that in-person
19 voting is more secure than voting by mail?

20 A. I believe there's a segment of the
21 community who has distrust of the system and finds it
22 more secure, yes.

23 Q. Okay.

24 MS. DE LEÓN: Objection; misstates
25 testimony. Sorry, I meant to get it in there.

1 HB 530 says that by July 1, 2022, the secretary
2 has to promulgate a rule in substantially the form
3 that's provided in the statute. And as part of
4 promulgating that rule, the secretary will call
5 administrative hearings to elicit opinions from
6 stakeholders. Does the CSKT plan to participate in
7 those hearings?

8 A. I don't know.

9 Q. Okay. In the CSKT's opinion, is there any
10 reason why it wouldn't participate with the secretary
11 in that process?

12 A. I don't know.

13 Q. Okay. I'd like to talk now about HB 176,
14 which is the -- which ends Election Day registration
15 for state and federal elections in Montana. In the
16 CSKT's opinion, does that harm CSKT members?

17 A. If it was put in place?

18 Q. Yes, sir.

19 A. I believe that the, that our population is
20 familiar with the ability to go on Election Day and
21 see that their vote is counted; or see that they can
22 get registered; or double-check their status of if
23 they're registered or not, or if their status got
24 thrown out for some reason that they can't understand,
25 or missed the letter of notification, or whatever, or

1 sometimes it seems like there is no notification.

2 But I think it, again, disrupts, the fact that
3 they had a go-to, engrained way of ensuring their vote
4 was counted and then it's not there.

5 **Q. Would the CSKT agree that a CSKT member**
6 **could check their voter registration status before**
7 **Election Day?**

8 A. That question could potentially reflect
9 the lack of understanding of the complications within
10 our community, with -- something that seems simple is
11 not as simple as it might seem within our community.

12 **Q. And so CSKT's answer is "it depends" to**
13 **that question?**

14 A. Ask the question again.

15 **Q. Sure. I'm just trying to understand**
16 **whether, in the CSKT's opinion, a CSKT member could**
17 **check their registration before Election Day in --**
18 **for the --**

19 A. Is there a system in place for people to
20 check their registration status? Yes.

21 **Q. Okay.**

22 A. Is our membership told of it? Yes.

23 **Q. Okay.**

24 A. Does our membership wholly embrace that?
25 That's up to each individual household, I guess.

EXHIBIT D

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Consolidated Case 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,

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

Plaintiffs,

vs.

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

Defendant.

VIDEOCONFERENCE VIDEO-RECORDED 30(b)(6) DEPOSITION OF
NORTHERN CHEYENNE TRIBE

LANE SPOTTED ELK

Taken at:

Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 20, 2022
9:03 a.m.

1 their right to vote."

2 By "EDR," was the Tribe referring to Election
3 Day registration?

4 A. Yes.

5 Q. How did the Tribe determine that its
6 members in particular rely on EDR in order to vote?

7 A. So the Tribe, you know, understands, you
8 know, in the conversations with our members and things
9 like that, how important EDR is to our membership, so
10 I guess that's referencing that.

11 Q. Okay. Are those communications in writing
12 or are they, or are they oral?

13 A. Yeah, verbal.

14 Q. Okay. Are there any records of those
15 conversations that the Tribe maintains?

16 A. Not that I'm aware of, no.

17 Q. Okay. So how does the Tribe itself become
18 aware? Are those communications that are made to
19 individual councilmen like yourself?

20 A. Yes, in apart.

21 Q. Okay. Who else at the Tribe might be a
22 recipient of those communications?

23 A. Perhaps other elected officials as well.

24 Q. Okay. Let's take a step back for a
25 moment.

1 Is the Tribal Council the governing body of the
2 Tribe?

3 A. Yes.

4 Q. Okay. Can you describe for me the Tribal
5 Council just briefly, its makeup?

6 A. So the Tribal Council is made up of
7 elected officials from our five various districts. We
8 have an elected at-large vice president and an elected
9 at-large president, and then an appointed secretary
10 and an appointed treasurer that make up the Tribal
11 Council.

12 Q. Okay. So there's a few employees in
13 addition to the councilmen or women that are a part of
14 the Tribal Council; is that correct?

15 A. Yes.

16 Q. Okay. Can you describe, does the Tribe
17 have any election-related employees or any -- excuse
18 me, let me restate that.

19 Does the Tribe have any employees that are
20 employed specifically for election-related tasks?

21 MS. DE LEÓN: Objection; vague as to what
22 type of elections.

23 MR. PHILLIPS: Thank you.

24 Q. (By Mr. Phillips) Let me rephrase, sir.

25 Does the Tribe have any employees that are

1 employed specifically for state or federal elections?

2 A. No.

3 Q. Okay. Does the Tribe administer its own
4 elections, tribal elections?

5 A. Yes.

6 Q. How does it do so?

7 A. So the Tribe has an election ordinance
8 that kind of governs the process and procedures for
9 tribal elections.

10 Q. Does the Tribe employ election officials
11 for those tribal elections?

12 A. Yes.

13 Q. How many?

14 A. Approximately, 10 to 20 individuals.

15 Q. Okay. Are those permanent or temporary
16 employees?

17 A. Temporary.

18 Q. Are there any permanent employees that the
19 Tribe hires for tribal election-related activities?

20 A. So as I previously mentioned, the Tribal
21 Council appoints a tribal secretary whose
22 responsibility it is to administer tribal elections,
23 so --

24 Q. Okay.

25 A. -- (inaudible, videoconference

1 malfunction) -- appointed position.

2 **Q. I apologize, I interrupted you.**

3 COURT REPORTER: I didn't catch the very
4 end of your answer. Forgive me. And I can read what
5 I had up to --

6 THE WITNESS: Yes, sir.

7 (The record was read back as follows:

8 "QUESTION: Are there any permanent
9 employees that the Tribe hires for tribal
10 election-related activities?

11 "ANSWER: So as I previously mentioned,
12 the Tribal Council appoints a tribal secretary whose
13 responsibility it is to administer tribal elections,
14 so --")

15 THE WITNESS: -- tribal elections, so I
16 guess that's the only appointed position.

17 BY MR. PHILLIPS:

18 **Q. Okay. What are the duties of the tribal**
19 **secretary?**

20 A. So the duties of the tribal secretary is
21 to manage and administer the tribal elections, and
22 then also to keep a record, an official record of all
23 the Tribal Council meetings.

24 **Q. Okay. Besides oral communications made to**
25 **tribal employees, does the Tribe have any other**

1 evidence that Northern Cheyenne members rely on EDR to
2 exercise their right to vote?

3 A. I have -- I can attest to the importance
4 of EDR and, you know, how -- the distance we are from
5 Forsyth, Montana, or for folks who live on the Big
6 Horn side to Harding, Montana.

7 You know, so just because of where we're
8 located, I have personal, and in my official capacity,
9 as well, too, knowledge of the importance of EDR.

10 Q. So outside of oral communications to
11 tribal employees, and your personal and professional
12 knowledge, does the Tribe have any other evidence that
13 tends to support its statement that Northern Cheyenne
14 members particularly rely upon EDR to exercise their
15 right to vote?

16 A. Not that I'm aware of, no.

17 Q. Can you tell me if you know personally
18 what tribal members -- or what tribal employees may
19 have also received oral communications?

20 A. I'm uncertain of that at the present time.

21 Q. Okay. Does the Tribe have any information
22 as to who else, which other tribal employees might
23 have received oral communications relating to the
24 importance of EDR?

25 A. I'm uncertain of that as well.

1 THE WITNESS: So as I've previously
2 mentioned, the Tribe does not operate any GOTV
3 efforts, so we rely on nonpartisan organizations like
4 Western Native Voice for GOTV.

5 Q. (By Mr. Phillips) Okay. From the Tribe's
6 perspective, when it says HB 530 makes participation
7 in elections by the Northern Cheyenne members
8 substantially more difficult, what is the baseline
9 it's comparing HB 530 to?

10 Does that question make sense?

11 A. Yes. The Tribe would compare it to if HB
12 530 took effect or not took effect. That potentially
13 could be the baseline.

14 Q. Okay. So does the Tribe have an
15 understanding of tribal member voter participation in
16 state and federal elections currently?

17 A. So in general, yes.

18 Q. Can you describe that understanding to me?

19 A. So in general, we know that, you know, our
20 tribal members' participation in state elections, you
21 know, is dependent on, you know, same-day voting
22 registration. And that's important to our members as
23 well as the Tribe, so -- (pause.)

24 MR. PHILLIPS: Jacqueline, can you still
25 hear us okay? I see you lost video.

1 A. So the Tribe, you know, contends that
2 nonpartisan organizations like Western Native Voice,
3 you know, we rely on those partnerships for those
4 activities since the Tribe doesn't necessarily do GOTV
5 efforts.

6 Q. Okay. So as we sit here today, you can't
7 -- the Tribe can't tell me the details of any
8 investigation it has conducted to determine why HB 530
9 makes voting substantially more difficult?

10 MS. DE LEÓN: Objection; misstates prior
11 testimony.

12 Q. (By Mr. Phillips) Okay. Tell me about the
13 investigation the Tribe conducted before making the
14 assertion that HB 530 makes voting substantially more
15 difficult.

16 A. I guess I'll go back to previous testimony
17 about how, you know, the same-day registration is
18 important for our members as well as the Tribe, and I
19 think that's been well documented.

20 Q. Sir, I'm trying to get to the
21 documentation. Is it just, is it just an opinion? Is
22 it the Tribe's opinion that Election Day registration
23 is important -- strike that.

24 Let's just go back to this question: So how
25 many members, tribal members participated, voted in

1 is it -- do most tribal members have access to
2 internet on the Reservation?

3 MS. DE LEÓN: Objection; form.

4 MR. PHILLIPS: Counsel, what's the problem
5 with the form?

6 MS. DE LEÓN: I'm just unclear as to what
7 "most" means.

8 MR. PHILLIPS: Okay.

9 Q. (By Mr. Phillips) Sir, let me restate. Do
10 more than 50 percent of Northern Cheyenne tribal
11 members on the Northern Cheyenne Reservation have
12 access to internet?

13 A. So our focus is access to quality
14 internet. You know, fiber build-out, things like
15 that, that's important for the Tribe. You know,
16 having access to internet is one thing, but quality
17 internet is important for us as well.

18 So without the conclusions of that study, you
19 know, we can't really give you an accurate answer
20 right now about that, but we do know it's an issue and
21 it's a priority for the Tribe.

22 Q. So can the Tribe tell me whether more than
23 50 percent of its members on the Northern Cheyenne
24 Reservation have access to internet regardless of
25 quality?

1 A. I would assume like everybody else
2 registering to vote. You know, I'm sure the process
3 is the same.

4 Q. And so the Tribe wouldn't have any reason
5 to disagree that absentee ballots are generally mailed
6 to tribal members?

7 A. Yes, that's how we understand it.

8 Q. Okay. And those tribal members, do they
9 generally rely on post office boxes for their mail
10 service?

11 A. The majority of tribal members living on
12 the Reservation rely on a post office box. There is a
13 small portion of the Reservation that receives mail
14 delivery services, but that's only for a few, a few
15 households proportional to the entire tribal members,
16 yes.

17 Q. Okay. So it's fair to say that for the
18 majority of tribal members, those absentee ballots are
19 sent to their post office boxes and they pick those
20 ballots up at the post office; is that correct?

21 A. That's correct.

22 Q. Does the Tribe --

23 MS. DE LEÓN: Wait. Objection, objection;
24 compound to the previous question.

25 Q. (By Mr. Phillips) Okay. Let me just

1 but just review Section 2(1)(b), which is down here by
2 my cursor? And I can zoom in a little bit, if that's
3 helpful.

4 Could you read that section for me? And then
5 I'd like to talk about it when you're ready.

6 A. Okay, I'm ready.

7 Q. Does the Tribe have any reason to believe
8 that it would not be considered a government entity
9 under this subsection?

10 MS. DE LEÓN: Objection; calls for
11 speculation.

12 Q. (By Mr. Phillips) I'm asking currently if
13 the Tribe has any reason to believe right now that it
14 wouldn't fall under the definition of "government
15 entity" as used in this subsection.

16 A. So the Tribe would contend that unless
17 it's explicitly stated, the Tribe is unclear if this
18 would be the legislative intent.

19 Q. Okay. And it's the Tribe's testimony
20 today that it participates routinely in federal
21 rulemaking processes; is that correct?

22 A. That's correct.

23 Q. And does the Tribe, in the context of
24 those federal rulemaking processes, ever submit
25 written or oral comment regarding the definition of a

1 Q. Sure. Does the Tribe contend that members
2 of the -- that its members are harmed if they cannot
3 register to vote and vote on Election Day?

4 A. Yes.

5 Q. Okay. How so?

6 A. So we know that same-day registration is
7 important. You know, some folks, some tribal members
8 utilize same-day registration, and so by allowing this
9 bill to take effect, that would prohibit them from
10 SDR. So that's our contention.

11 Q. I understand. I'm trying to determine:
12 Is the harm simply that tribal members want to vote on
13 Election Day and they would be precluded from doing
14 so?

15 MS. DE LEÓN: Objection; form.

16 Q. (By Mr. Phillips) Can you give me -- I'll
17 strike that.

18 Can you give me any more explanation of the harm
19 that the Tribe contends its members suffer by not
20 being allowed to register to vote on Election Day?

21 A. So an example would be, you know, the
22 limited opportunity, you know, for folks to -- for
23 tribal members to register to vote.

24 You know, we have very few satellite election
25 days before the, before the election, and if that is

1 not -- if tribal members don't have the opportunity,
2 they need to travel long distances to county seats,
3 and sometimes that is not ideal or is nearly
4 impossible for tribal members to do that. So I guess
5 that's why it's important for the Tribe.

6 **Q. Okay. Is the Tribe aware of whether there**
7 **are long lines at polling places on Election Day in**
8 **Rosebud or Big Horn County?**

9 A. No, we're not aware just because we don't
10 administer those elections or anything like that.

11 We usually have tribal elections on the same
12 days. That takes our time and attention.

13 **Q. Are there ever lines at tribal elections**
14 **on the Northern Cheyenne Reservation?**

15 A. I did see a line last election because
16 they were handing out materials for COVID, so folks
17 were getting that information and getting screened and
18 getting that kind of information. But other than
19 that, no, I haven't ever seen a line at tribal
20 elections.

21 **Q. Okay. In the Tribe's opinion, do long**
22 **lines at polling places negatively impact tribal**
23 **members?**

24 A. We can probably speculate that it would,
25 but we are not sure if those lines exist in Forsyth or

EXHIBIT E

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

Montana Democratic Party)	
and Mitch Bohn,)	
)	
Plaintiffs,)	
)	
Western Native Voice, et al.,)	
)	
Plaintiffs,)	Case No.
)	DV 21-0451
Montana Youth Action, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
Christi Jacobsen, in her official)	
capacity as Montana Secretary of State,)	
Defendant.)	

30(B)(6) DEPOSITION OF DELINA CUTS THE ROPE ON
BEHALF OF FORT BELKNAP INDIAN COMMUNITY
TAKEN VIA ZOOM

On the 3rd day of May, 2022, beginning at 10:30 a.m., the deposition of DELINA CUTS THE ROPE, appearing at the instance of Defendant, was heard via Zoom, before Lisa R. Lesofski, Registered Professional Reporter, Notary Public.

1 **Fort Belknap casino and the college, is there mail**
2 **service? And I --**

3 A. No.

4 **Q. Let me be a little more specific. United**
5 **States Postal Service.**

6 A. I don't know about the casino
7 specifically, but I can tell you that for the tribal
8 administration building for the tribal government,
9 that we can, we do receive like a UPS truck or a
10 FedEx truck that can come to the tribe to pick up a
11 box and then deliver them. But for regular mail we
12 have to tote it to the actual physical post office
13 in Harlem off reservation. That's what I can tell
14 you.

15 **Q. Okay. And there is no mail delivery to**
16 **the tribal office from the United States Postal**
17 **Service. Is that accurate?**

18 A. That's accurate, not to the tribal office,
19 no.

20 **Q. And do you know whether or not there is**
21 **any mail delivery to any homes in the area around**
22 **the tribal government office from the United States**
23 **Postal Service?**

24 A. So are you talking like a brown UPS truck
25 or are you talking about like the mail, the actual

1 postal service delivering a mail, a letter or
2 personal letter to a residence?

3 Q. The latter.

4 A. Not that I'm aware of.

5 Q. Okay. All right. Is that something that
6 members, that is -- let me start over.

7 A. Okay.

8 Q. Is the United States Postal Service
9 delivery something that the members of the Fort
10 Belknap Indian Community want?

11 MS. DE LEON: Objection, calls for
12 speculation.

13 Q. (By Mr. Morris) You can answer that.

14 A. Okay. I don't know. I guess I...

15 Q. Has the tribal council made any efforts to
16 increase mail delivery service at Fort Belknap
17 Agency from the United States Postal Service that
18 you're aware of?

19 A. I don't know.

20 Q. You're not aware of any action that it's
21 taken to try to increase mail delivery service. Is
22 that fair?

23 A. Well, they're two different questions. Do
24 you want to know if the council has engaged with the
25 U.S. Postal Service and then you want to know if

1 because they're -- just because they're the
2 internet, they have the cellular data from Triangle
3 doesn't mean you can't use other cell phones like
4 prepaid phones from Walmart or something, you know,
5 or you could actually use a different provider of
6 your choice. You know, there is tons out there that
7 you could use. It's not monopolized necessarily.
8 You could use different cell services that you would
9 like to use.

10 **Q. Gotcha. In terms of homes having access**
11 **to the internet at the Agency, did you -- do you**
12 **have any data or information about how common it is**
13 **for homes within Agency to have internet access?**

14 A. So your question is how -- does the tribe
15 have knowledge of homes in the Agency area that have
16 internet access?

17 **Q. Yes.**

18 A. Is that the question?

19 **Q. Yep.**

20 A. Yes, we are aware of homes that have
21 internet access, yes.

22 **Q. And is it common for homes within the**
23 **reservation to have internet access?**

24 A. Not so much. You have to be able to
25 afford to pay those internet bills and whatnot.

1 Like with Triangle, they still give you the internet
2 even though they sold the cell phone. So the thing
3 that they do is they require you to pay for a
4 landline and then hook your modem up to the landline
5 jack so that you could get, you know, the wireless
6 through your home but it's not wireless internet.
7 If you do choose to purchase wireless internet, it's
8 just not very reliable here in this rural, remote
9 area where we're far from, you know, antenna access
10 and stuff.

11 So you have to pay for the phone line even
12 if you don't like own, physically own a phone, you
13 still have to buy the jack and the setup and pay
14 that monthly bill and then you have to still pay
15 your internet bill. So a lot of the working people
16 do have internet access but a lot of our elders and
17 a lot of our community members that are not in the
18 workforce typically don't have access to internet.

19 **Q. Are there ways for elders and others to**
20 **access the internet when they need to?**

21 A. I really don't know where they would do
22 that, unless it was with a friend or a relative
23 perhaps.

24 **Q. And does the tribe keep data or**
25 **information about the percentage of its members on**

1 **Q. What about businesses? Are there -- what**
2 **are the businesses that are in Hays?**

3 A. We have a Martin's grocery store.

4 **Q. Is that a good grocery store?**

5 A. No. I mean, it meets your basic needs but
6 it's very expensive and it's tailored for the food
7 cards. So you're able to buy all eligible things
8 for your food cards there and things like that but
9 it's very, very basic. I mean, it's like a
10 convenience store is all I can say. It's a
11 convenience store. It's not a grocery store.

12 **Q. I get the picture.**

13 A. Yeah. Yeah.

14 **Q. And there is a post office in Hays,**
15 **correct?**

16 A. There is. There is one little post office
17 right there in Hays, yep.

18 **Q. And are you aware of whether or not there**
19 **is any mail delivery by the postal service, U.S.**
20 **Postal Service anywhere in Hays?**

21 A. I'm aware that there is no mail delivery
22 inside Hays, other than just in your box.

23 **Q. And then the third sort of population**
24 **center within the boundaries of the reservation is**
25 **Lodge Pole, right?**

1 **Q. So what's he referring to in terms of post**
2 **office boxes in Lodge Pole; do you know?**

3 A. So Lodge Pole residents -- and I guess I
4 would have to kind of show you like a map maybe --
5 but Lodge Pole residents that live in scattered home
6 sites closer to the eastern, northeastern end of the
7 reservation can get their mail delivered to a
8 mailbox, like I explained, along the road. And I
9 believe they call it HC something or other,
10 whatever, you know, and then -- but primarily
11 they're eligible to have a box inside Dodson. So
12 you would have to kind of -- I really -- that's all
13 I kind of really know is that they -- you can have a
14 box in the post office but you can have -- some of
15 the population in Lodge Pole that's closer to Dodson
16 and it probably has something to do with how far the
17 postal service will be able to go out. They
18 don't -- so far I know they don't go into Lodge Pole
19 but because they don't have, you know -- not
20 everyone there has mailboxes but some along Route 8.
21 And then there is also back roads out of Lodge Pole
22 going east that connect to 191, et cetera, through
23 what they call the Beaver Creek area and then it
24 goes back -- I guess you can enter Malta through the
25 south kind of like in that manner. So like on those

1 Q. So are there multiple people that you're
2 aware of that fit this description?

3 A. I would say for sure there are multiple
4 people, yes.

5 Q. And you don't want to disclose their
6 names; is that right?

7 A. Do I have to disclose their names?

8 Q. Well, I can tell you that we asked in
9 discovery for information about certain individuals
10 and there is an objection to providing that
11 information. I would like to know the names if
12 you're willing to disclose them.

13 A. No, I don't see -- I'm testifying on
14 behalf of the Fort Belknap Indian Community and I
15 just don't feel that having to zone in on anyone's
16 name to show evidence is necessary.

17 Q. And do you know with respect to these
18 individuals that fall in this category if any of
19 them have a vehicle?

20 A. Yes.

21 Q. They do have vehicles, the ones that
22 you're thinking of have vehicles?

23 A. The ones I'm thinking of have vehicles,
24 but because they live in -- we have multiple
25 families living in homes, I would have to say that

1 they have a vehicle but they don't all individually
2 own a vehicle, but they do have transportation to
3 get in and out if they share it.

4 **Q. And the ones that you're thinking of, do**
5 **you know whether or not they vote absentee?**

6 A. I think for folks in that situation we've
7 relied mostly on folks going out and collecting
8 their ballots for them. It depends on the season.
9 Usually voting is in a fairly decent season. But
10 then there is some that don't have developed roads
11 so, you know, if a guy could meet you halfway or
12 something or, you know, if on a good day a ballot
13 could be collected when the road conditions are
14 acceptable, then that could happen that way.

15 **Q. Let me just make sure I understand. So**
16 **you have some people in mind who you believe fit**
17 **this description and those people, do you know**
18 **whether or not they have voted absentee in prior**
19 **elections?**

20 A. Not all of them I don't know, but I do
21 know of a couple that did vote absentee, yeah.

22 **Q. Okay. And do you know whether or not any**
23 **of them have ever had any difficulty in voting**
24 **absentee by taking their own ballot to a post office**
25 **location?**

1 A. Yes. Difficulty in getting their ballot
2 in I would say yes.

3 **Q. So you know that these individuals who you**
4 **have in mind have had difficulty driving their**
5 **ballots to post office locations. Is that accurate?**

6 A. Yes, some, yes. Uh-huh.

7 **Q. And how do you know that?**

8 A. Just because -- I guess I would know
9 because I'm familiar -- or I guess what I'm thinking
10 of is the outer Hays area, so I'm familiar with that
11 area. But you want me to speak on behalf of the
12 Fort Belknap tribal council and I don't know if
13 everybody knows that particular instance. So I
14 would have to kind of say I don't really have firm
15 data to tell you whether or not there is X amount of
16 people specifically or if they have or have not had
17 certain types of voting attributes associated with
18 them. I'm not able to -- I'm just not able to give
19 that to you because I haven't done, you know, like a
20 census on it.

21 I can just tell you common knowledge that
22 folks who live far out, they abuse their vehicles
23 heavily, because on undeveloped roads it's hard to
24 get in and out of their place. And I can tell you
25 that school is difficult, things like that, coming

1 in to church is difficult. It kind of depends, you
2 know, on how they're able to be able to get in and
3 out. And I can tell you that they do -- they
4 certainly do appreciate, like if they have
5 breakdowns or something, I know they mechanic for
6 each other, like they mechanic their own vehicles
7 with locals and stuff because they're not able to
8 take their vehicles into town to get them fixed.

9 So sometimes they don't have a way in all
10 the time, but I don't really have any data to be
11 able to answer the question on who actually did what
12 or whatever, you know. I just know that they have
13 difficulty getting in and they have to travel long
14 distances. That's about all I can help you with.

15 **Q. Okay. I just want to make sure that we're**
16 **talking about the same thing. And my question is**
17 **pretty specific about the people that you have in**
18 **mind who live some distance, 40 miles from a post**
19 **office, who vote absentee and I wanted to think**
20 **specifically about those people. Do you understand**
21 **that?**

22 **A. Yes.**

23 **Q. And I think what you've told me is that**
24 **the people that you have in mind, you know one or**
25 **two of them who have voted absentee in past**

1 trailer houses, tiny houses, et cetera, et cetera.
2 So that's kind of the housing situation here where
3 there are not enough homes for folks, you know, to
4 pretty much live in their own independent home
5 typically, yeah.

6 Q. Is it your -- in terms of the population
7 of Fort Belknap Indian Community members, is it
8 growing, staying about the same or declining?

9 A. Growing.

10 Q. And how long has the population been
11 growing? Do you have a sense of that?

12 A. Annually.

13 Q. Has it sort of seen steady population
14 growth over the past six years?

15 A. Yes.

16 Q. And you referenced low-rent housing and
17 rental housing. Is that housing all privately owned
18 homes with landlords, private landlords who are
19 renting to tribal members?

20 A. No.

21 Q. Okay. Tell me about the low-rent housing
22 and --

23 A. So that's housing stock. That's Fort
24 Belknap housing stock.

25 Q. What do you mean by that?

1 deemed essential, you know, for the community.

2 As far as housing, we have the Fort
3 Belknap Housing Authority that has its own board and
4 those folks handle, you know, the housing stock and
5 that type of thing, yeah.

6 **Q. So does the tribe have like taxation**
7 **powers?**

8 A. So if you live on the reservation and you
9 work for any business or entity such as the tribal
10 government, you are paying federal tax. It comes
11 right out of your paycheck and so you are constantly
12 paying that to the federal government. But the
13 tribe itself doesn't have -- it doesn't impose a tax
14 on its members individually.

15 **Q. Gotcha.**

16 The housing shortage I think is referred
17 to a number of times in the complaint and in various
18 documents that have been produced in discovery,
19 including the discovery responses. Can you give me
20 more information about what is meant by a housing
21 shortage on Fort Belknap?

22 A. In summary, not enough houses for the
23 population that resides on the reservation.

24 **Q. And are there documents or records that**
25 **the tribe has that establish sort of goals to**

1 **achieve housing needs for members of the tribe?**

2 A. Is your question does the Fort Belknap
3 Housing Authority have documents or records or does
4 the Fort Belknap Indian Community have documents or
5 records?

6 Q. **I think the housing authority is probably**
7 **what I'm asking you about.**

8 A. So, yes, the Fort Belknap Housing
9 Authority has a housing plan. They're required by
10 regulation to have a five-year plan, so we had a lot
11 of plans.

12 Q. **And what are sort of the need -- can you**
13 **describe what the needs are in terms of numbers for**
14 **meeting the housing, addressing the housing**
15 **shortage?**

16 A. So in your discovery I did contact the
17 housing authority and I asked them for the housing
18 waiting list. Those numbers show -- and they
19 typically are, sometimes they're, you know, 350 but
20 I think the document I sent you is something to the
21 tune of 256. It might be a little off there. But
22 right now that's their housing waiting list and
23 that's primarily for eligible folks who meet that
24 income threshold for low-income rent.

25 So our problem lies in working people that

1 are eligible to be able to pay rent but they're not
2 eligible for low rental income housing and so those
3 folks primarily live with their folks or live with
4 other family members even though they're working
5 because there just aren't enough houses to live in.

6 In turn, we've got like a lot of
7 low-income folks who also live with multiple family
8 members in their homes. It's just typical for many
9 family members to live together.

10 Q. I did see this documents with the waiting
11 list for housing, low-rent housing, and I just had a
12 clarification question about that. Is that the
13 number of home sites that are needed or the number
14 of people on the list?

15 A. That's the number of head of household
16 applicants that have applied for housing that don't
17 have a house but they're asking for a house, yeah.

18 Q. And do those people live on the
19 reservation?

20 A. Yes.

21 Q. So in order to make that application, you
22 would need to be a person who already lives on the
23 reservation; is that right?

24 A. Yes.

25 Q. Okay. So as a result of the housing

1 **shortage, friends, family members, acquaintances,**
2 **will all live at the same address. Is that a fair**
3 **summary?**

4 A. Yes.

5 Q. And is it the Fort Belknap Indian
6 Community's position that that housing shortage
7 affects its members' voting rights or voting access?

8 A. I don't know what you mean.

9 Q. Yeah, how is the housing shortage relevant
10 to Fort Belknap Indian Community members' voting
11 rights?

12 A. Okay. That's a different question, but
13 okay. Multiple people living in one home, number
14 one, is kind of hard. And a lot of folks that live
15 in one home, keep in mind, they're not all just
16 working people. They could be a variety of people
17 that don't have much income. So one of the major
18 features of having so many people living in one
19 home, having to access your mailbox to which you
20 have to drive to, as you can imagine, it creates a
21 challenge, you know, to get everybody to be able to
22 get to the post office. So you can imagine you
23 either make what, you know, four trips to the post
24 office in one day, I mean, which doesn't make a lot
25 of sense. So, you know, one person will typically

1 pick up mail for everybody that lives in the
2 household even though like you might have multiple
3 boxes and some people do share boxes. Like a lot of
4 youngsters that age out, they still will use their
5 folks' box because technically you can. There is
6 even college students that do that, things like
7 that.

8 So it kind of creates a little burden, as
9 you can imagine, when you have a lot of people
10 living in one house. It's just kind of not really
11 your call a lot of times, you know, to be able to
12 just be the only one to go -- you're not going to
13 selfishly just go and get your own mail and
14 everybody else has to fend for themselves. So it's
15 kind of a group effort is all I'm going to say.

16 **Q. Okay. And having that one person that**
17 **goes to get the mail for everybody as a single**
18 **household, explain to me how that affects tribal**
19 **members' voting rights.**

20 A. Well, you're kind of at the mercy of who
21 is going to get the mail and that's if you have a
22 vehicle. So if you're waiting for auntie to come
23 by, you know, to go pick up one person from the
24 house to take them to the mailbox, if she doesn't
25 come or she can't come, then that kind of presents a

1 Q. I don't want to retread the same ground,
2 and I know you've said that it's difficult and I
3 think the thing that I heard about it being
4 difficult is that there is the potential that auntie
5 or someone else can't bring the mail back to its
6 recipients in a timely manner or something like
7 that. Is that -- do I have that right?

8 MS. DE LEON: Objection, misstates
9 testimony.

10 A. I used that as an example, I believe. In
11 my description of multiple families living under one
12 roof I talked about the lack of transportation in
13 which -- if there is a lack of transportation to get
14 back and forth to the mail, if there is
15 transportation available, great. You could probably
16 just have that one person go to the mailbox and pick
17 up the mail for everyone and everything goes
18 smoothly. But if you don't have transportation and
19 you can't walk your 20 miles or your 15 miles,
20 living in Montana it's cold, you know, and things
21 like that so you might not be able to get to the
22 mailbox on time or you might not even be able to get
23 to the mailbox every day. It kind of presents a
24 burden and a challenge on unreliability to be able
25 to access your mailbox on a daily basis like the

1 average bear to be able to just have your kids pick
2 it up on their way home or perhaps, you know, drive
3 there yourself independently if you don't have the
4 transportation and, you know, you're relying on
5 others to help you out to get to the mailbox, it
6 presents a challenge. I hope that helps.

7 Q. (By Mr. Morris) Anything else to add to
8 that topic in terms of why multiple people living
9 under one roof affects in Fort Belknap's opinion
10 voting access?

11 A. No.

12 Q. So let's take a quick break. Let's go off
13 the record.

14 (Discussion off the record.)

15 Q. (By Mr. Morris) So the next --

16 MS. DE LEON: Actually, can we go off the
17 record real quick?

18 MR. MORRIS: Sure.

19 (Break taken.)

20 Q. (By Mr. Morris) Ms. Cuts The Rope, we
21 just took a break. You understand you are still
22 under oath, correct?

23 A. Yes.

24 Q. And during the break I received some
25 documents from counsel relating to satellite

1 entire organization and the community is well aware
2 that not everyone has a vehicle, because we're all
3 living it, we're all trying to help each other out,
4 get from one place to another, knowing very well
5 who's afoot and who isn't. Data, no, I'm not sure
6 what the...

7 **Q. Yeah. And for purposes of this**
8 **deposition, you didn't review any data or studies --**

9 A. No, I just lived it.

10 **Q. Hang on. Just let me get my question out.**

11 A. Okay.

12 **Q. So Lisa doesn't get upset with us.**

13 For purposes of this deposition you didn't
14 review any data or studies or anything like that
15 that compared vehicle access on the reservation to
16 other people within the state of Montana, right?

17 A. No, unfortunately I didn't review other
18 people versus Native Americans that live on my
19 reservation. I'm just basing it on common knowledge
20 of living every day with my community members. I
21 don't have data unfortunately like -- even the
22 census of 2020 doesn't even collect that kind of
23 data. But I can tell you that we do have a vehicle
24 transportation access shortage here at Fort Belknap
25 because we're like living it every day. I mean,

1 sometimes you'll see, you know -- it's not uncommon
2 for somebody to be driving down the road with all
3 four spares, little bitty bike tires, or missing a
4 windshield. They can't leave the reservation in
5 those kind of conditions because they'll get
6 stopped, but at least they're getting someplace from
7 one place to another. I just jumped somebody just
8 the other day in Hays, you know, so they could get
9 to work and that's a working person.

10 So it just happens a lot here. We're just
11 kind of used to it. So I can't hide the fact but,
12 yet, I don't have data to prove it. I just live the
13 experience every day, you know, just knowing that
14 people don't have access to vehicles. It's just not
15 uncommon to have people ask for a ride someplace or
16 be taken somewhere. It's just common. That's all I
17 can explain.

18 And that's the same for everybody in my
19 organization and anyone who lives on Fort Belknap
20 can relate to it. That's all I can really explain
21 is you just kind of have to witness it and be here.
22 And we don't get, you know, like anything like to
23 where we could buy a bunch of cars for people so,
24 you know, it's just like -- it's just a thing, way
25 of life here.

1 A. Oh, Lodge Pole to Hays. I really don't
2 know what that fee would be. I only had to ride the
3 transit before when my car was in the shop and that
4 was years ago. But I know that there is a small fee
5 and it fluctuates. Like right now I'm not sure, you
6 know, coming out of the pandemic and we just now
7 opened up. I know that they have a couple bus
8 routes but I didn't research those routes for the
9 deposition but I can certainly get you the schedule
10 and the fee schedule. I'd be happy to provide that
11 to you via email.

12 **Q. Okay. That would be great.**

13 A. Okay.

14 **Q. And I know that there are multiple people**
15 **living in some cases within the same household and**
16 **is the lack of vehicles related to having, you know,**
17 **not enough vehicles per household? In other words,**
18 **is it typical to have at least one vehicle per**
19 **household?**

20 A. Yes. Or none at all. But it's typical to
21 have one.

22 **Q. Are there certain areas on the reservation**
23 **where you believe access to a vehicle is worse than**
24 **other areas?**

25 A. Not really. I would say at the Agency

1 most people who don't have vehicles will walk the
2 bike path along Highway 2 to come and do business at
3 the Agency, you know. Like say if they've got to go
4 to, I don't know, an office to, say, I don't know,
5 apply for LIEAP or something like that, low income
6 energy assistance, or they have to send a fax in or
7 if they have to check in with their case manager or
8 something, they'll typically walk on the bike path
9 from the Agency and I would say it's probably -- I
10 don't know -- probably not more than five miles,
11 maybe six. They can walk that bike path. People
12 are constantly walking on the bike path. It looks
13 like they kind of like to exercise and I think half
14 of them do, but mostly I think they're walking
15 because they don't have a car. So they make
16 everybody on the southern end of the reservation
17 look bad because we don't have as many bike paths.

18 So if you're afoot and you're walking,
19 you're cutting through the brush or something like
20 that on trails and stuff so you don't have to be
21 walking on the road, we're just -- that's why they
22 call the Hays area, they tease us and they call us
23 brush cats because we cut through the brush to get
24 to where we need to go, if it's to the, you know,
25 when we're walking. But at the Agency they have

1 nice bike paths. They have a nice one like right
2 along Highway 2. And so it will take you all the
3 way up to Highway 2 to the Kwik Stop area where a
4 lot of people do their milk and bread and kind of
5 thing or they just walk straight down the street to
6 go to the tribal office.

7 Lodge Pole, you know, there are a lot of
8 people there that don't have vehicles. I'm really
9 not sure. Like I'm mostly from Hays but I do have
10 some relatives that live in Lodge Pole that are
11 married to folks that are from that area in Lodge
12 Pole. And a lot of times when people don't have
13 cars there, like I said, they usually pretty much
14 don't go really anywhere. They might walk up to the
15 community center again to do their fax business or
16 something like that or maybe expecting a fax, or
17 something like that.

18 But when you don't really have a vehicle
19 or you don't like -- like I said, you're living with
20 whatever. Say you're living with grandma and it's
21 not grandma's car but it's auntie's car or whatever.
22 It doesn't mean you can use it whenever you want,
23 you know. So if you don't have access to a car,
24 you're pretty much out of luck, so you're going to
25 have to make some kind of arrangement, maybe wait

1 until the 1st when you get your TANF or then just
2 pay somebody to take you shopping, you know. And
3 that's typically the case.

4 I feel bad about that because like a lot
5 of people that are on fixed income they shouldn't
6 have to be paying an arm and a leg for someone to
7 take them, you know, to the store to go shopping at
8 Walmart. You know, I just don't know how some of
9 them do it. I mean, like to spend that extra money
10 out of the assistance that they're probably getting,
11 I mean, is highway robbery. So but like just a lot
12 of relatives will do it for nothing because they're
13 nicer and they care but sometimes when you're asking
14 sort of a nonrelative but you know them, you want to
15 give them gas money to take you somewhere. So
16 that's just the kind of norm. So, yeah, having one
17 vehicle or no vehicle is kind of tough. I've been
18 lucky where I don't have to live like that, I don't
19 know how some of them do it. I really don't. I
20 don't know how folks survive like that. I really
21 don't.

22 **Q. Dr. McCool is an expert that was hired in**
23 **this case on the tribe's behalf and he cites to a**
24 **2010 census data study that indicates that about**
25 14 percent of individuals, Native Americans living

1 in Blaine County, lack access to a vehicle. Is that
2 consistent with your experience?

3 A. No. No. Census also says that we have,
4 what was it? 1,400 abandoned homes. Gee whiz, I'd
5 like to renovate those and make them into homes that
6 people can live in. I haven't yet counted 1,400
7 homes; however, I think that census for tribal
8 tribes has been somewhat skewed over the years
9 because a lot of times folks just don't really like
10 to interact with the census takers and so a lot of
11 times we get a lot of skewed information.

12 You could go to the door where there is a
13 family of probably, I don't know, three generations
14 living in there, I can guarantee you unless you're a
15 tribal member knocking on that door, there is no way
16 in hell someone is going to tell you how much income
17 they have coming into that house, nor are they going
18 to reveal to you that they have two other families
19 living in there.

20 So census for us is always going to have
21 discrepancies for tribes. It's great to have the
22 number and a lot of time you have to use it for
23 grant funding because it's, I guess it's considered
24 a reliable source just because the federal
25 government is collecting it in a validated manner

1 polling opening in Chinook on May 10th, but we'd
2 like to.

3 Q. There is an allegation in the discovery in
4 the complaint that if election day registration is
5 no longer available, the Fort Belknap tribe will
6 have to expend additional funds to provide services
7 to voters. Are you familiar with that contention?

8 A. Yes.

9 Q. And why is that a contention that Fort
10 Belknap is making in this case?

11 A. I think -- well, Fort Belknap believes
12 that, you know -- you know, just voting is just
13 really important to Fort Belknap. It's our voice
14 and anything that's going to like limit that in any
15 way just is a negative impact. I mean, if you can't
16 have same day voting, it's a once in a -- it's
17 usually once a year activity, so it's not something
18 that you're doing all the time and so that you want
19 to make sure that you schedule something like that
20 in there.

21 And so for all the reasons that I
22 explained before about the transportation issues, I
23 can't really guarantee that everyone is going to
24 have an opportunity to get to the polling sites on
25 the days that are available to them. Some people

1 just have, for whatever reason, would stand, you
2 know, a better, greater chance to be able to get
3 their vote if they have that available to them on,
4 you know, election day.

5 Just like filing taxes. Does everybody
6 file their taxes before tax day? I guess I can't
7 really, I couldn't really say that they do. Except
8 you can't get an extension with election voting.
9 You need to make sure that you're voting in the time
10 ample for you. I think that's kind of the gist
11 of -- I mean, I could go on and on but I'm trying to
12 keep my answers as short as possible.

13 **Q. To be clear, Fort Belknap has never spent**
14 **funds to ensure that its members are registering on**
15 **election day in past elections, right?**

16 MS. DE LEON: Objection, misstates
17 testimony.

18 **Q. (By Mr. Morris) You can answer.**

19 A. Okay. I think I -- I think other than the
20 support that we've done for our volunteer groups
21 like we did for the Snake Butte Voter coalition, no,
22 We don't. We don't have anyone on the payroll to
23 take care of that kind of voting endeavor.

24 **Q. And so in terms of additional funds to**
25 **provide services to voters, if election day**

EXHIBIT F

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

-----X
MONTANA DEMOCRATIC PARTY AND :
MITCH BOHN, :
Plaintiffs, :
WESTERN NATIVE VOICE, MONTANA :
NATIVE VOTE, BLACKFEET NATION, :
CONFEDERATED SALISH AND KOOTENAI : Cause No.
TRIBES, FORT BELKNAP INDIAN : DV 21-0451
COMMUNITY, AND NORTHERN CHEYENNE :
TRIBE, :
Plaintiffs, :
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. :
-----X

Deposition of SCOTT GESSLER
Conducted Remotely
Friday, April 22, 2022
9:03 a.m.

Reported by: Matthew Goldstein, RMR, CRR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 application.

2 My personal interpretation for
3 pecuniary, it would likely exclude non-monetary or
4 at least exclude sort of a non-monetary de
5 minimis -- a volunteer gets some water for helping
6 collect ballots, it would not prevent that. But I
7 don't know exactly how the law has been
8 implemented, but my interpretation is pecuniary
9 still focuses around money.

10 BY MR. GORDON:

11 Q. So setting aside anything about how the
12 law has been implemented. Because I'll just
13 represent to you, as far as I'm aware, the
14 Secretary has not promulgated regulations, just
15 looking at the law as it's written. So I'm going
16 to ask you some questions about what -- your
17 understanding of what the law means based on how
18 it's written, setting aside how it might be
19 implemented. Fair enough?

20 A. Fair enough.

21 Q. Okay. HB530 as it's written, would it
22 prohibit somebody from receiving tickets to a

1 sporting event in exchange for collecting ballots?

2 MR. MORRIS: Same objections.

3 THE WITNESS: So, in other words, would
4 the tickets be considered a pecuniary benefit?

5 BY MR. GORDON:

6 Q. Yeah.

7 To be clear, Mr. Gessler, and to address
8 counsel's objections, when I'm asking you these
9 questions, I'm asking for your understanding.

10 A. I get it. Yeah, I mean, my opinion is
11 it probably would not prohibit that.

12 Q. Why not?

13 A. Because --

14 MR. MORRIS: Same objection.

15 THE WITNESS: Because tickets are not
16 money, and they're normally not viewed as a means
17 of exchange. A dollar bill is a means of
18 exchange, money. Tickets are generally not viewed
19 as a means of exchange or financial benefit.

20 BY MR. GORDON:

21 Q. How about a gift card to a restaurant
22 for \$100?

1 MR. MORRIS: Objection; calls for
2 speculation and asks for a legal conclusion.

3 THE WITNESS: That probably would be
4 considered a pecuniary benefit because it's not a
5 specific item, but, rather, it's a means of
6 exchange and \$100 of value.

7 BY MR. GORDON:

8 Q. How about sports tickets that are \$300
9 in value?

10 MR. MORRIS: Same objections.

11 THE WITNESS: I guess my answer would be
12 the same as the ticket.

13 BY MR. GORDON:

14 Q. Okay. So the value of the sports ticket
15 doesn't matter to whether or not it's a pecuniary
16 benefit?

17 A. Yeah --

18 MR. MORRIS: Same objections.

19 THE WITNESS: -- that I would not view
20 as a financial benefit.

21 BY MR. GORDON:

22 Q. Okay. But a gift card to a restaurant

1 you would view as a pecuniary benefit?

2 A. Yeah, because that's measured in dollar
3 amounts. It's not a specific item.

4 Q. And it's your understanding that HB530
5 prohibits only pecuniary benefits paid on a
6 per-ballot basis, or does it also prohibit
7 salaried employees from collecting ballots as part
8 of their job where their salary does not depend on
9 the number of ballots they collect?

10 MR. MORRIS: Object to the form, calls
11 for speculation, legal conclusion.

12 THE WITNESS: In my view, that would
13 include salaried workers whose duties include
14 collecting ballots.

15 BY MR. GORDON:

16 Q. What is that view based on?

17 A. My read of the word "pecuniary."

18 Q. So do I have this right that your
19 understanding of the word "pecuniary" in this
20 context includes somebody whose job
21 responsibilities include among them the collecting
22 of ballots?

1 A. Yes.

2 Q. Regardless of whether they're paid more
3 or less depending on whether they collect any
4 ballots or whether they collect a certain number
5 of ballots?

6 MR. MORRIS: Objection to the form.

7 THE WITNESS: Yes.

8 BY MR. GORDON:

9 Q. Paragraph 46, page 26.

10 "For these reasons, Montana's general
11 prohibition on paid ballot collection places
12 minimal burdens on voters who want someone else to
13 deliver their ballot for them."

14 What's the basis for this statement?

15 A. I'd have to look at the reasons
16 articulated above paragraph 46.

17 Q. Okay. Do you want to look at
18 paragraph 45?

19 A. Yeah, that would be great.

20 MR. GORDON: Can we scroll back to that,
21 please, on the preceding page. And can we put
22 pages 25 and 26 up side by side so the witness can

EXHIBIT G

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Consolidated Case 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,

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

Plaintiffs,

vs.

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

Defendant.

VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF ROBERT McDONALD

Taken at:

Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 19, 2022
2:45 p.m.

1 You have many programs trying to stabilize
2 unstable families. And the systems that serve these
3 populations are struggling for answers, be it the
4 hospitals -- our own included, Tribal Health, who have
5 a busy schedule, and it's a big deal to reserve time
6 for a visiting health schedule, and people don't show
7 up and even seem flip about it because they don't show
8 up a second time.

9 It is a question of, "Why is this population,
10 whatever this population is on the reservation,
11 unstable?" and there's multiple answers to it.

12 So in my exploration of our own tribal research
13 on it, conversation with department heads on the
14 social service safety nets, of the education
15 department and their talk with families who sometimes
16 go from different school district to different school
17 district as they move from town to town, to those that
18 come in the Council and explain their situation, a lot
19 of time it's tied to housing issues: Losing housing,
20 fear of losing housing, situation change, they need
21 help with -- despite the programs like LIHEAP that pay
22 heating bills, they're looking at a \$400 unpaid
23 heating bill that could throw them on the street.

24 These are all the kinds of exposure I've been
25 emersed in for 15 years that allows me to say this

1 statement you're seeing in Paragraph 4.

2 Q. Thank you. Based on that experience, do
3 you -- are you able to estimate, even roughly, what
4 percentage of the CSKT members move from home to home,
5 as you indicate?

6 A. The quantification of a question like that
7 is just difficult. We rely on systems that have more
8 quantifiable numbers like the free and reduced lunch,
9 which explains the poverty; the waiting list that
10 exists of 100-plus families for homes through our
11 Salish and Kootenai Housing Authority program.

12 And it's only gotten much, much, much worse now
13 that there is an incoming out-of-state population that
14 -- no one is finding housing here of any economic
15 means at this point. It's been the conversation for
16 six months that if you have a home now, you'd better
17 not sell it because you're not going to be able to
18 find a new one to buy and no one has materials to
19 build a new one.

20 So housing is clearly an issue, but quantifying
21 the exact numbers, it is elusive to nail that down.

22 Q. Okay. I understand that --

23 A. And anybody who's dealt, and anyone who's
24 dealt with the homeless populations can explain more
25 eloquently than me the difficulty of doing such,

1 areas, how traveling to a post office is more
2 burdensome.

3 I mean, I initially read this paragraph and I
4 thought you were referring to just general post
5 offices in urban centers.

6 So my question --

7 A. What is --

8 Q. Sorry, sorry.

9 A. Yeah, you can interrupt me, if you like.
10 Go ahead.

11 Q. I apologize for interrupting you, sir.

12 I am just trying to understand the factual basis
13 for the statement that CSKT members' travel to their
14 nearest post office is more burdensome.

15 A. The concept that needs to be understood
16 here is that the concentrations of tribal populations
17 tend to be away from the urban central areas of even
18 the smaller towns. They tend to be furthest away from
19 the main roadways, which tend to be the connection
20 between post offices and schools. And this is tied to
21 the historic pattern of what I mentioned earlier about
22 the allotments.

23 So it is a matter of, it's a matter of
24 perspective. I'm sure somebody in a Los Angeles
25 suburb, comparing their route to this community, you

1 know, it's a different scale we're talking about.

2 But in this scale and the only world that a lot
3 of the population has ever known, that it's not simply
4 a two-minute drive. It's navigating rutted roads in
5 the foothills, sometimes unnavigable without snowplow
6 treatment, to access slightly larger dirt roads with
7 culverts that wash out to get to the main highways
8 that then lead to the post offices.

9 The phrase "more burdensome" might be the key
10 phrase there.

11 Q. Okay. And the phrase "more burdensome" in
12 this paragraph, you're specifically referring to
13 non-Natives residing in parts of the Reservation like
14 Polson; is that correct?

15 A. Sorry, could you rephrase that? You
16 seemed to add a couple elements to that, that I didn't
17 say.

18 Q. No, sure, and I did add a couple elements.
19 What I mean is: More burdensome than what?
20 Where are the non-Natives living that you're comparing
21 this to? Is it in Polson?

22 A. It's in Ronan, it's in Polson, it's in
23 St. Ignatius, it's in Arlee.

24 Q. Okay. Sir, I'm moving now to Paragraph 6,
25 which says, in part, that internet access in the town

1 of Hot Springs is limited.

2 And, let's see here, do you generally have any
3 personal knowledge of how many Native -- or CSKT
4 members that live in the Hot Springs and surrounding
5 area?

6 A. If I remember off the top of my head,
7 based on election and eligible voters, it's about 300
8 eligible voters in Hot Springs, 350. I would need to
9 double-check that, but that's ballpark.

10 Q. What would you double-check to check that?

11 A. The lists of eligible voters that the
12 election judges received in each of the voting
13 districts, Hot Springs being one of them.

14 Q. Okay. Do you know, based on your personal
15 knowledge, how many of those voters do not have
16 internet access?

17 A. I have no way of knowing that.

18 Q. Okay. Could you speculate how many of
19 those voters don't have any internet access?

20 A. Virtually none.

21 Q. Okay. But that would only be a
22 speculation?

23 A. I know our IT department is challenged to
24 wire the Senior Center. It's one of the hubs which we
25 use for community meetings. And I was shocked to

1 discover a month ago that the Senior Center is wired
2 for internet and was told it was capable of doing, you
3 know, Zoom meetings, and when I got there and tried to
4 utilize it, it's speeds were so ridiculously slow, it
5 could not handle any sort of audio conference.

6 So, I mean, Time Magazine made a point to write
7 about Hot Springs because it's a place where cell
8 phone service is almost nonexistent.

9 And there have been efforts to expand broadband
10 connectivity throughout the Reservation, but that is a
11 slow and expensive progress.

12 Q. I'm going to move now to Paragraph 8 of
13 your affidavit, sir. It discusses what you referenced
14 briefly earlier, which is:

15 "The number one reason given to health
16 officials for why appointments are missed is because
17 of a lack of transportation."

18 As I recall, that's something that you learned
19 during the course of your years as a communication
20 director for the CSKT. Is that correct?

21 A. My family is born and raised here, both my
22 parents were born and raised here, both my
23 grandparents were born and raised here. I came to
24 visit here, and left for college and career, and came
25 back with a communication job. So it's been a

1 A. That's the kind of broad statement that
2 would get me in trouble as a communication director.

3 Q. Do you understand that that's almost a
4 direct quote of what the District Court stated and
5 while relying on your affidavit?

6 A. What I heard in your comment is almost --
7 MS. DE LEÓN: Objection, objection; calls
8 for a legal conclusion.

9 Q. (By Mr. Phillips) Sorry, sir, I didn't
10 hear what you said.

11 A. I was trying to figure out where the
12 question was.

13 Q. Okay. My question was: Can you say, as a
14 matter of fact, that Native Americans are less likely
15 to have a working vehicle than other Montanans?

16 MS. DE LEÓN: Objection; calls for
17 speculation.

18 THE WITNESS: Based on what I've
19 experienced, it certainly seems that way.

20 But is there scientific data pointing that
21 out that I would stand on? I'm not sure that
22 information exists.

23 MR. PHILLIPS: Okay. I think I'm done.
24 Ms. -- or Mr. McDonald, if you'd permit me, and
25 Jacqueline, I'd like to take five minutes just to look

EXHIBIT H

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Consolidated Case 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,

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

Plaintiffs,

vs.

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

Defendant.

VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF LANE SPOTTED ELK

Taken at:

Nordhagen Court Reporting
1734 Harrison Avenue
Butte, Montana
April 20, 2022
1:21 p.m.

1 "Given the extreme poverty, members cannot
2 always afford a tank of gas and instead may choose to
3 spend limited funds on necessities such as food or
4 heating."

5 And that's just based on your personal
6 experience in the Northern Cheyenne Reservation; is
7 that correct?

8 A. That's correct.

9 Q. Okay. In your opinion, is this an issue
10 that only members of the Northern Cheyenne Tribe deal
11 with?

12 A. I'm sure it's a commonality in other
13 places as well, but I guess I can speak to Northern
14 Cheyenne specifically, serving as an elected official
15 for the Tribe.

16 Q. In Paragraph 8 - we're just going to
17 continue down here - it begins:

18 "Lack of access to a vehicle, or shared
19 vehicles is also very common on the Northern Cheyenne
20 Reservation."

21 Is this statement based on your personal
22 experiences?

23 A. Yes. I definitely know of friends and
24 family members who -- that this definitely applies to,
25 yes.

1 Q. Can you estimate how many tribal members
2 lack access to a vehicle, based on your personal
3 knowledge?

4 A. I know that it's more common than not, but
5 to, to nail it -- nail down a number, I don't know if
6 I could do that.

7 Q. Okay. Would you say that a majority of
8 the tribal numbers lack access to a vehicle, in your
9 experience?

10 A. I would say that's a fair statement.

11 Q. Okay. And do you include in that people
12 that share vehicles or simply that have no access to a
13 vehicle?

14 A. Yes.

15 Q. So you would include -- I'm sorry, that
16 question wasn't very clear.

17 You would include in that the people that share
18 access to vehicles.

19 A. Yeah. I'm sure they make up a good
20 portion of that number.

21 Q. Okay. And when you refer to "shared
22 vehicles," do you mean households that have just one
23 vehicle, in your experience?

24 A. Yes.

25 Q. Okay. In your opinion, do you think that

1 register on Election Day because Northern Cheyenne
2 members are located, on average, just over 50 miles
3 one-way from the county seats."

4 And again, this is based on your personal
5 knowledge; is that correct?

6 A. Yes.

7 Q. And how did you, excuse me, how did you
8 calculate the 50 miles on average? What is that based
9 on?

10 A. It's probably based on the miles between
11 the Reservation and each respective county seat.

12 Q. Okay. And what facts are you referring to
13 -- or what facts did you look to when you determined
14 that Northern Cheyenne members were particularly
15 reliant on rides to county seats?

16 A. Well, given the long distances,
17 transportation issues, price of fuel, that's probably
18 a lot of the factors why tribal members are reliant on
19 rides to county seats.

20 Q. Okay. Are there other opportunities for
21 tribal members to register to vote outside of on
22 Election Day on Northern Cheyenne Reservation?

23 A. Yes, there is. For Big Horn County, I
24 believe that the, that the County does it voluntarily
25 to set up -- set polling locations, register voting

EXHIBIT I

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

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

Cause No. DV 21-1097

Plaintiffs,

vs.

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

**DECLARATION OF
ELIZABETH FU
WRZESINSKI**

Defendant.

I, Elizabeth Fu Wrzesinski, state as follows:

1. I am over 18 years old and a resident of Missoula County, Montana.

The matters set forth in this Declaration are based on my personal knowledge.

2. I am a current student at the University of Montana.

3. I previously registered to vote in Gallatin County, where I lived
before starting school at UM.

4. Prior to the 2022 primary elections, I had intended to register to vote

in Missoula County. However, I was unable to update my registration ahead of the primary elections in order to receive an absentee ballot.

5. Although there are locations on campus to update my registration, my schedule has not permitted me to do so.

6. During the Spring semester, I was enrolled in 17 credits, which is well above the average load for a student, worked a part time job between fifteen to twenty hours each week, and took part in several extracurricular activities on-campus.

7. Due to extensive commitments academically, professionally, and socially, which occurred during typical business hours, I did not have sufficient time to update my voter registration to reflect my change of address.

8. At around 11:00am on the morning before the primary elections, I received a call from Forward Montana notifying me of the election the next day. Once I was made aware of the election, I hoped to take part and register to vote in Missoula with my new address, as I spend the majority of the year in Missoula and am far more familiar with local candidates in Missoula than in Bozeman and consider myself a resident of Missoula.

9. As I had not yet updated my address in Missoula County, to vote in the primary election I needed to go to the Missoula Elections Office that day to register to vote in Missoula County so that I could vote in the primary election. However, due to the 12:00pm deadline to register, my busy schedule, and my lack of access to a car, I did not have time to make it into the office before the

deadline. I was also unable to return to Bozeman where my voter registration is still active to vote in person for the primary the next day due to my lack of access to a car and my busy schedule. Therefore, I was unable to vote in the primary election.

10. Despite my past voting in Montana's elections, I was unable to vote in the 2022 primary elections because of the new deadline for registration.

11. Had there still been Election Day Registration, I would have been able to update my registration and vote in the 2022 primary elections. Rather than having only one hour to plan a major change to my schedule, an extra day to adjust my schedule would have allowed me find time to go to the Elections Office and given me the opportunity to exercise my right to vote.

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

DATED this 23 day of June, 2022.

LOCATION when signed: Bozeman, MT

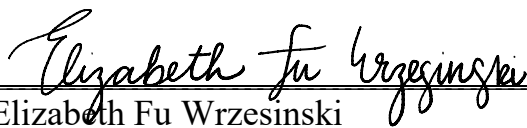

Elizabeth Fu Wrzesinski

EXHIBIT J

1 IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

2 YELLOWSTONE COUNTY

3 Montana Democratic Party, et

4 al.,

5 Plaintiffs,

Cause No. DV-56-2021-451

6 vs.

7 Christi Jacobsen, in her

8 official capacity as Montana

9 Secretary of State,

10 Defendant.

11 -----

12 WESTERN NATIVE VOICE, Montana

13 Native Vote, Blackfeet

14 Nation, Confederated Salish

15 and Kootenai Tribes, Fort

16 Belknap Indian Community, and

17 Northern Cheyenne Tribes,

18 Plaintiffs,

19 vs.

20 Christi Jacobsen, in her

21 official capacity as Montana

22 Secretary of State,

23 Defendant.

24 -----

25 Montana Youth Action, Forward

1 Montana Foundation, and
2 Montana Public Interest
3 Group,

4 Plaintiffs,

5 vs.

6 CHRISTI JACOBSEN, in her
7 official capacity as Montana
8 Secretary of State,
9 Defendant.

10
11
12 VIDEOCONFERENCE DEPOSITION UPON ORAL EXAMINATION
13 OF
14 ALEX STREET
15

16 BE IT REMEMBERED, that the videoconference
17 deposition upon oral examination of Alex Street,
18 appearing at the instance of the Plaintiffs, was
19 taken at Helena, Montana, on Friday,
20 February 18, 2022, beginning at the hour of
21 9:02 a.m., pursuant to the Montana Rules of Civil
22 Procedure, before Mary R. Sullivan, Registered
23 Merit Reporter, Certified Realtime Reporter, and
24 Notary Public.
25

1 A. I guess it -- it seems to me that what
2 you have in mind is a very different organization;
3 one that can no longer pay people in the way that
4 they have in the past.

5 Q. Right. So I guess I just want you to
6 agree with the -- with the notion that if an
7 organization can use volunteers to collect ballots
8 under the law, then under the law it's -- it's not
9 accurate to say that they're prevented from doing,
10 correct?

11 MS. LEE: Objection.

12 A. I mean, like I said, I think you
13 would -- that this law prevents
14 Western Native Voice from doing the kind of work
15 that they have done.

16 BY MR. KNOBEL:

17 Q. And your report doesn't cite any facts
18 related to whether or not Western Native Voice
19 would be able to use volunteers to collect ballots,
20 correct?

21 A. So I guess I -- I -- I don't have an
22 empirical analysis of -- of that in this report.
23 I guess I would like to add, though, that in
24 general, this kind of -- these civic organizations
25 doing this kind of work and having some money to

1 do this kind of work is absolutely a feature of
2 American elections, and that it's -- you know,
3 it's -- we allow it in all sorts of ways. And so
4 in that context, it does seem to me that -- that
5 preventing this particular version would have a --
6 a negative effect on this organization.

7 Q. Your report doesn't include any citations
8 to any facts to back up the statement that you just
9 said though, correct?

10 MS. LEE: Objection.

11 A. I don't think that's correct. I think
12 the -- the research that I cite here, like there's
13 a wealth of research on this -- on this -- on
14 civic organizations providing pecuniary benefits
15 being involved in American civic life. That's --
16 It's -- It's a huge part of elections, and I -- I
17 cite that research, and I -- my opinions are based
18 on my knowledge of -- of that field of research.

19 BY MR. KNOBEL:

20 Q. Okay. So -- So your -- your opinions in
21 this case are based on a fact that you are putting
22 forth that Western Native Voice would be unable to
23 use volunteers to collect ballots.

24 MS. LEE: Objection. Misstates
25 testimony.

1 A. I -- I don't think I said that.

2 BY MR. KNOBEL:

3 Q. Okay. So if Western Native Voice was able
4 to use volunteers to collect ballots, then your
5 opinions would be different in the case, right?

6 A. I -- I feel like we're going around in
7 circles. If -- If they could -- It seems clear to
8 me that HB 530 prevents Western Native Voice from
9 doing the kind of work that they have been doing,
10 and -- and prohibits some of the most effective
11 work that they've done, and that changing that
12 would have an effect on that organization. It
13 seems to me that you have in mind that somehow
14 they could compensate for that by suddenly not
15 paying people, and that -- maybe they could partly
16 compensate, but it -- it seems pretty clear to me
17 that that would be an imposing cost on them, and
18 in a way that would be out of line with how a lot
19 of other organizations work. And so --

20 Q. Okay. Well, I'm going to keep -- I'm
21 going to keep asking the question until you answer
22 it, and if you -- if it's going around in circles,
23 it's because you're not answering the question.
24 And my question is --

25 MS. LEE: Objection. Argumentative.

1 Misstates the testimony.

2 BY MR. KNOBEL:

3 Q. And my question -- your report -- your
4 report cites no facts or data about whether
5 Western Native Voice could use volunteers or not,
6 correct?

7 MS. LEE: Objection. Misstates the
8 exhibit.

9 A. I mean, my report analyzes the -- the
10 evidence in the -- in the voter files, primarily,
11 to see whether they're consistent with the claims
12 that Western Native Voice makes about the kind of
13 work that they've done and the kind of effects of
14 that kind of work that they've done.

15 BY MR. KNOBEL:

16 Q. Okay. So that's a yes to my question.

17 MS. LEE: Objection. Misstates the
18 testimony.

19 A. I -- I -- I don't remember exactly the
20 wording of your question, but you seem to want me
21 to say something for some reason, and I -- as I've
22 been trying to explain to you, I -- I don't -- I
23 don't think that that's what I'm saying, so you
24 can want it as much as you like.

25 ///

1 BY MR. KNOBEL:

2 Q. Okay. Point to me where in your report
3 does it cite the facts or data about whether
4 Western Native Voice is capable of using volunteers
5 or not.

6 A. I -- So you -- you have a hypothetical in
7 mind where Western Native Voice becomes a
8 completely different organization, that somehow
9 they can't have money any longer. I -- I have not
10 studied the completely different organization that
11 doesn't exist.

12 Q. Okay. Your -- Your report doesn't include
13 any information about how Western Native Voice
14 compensates ballot collectors, correct?

15 A. That is correct, although I did read
16 the -- the complaint where they discussed some of
17 that.

18 Q. And is your -- is your report based on the
19 allegations in the complaint being true?

20 A. No. My report --

21 Q. Okay.

22 A. -- is trying to use the -- the data that
23 are available to me, and the tools and the
24 background, findings from other research in my
25 field of expertise to assess whether the -- the

EXHIBIT K

MONTANA 13TH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

-----)
MONTANA DEMOCRATIC PARTY AND MITCH)
BOHN; WESTERN NATIVE VOICE; MONTANA)
NATIVE VOTE; BLACKFEET NATION;)
CONFEDERATED SALISH AND KOOTENAI)
TRIBES; FORT BELKNAP INDIAN)
COMMUNITY; NORTHERN CHEYENNE TRIBE;)
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.)
-----)

REMOTE DEPOSITION OF SEAN TREND
APRIL 21, 2022

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 A. I don't think you have to be a clever
2 prosecutor to see how -- to shoehorn pecuniary
3 benefit into the definition of a campaign operative
4 doing what they did.

5 Q. So aside, then, from the North Carolina
6 example that we've just discussed, would any of the
7 other examples in your report be addressed by the
8 laws challenged in this case?

9 MR. MORRIS: Object to the extent it calls
10 for a legal conclusion and speculation.

11 A. Yeah. I don't know how the laws could be
12 applied by a clever prosecutor, but as I sit here,
13 I don't know directly.

14 Q. Do you consider the examples in the news
15 articles regarding voter fraud that you cite in
16 your report to be more subtle than someone
17 registering under the name Miguel Raton?

18 A. I don't -- I don't know about that.

19 Q. Do you think they're less subtle than
20 someone registering as Miguel Raton?

21 A. I would certainly want to do research into
22 the particulars of each case to see how they got

EXHIBIT L

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MONTANA DEMOCRATIC PARTY,)	
MITCH BOHN,)	
Plaintiffs,)	
)	Case 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,)	
)	
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.)	
)	

VIDEO 30(b)(6) DEPOSITION OF AUSTIN JAMES

On the 26th of May, 2022, beginning at 9:00 a.m., the 30(b)(6) video deposition of AUSTIN JAMES was held at the offices of Crowley Fleck, PLLP, 900 North Last Chance Gulch, Helena, Montana, before Holly E. Fox, Court Reporter and Notary Public.

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 Q (By Ms. Lee) By how much will HB176 reduce the
2 workload for elections officials?

3 MR. MCINTOSH: Objection; vague.

4 THE DEPONENT: Yeah. I mean, you're -- you're --
5 you would be entirely speculating based on how many people
6 come in and what they need. It could be different on each
7 thing. But it certainly is going to help.

8 Q (By Ms. Lee) Does every additional voter in an
9 election necessarily cause some additional work for county
10 elections officials and elections judges?

11 A Does every voter cause some additional work? I
12 mean, I -- I -- I mean, it depends on how you're
13 classifying it; right? Because, for example, I'm -- I'm
14 registered. I sent in my ballot. A person has to open my
15 envelope. They have to feed it in the machine. So if
16 you're -- if you're talking about that they pick up the
17 stack, and then they -- then they pick up the stack after
18 it's gone through, that that picking up that I contribute
19 to the 1/100 of the time it took to pick up the stack, then
20 I guess that's something.

21 Q Would any enactment that caused fewer people to
22 vote reduce the workload for counties related to running

1 cover as many bases as possible at a time.

2 So what they did do is they sent it to the clerk, and
3 the clerk was able to explain the situation. The situation
4 is 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 the question.

8 Q (By Ms. Lee) Okay. And you can set that exhibit
9 aside.

10 Has voter confidence on -- in Montana increased
11 since the passage of these laws in spring 2021?

12 A You know, there's a lot of different things that
13 people are confident about and not confident about. And
14 certainly voter -- you know, voter ID, for example, is
15 something that people -- that have expressed it. I've, you
16 know, heard myself. So to that level, there's increased
17 confidence.

18 And then at the same time there's people that are
19 not confident for other reasons or whatnot. So it's kind
20 of this thing that goes all over. I hope that they are --
21 that they're confident in the current law, and I hope that
22 we can maintain confidence. I hope we maintain good laws.

1 And -- and we'll do our best to, like I said, make Montana
2 elections great and continue to serve with a servant's
3 heart.

4 Q Are you aware that voter confidence is stable in
5 Montana over the past decades?

6 MR. MCINTOSH: Objection; counsel's testifying.

7 THE DEPONENT: Yeah. Umm -- am I -- aware -- are
8 you going to give me an exhibit or something?

9 Q (By Ms. Lee) That's -- the question is, are you
10 aware of that?

11 MR. MCINTOSH: Same objection.

12 THE DEPONENT: Is it like a true or false
13 statement or something? I mean, I don't -- I don't know
14 what study you're talking about or -- I don't know what
15 you're talking about.

16 Q (By Ms. Lee) Okay. Are you aware that whether
17 someone's preferred candidate wins or loses is one of the
18 largest drivers of voter confidence?

19 MR. MCINTOSH: Same objection.

20 THE DEPONENT: I mean, I think that my voter
21 confidence in the system doesn't make any difference as to
22 who wins or loses as far as I know. I guess it could be a

1 certain circumstance where it does. Seems like a pretty
2 generic reason to label onto voter confidence. I think
3 there's a lot of things that go into it. I think maybe the
4 reason why -- it seems like an awfully generic thing to
5 say.

6 And I guess if we're doing the true-false game, I
7 just -- again, I don't know what to say other than you're
8 making a statement and saying "are you aware." I'm aware
9 of what? I mean, give it to me, and I'll look over it and
10 see if I've seen that before. But as far as this blanket
11 thing, I don't know what to say to that.

12 Q (By Ms. Lee) Okay. Are you aware of any instances
13 of voter fraud in Montana involving election day
14 registration?

15 A I mean, to a degree, sure.

16 Q What are -- what are you aware of?

17 A Well, I mean, I think we'd start with, like --
18 what do they call it -- the Wooly Ranch votes. It was,
19 let's see, the election where there was 4,000 registered on
20 election day, and then people were nowhere to be found or
21 unable to be located. So I guess that would constitute as
22 a fraud, as an example. I think they call them Wooly Ranch

1 votes.

2 Q When is this Wooly Ranch example that you're
3 referencing from?

4 A That one would have been 1887, I believe. And
5 then they -- they talk about the Wooly Ranch votes there.
6 And I think it was 1893 when they set the registration for,
7 like, an hour at a time each county could do -- could set
8 it. And there's, you know, different things like that.
9 But you asked me for an example. There's -- that would be
10 one right off the get-go.

11 Q Are you aware of any instances of voter fraud
12 involving election day registration in Montana since 2006?

13 A Well, I mean, I don't -- I don't know how I'd look
14 for some type of laws or anything like that, but I can say,
15 like, one of the examples where we produced would have been
16 where a county -- I believe it was in Anaconda -- had a
17 person that tried to register that was -- had already
18 registered and voted in Great Falls, and they were trying
19 to do so in Anaconda. And there was this duration of time
20 to where she was able to call the Secretary of State's
21 office to ask whether they canceled the vote and give them
22 a new ballot or whether they're just supposed to say

1 registration is rejected.

2 So it predates those different nuances. If that
3 same thing would have been on election day, that could have
4 constituted as a fraud. You know, it's speculation there,
5 but you're asking me about a highly specific type of thing
6 and I'm trying to provide you with examples.

7 Q So that example that you just described is not an
8 example that occurred on election day; is that right?

9 A No, that one was not. No.

10 Q Okay. And so sitting here today, are you aware of
11 any specific examples of fraud involving registration on
12 election day in Montana since 2006?

13 A Since 2006. I mean, obviously there's -- you
14 know, when I went to the historical -- you asked these
15 questions, and in preparing for today -- so I tried to get
16 prepared, because we've got a lot of different documents,
17 and we tried to give you what was in the office. And then
18 when I -- sorry.

19 Q Just specifically just that question. Sitting
20 here today are you aware of any examples of fraud involving
21 registration on election day in Montana since 2006?

22 A Yeah. And I'm speaking on behalf of the Secretary

1 of State's office. And there's stuff on behalf of the
2 Secretary of State's office, like 2,000 square feet of
3 files, that I was not able to go through. So there could
4 be and there could not be. I got through a few boxes,
5 including the Woolly Ranch-type stuff where they were able
6 to get back at me.

7 So I don't have any examples to give you, but that
8 doesn't mean that there wasn't anything. I also don't know
9 what type of -- you know, how things would be detected or
10 not, or even if there were, there was reports -- that
11 doesn't mean that it was. And even if there was, then that
12 doesn't mean it was intentional. I mean, that's kind of
13 a -- that's kind of a runaround that I don't think really
14 is relevant.

15 Q Are you aware of any instances of fraud involving
16 paid ballot collectors in Montana since 2000?

17 A Fraud?

18 Q Yes.

19 A Well, fraud is kind of an amorphous thing; right?
20 Like we had the testimony in this case where they were
21 talking about it didn't matter whether somebody was
22 actually a resident of Montana; it was only whether they

1 had been there for 30 days. So that would be collecting a
2 person's ballot that wasn't actually a resident. That's a
3 fraud. Whether they were doing that intentionally, that
4 would, you know, alter whether they would be subject to
5 statutes. And even if they were, I don't know who would
6 have the time to prosecute that type of stuff.

7 So there's instances, you know, that are a
8 violation of election law that we see, but it's not like --
9 it's not like I have this -- this amorphous, you know,
10 example-type thing to be able to provide for you.

11 But we do know that we have things where people
12 feel intimidated. We do know where people called the cops.
13 We do know where, you know, people were doing things that
14 made people concerned. And we also have stuff where the
15 people that were doing it clearly didn't understand Montana
16 law, and so maybe that's a fraud in itself. But I guess
17 that's up to your definition of fraud.

18 Q Are you familiar with the case brought against two
19 non-citizens in Phillips County who are alleged to have
20 registered to vote there?

21 A I'm familiar with the -- you know, yeah, the --
22 the -- it. Yeah.

1 confidence in the election process.

2 What does the Secretary of State do to measure
3 confidence among Montanans in the election process?

4 A That's an intriguing aspect on gauging there, but,
5 you know, what we're trying to do is constantly make a good
6 system better and to have -- again, have people respect it
7 and believe it in. So I don't know that there's one
8 particular mark.

9 I mean, I guess one gauge, for example, would be,
10 you know, you go to a clerks' training and -- year after
11 year, and when they walk in, they say, Hey, you guys are
12 trying real hard, you know, we're real impressed. And that
13 would be one way to feel proud about it, you know. There's
14 a lot of things that go into it, I suppose, and a lot of
15 different issues for people, but doing the best we can.

16 Q Let me ask more directly.

17 Does the Secretary of State do anything
18 specifically to measure voter confidence in Montana?

19 A Yeah. I don't -- I guess, you know, there's
20 things that you could say apply to that sentence, but I
21 don't have, like, something in my mind that is just, like,
22 you know, here's a micro-target -- I don't know how -- what

1 you would mean, so it seems kind of, like, abstract.

2 Q (By Mr. Gordon) Well, let me give you a specific
3 example.

4 Does the Secretary of State conduct any surveys of
5 Montanan to measure their voter confidence?

6 A I don't think we -- we have any surveys for voter
7 confidence. I don't know if we have any surveys for, you
8 know, administrative rule confidence or business confidence
9 either. Maybe you'd get some. I don't know how accurate
10 it would be. Sometimes people are, you know, more apt to
11 respond for one reason or another. I don't know how we'd
12 get a good litmus. Maybe it's a good idea. I can
13 certainly relay that back.

14 Q (By Mr. Gordon) Counsel asked you some questions
15 about awareness of voter intimidation; do you recall that?

16 A Uh-huh. Yes. Sorry.

17 Q And you specifically mentioned an incident in
18 Livingston where somebody had called the police because
19 people were asking for their ballots; do you recall that?

20 A Yeah, I do.

21 Q And I think you'd mentioned that you read about
22 that in the paper?

1 job with the amount of stress that is being put on me, so
2 it turns out they always say if you need to increase your
3 ability to go the gym, get a workout buddy. And it turns
4 out that if your boss is leaving to the workout, it's
5 pretty easy to be held accountable to leave work to go work
6 out.

7 Q Does Secretary Jacobsen believe there's any
8 concrete evidence to support allegations of coordinated
9 voter fraud in Montana?

10 A I mean, that's a -- that's a silly way to put it.
11 I mean, there's obviously things that are alleged and stuff
12 like that. But the goal is not to be policing around
13 and -- and pointing things out. And even in this case,
14 it's like, why don't you show us these highly specific
15 examples. And that's why that's harmful, is because --
16 because then it creates people's fear, and why isn't this
17 being taken care of.

18 And it's a lot better to just have reasonable laws
19 that prevent things in the first place. If they don't
20 prevent, they alleviate. And people can feel confident in
21 the elections. It's just -- it's just that. Doing the
22 constitutional duty.

1 simple one. Is the Secretary of State aware of any
2 instances of voter fraud involving the use of a student ID
3 to vote?

4 MR. MCINTOSH: Objection; asked and answered.
5 Go ahead.

6 THE DEPONENT: Like I said, as far as IDs with a
7 name and photo, which would include a Costco card, a
8 student ID, and elementary card, all those different types
9 of things, they're not -- they're not logged in the system.
10 So if someone -- say they did use that to register to vote
11 fraudulently, and they were -- they were caught
12 fraudulently voting, we would have no idea what ID they
13 used. So, I mean, it's -- you're asking me for a question
14 that's impossible to answer to try to create an outcome
15 that's wrong.

16 Q (By Mr. Gordon) I'm just asking a simple factual
17 question, and let me ask --

18 MR. MCINTOSH: It's 6:00.

19 MR. GORDON: Do we need to -- can I ask one
20 follow-up question?

21 THE COURT REPORTER: You can ask one question.

22 MR. GORDON: I promise.

1 Q (By Mr. Gordon) Same question with respect to
2 out-of-state drivers licenses.

3 Is the Secretary of State aware of any instances
4 of voter fraud involving the use of an out-of-state drivers
5 license to vote?

6 A We -- I mean, we very well could be. I -- I don't
7 know of a specific example off the top of my head. I'm
8 trying to think of whether -- whether the out-of-state
9 drivers license number is logged. I think some of this
10 might get answered if we look at, like, an ERIC system or
11 something. But I think what we're trying to do is take the
12 most information that we have and put together a law that
13 makes sense, has a lot of fail-safes, and at the same time,
14 does a good job.

15 MR. GORDON: Thank you, Mr. James. We're going to
16 pause here pursuant to the further discussion. And, as
17 indicated, plaintiffs intend to hold the deposition open
18 and will confer with defense counsel about when to resume
19 and the parameters for that.

20 MR. MCINTOSH: John, could you please let us know
21 while we're on the record just how many minutes we've been
22 on the record.

EXHIBIT M

IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

Montana Democratic Party and 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
Group,
Plaintiffs,

vs. Cause No. DV-56-2021-451

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

DEPOSITION UPON ORAL EXAMINATION OF
DOUG ELLIS

BE IT REMEMBERED, that the deposition upon oral examination of DOUG ELLIS, appearing at the instance of the Plaintiffs, was taken via Zoom on April 20, 2022, beginning at 9:30 a.m., pursuant to Montana Rules of Civil Procedure, before Robyn Ori English, Court Reporter - Notary Public.

1 that these other voters who are not in the EDR
2 bracket are standing in line at your office on
3 election day? And let's right now just focus on a
4 federal general election.

5 A. Actually, it's not very -- not very
6 typical that that would happen. Usually we might
7 have one or two voters in there at a time. But
8 because we wouldn't be dealing with the late
9 registration, the line would go away.

10 Q. I understand. So for right now I'm just
11 talking about prior to HB 176, and I just want to
12 make sure the record is clear. Do voters who are
13 not engaged in EDR typically stand in line on
14 election day in your office?

15 A. Not typically, no.

16 Q. Okay. I want to ask another question
17 about your affidavit. I'm now at paragraph 30 of
18 your affidavit. And I also have it on the screen.
19 And, again, in the interest of time, I'm not going
20 to read the whole paragraph into the record. If I
21 misstate anything, you can say so.

22 But generally, in this paragraph you
23 state that by law you have to inform voters three
24 times in the four weeks prior to the deadline about
25 registration.

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 presidential election -- the primary federal.

2 Q. So they started you off with the easy
3 ones?

4 A. Right.

5 Q. Let me ask you an easier question,
6 Mr. Ellis. When was the last election you
7 administered in Broadwater County?

8 A. I believe it was the presidential
9 election of 2020.

10 Q. So -- oh, sorry, go ahead.

11 A. No, we had one school election after
12 that. We had a school election -- I can't --
13 honestly I can't remember if it was before or after
14 the presidential election of 2020.

15 Q. Fair to say that the -- all the elections
16 that you administered in Broadwater County came
17 during a time when Montanans were able to register
18 to vote on election day?

19 A. I believe so.

20 Q. Mr. Ellis, did you have the time to
21 administer each of those elections?

22 MR. MORRIS: Object to form.

23 Q. (By Mr. Gordon) Let me ask it a little
24 differently. I put in a -- I missed a word there.
25 I added an extra word.

1 election day instead came in to register the day
2 before election day or the Friday before election
3 day, it would take time -- your staff's time away
4 from other things that they were doing those days,
5 fair?

6 MR. MORRIS: Objection, misstates.

7 THE WITNESS: It would, yes.

8 Q. (By Mr. Gordon) I want to ask you a few
9 more questions -- actually, before we leave that
10 topic, it sounds like your opposition to election
11 day registration and support for HB 176 is based, at
12 least in part, on an allocation of resources.

13 In other words, if you had additional
14 resources and somebody who could devote their time
15 exclusively or almost exclusively to election day
16 registration, that would alleviate the concerns you
17 have about having election day registration; is that
18 fair?

19 A. It would have to be the trained resources
20 to enter that information. It would have to be
21 someone that's trained on the Montana vote system
22 and on elections and someone I trusted to put that
23 information into the computer and not make a
24 mistake.

25 Q. Sure. So if you had somebody who could

1 do that and devote their time to that on election
2 day, that would alleviate the concerns that you have
3 about the effects of election day registration,
4 correct?

5 MR. MORRIS: Calls for speculation.

6 THE WITNESS: To a point, it would.

7 Q. (By Mr. Gordon) Have you ever -- have
8 you ever requested more resources for election day?

9 A. I've ran two extra election training
10 schools for the 2020 presidential election just to
11 get enough people to man my precinct. It's not a
12 job people are standing in line for. So, yeah, I
13 have requested it, and --

14 Q. Of whom did you make -- have you ever
15 made a request to the Secretary of State's office
16 for more resources on election day?

17 A. The Secretary of State's office doesn't
18 get involved in our county election. They -- in
19 that forum. They have their own work that they're
20 doing to get -- to prepare for an election. They
21 have their own reports and things that they have to
22 do to get 56 counties ready for an election.
23 They're probably understaffed just as well or worse
24 than we are.

25 Now, if I were to ask for somebody for

EXHIBIT N

Janel Tucek

1 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

2 COUNTY OF YELLOWSTONE

3
4 MONTANA DEMOCRATIC PARTY
and MITCH BOHN,

5 Plaintiffs,

Cause Number
DV 21-0451

6 WESTERN NATIVE VOICE,
7 MONTANA NATIVE VOTE,
BLACKFEET NATION,
8 CONFEDERATED SALISH and
KOOTENAI TRIBES, FORT
9 BELKNAP INDIAN COMMUNITY,
and NORTHERN CHEYENNE TRIBE,

10 Plaintiffs,

11 MONTANA YOUTH ACTION,
12 FORWARD MONTANA FOUNDATION,
and MONTANA PUBLIC INTEREST
13 RESEARCH GROUP,

14 Plaintiffs,

15 vs.

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

18 Defendant.

19
20
21 ZOOM DEPOSITION UPON ORAL EXAMINATION OF

22 JANEL TUCEK

23 WEDNESDAY, APRIL 13TH, 2022

Janel Tucek

1 Said I need you to void her ballot so I can pull her
2 into my county. I left. I came back the next
3 morning, and she was released from the -- her
4 previous county, and I registered her.

5 Q. So in this instance it took you how long
6 total? And I am not counting overnight, but I'm
7 saying like working minutes.

8 A. Because I had to wait for them to pull,
9 that adds probably on another, you know, five or ten
10 minutes. I don't know what -- how fast they were.
11 Some are fast. Some are not. You know, it just
12 depends on how busy they are to be able to get it. A
13 lot of times you have to call them.

14 Q. Sure. But I'm just -- and I'm not talking
15 about them. I'm talking about you -- you, Ms. Tucek.
16 How many minutes did you spend total -- either on the
17 day prior after 4:00 p.m. or the day of in the
18 morning, how many minutes did you spend registering
19 that voter?

20 A. Less than five minutes.

21 Q. Less than five minutes. And is that
22 typical, less than five minutes?

23 A. Usually.

24 Q. What's the longest you have ever taken to
25 register a voter in Fergus County?

Janel Tucek

1 Q. Okay. That's fine. Now turning -- I know
2 I'm hopping around here a little bit, but it's in an
3 effort to wrap this as quickly as possible. I
4 promise. So I'm a little over with this.

5 A. Sure.

6 Q. So now turning to Fergus again, we talked
7 about Petroleum County. You recall one to two.
8 Right? And -- and that's your testimony with
9 Petroleum County. Correct?

10 MR. PHILLIPS: Objection. Form.

11 THE WITNESS: I -- just going -- just
12 trying to, you know, recollect, I mean, I would have
13 to go back and look at records.

14 BY MR. BREWSTER:

15 Q. I promise you I'm not trying to trip you
16 up or anything like that. Your -- my question is,
17 your recollection is that you had one or two total in
18 your time at Petroleum County. Right?

19 MR. PHILLIPS: Objection. Form.

20 THE WITNESS: Yeah, without going back and
21 verifying.

22 BY MR. BREWSTER:

23 Q. Okay. And my second question is, you
24 don't -- so far in your tenure at Fergus County, you
25 have not had to register on election day in a polling

Janel Tucek

1 place location -- or election. Right?

2 A. Not for polling place.

3 Q. And the last question along these lines
4 is, have you heard of any long lines in Fergus County
5 on election day from before your tenure starting last
6 year? And I understand you may not know. You would
7 have to look at records. I'm only asking you if you
8 know of long lines in Fergus County.

9 A. From what Abbie has told me in
10 conversation she stated that the 2020 election, there
11 were -- there were lines. She would talk about
12 coming to work, and they would be, you know, down the
13 stairway from the office for people who were
14 registering.

15 Q. And so I have the number here. It says in
16 Fergus County in 2020, according to the secretary of
17 state, 103 voters registered to vote in Fergus County
18 on 2020 election day. Does that sound approximately
19 correct to you?

20 MR. PHILLIPS: Objection. Foundation.

21 THE WITNESS: Without looking at the data
22 and just from what Abbie had said, she said it was --
23 she goes, it was a lot of same day. And in me going
24 back through voter profiles, trying to clear up the
25 absentee voter lists, I can see that a lot of them

1 election-day registration?

2 MR. PHILLIPS: Objection. Foundation.

3 THE WITNESS: Can you explain that a
4 little bit more?

5 BY MR. BREWSTER:

6 Q. Sure. So this is not a question. This is
7 me explaining my question. So we already defined
8 voter fraud. Right? Okay. And earlier at the
9 beginning of the day, we defined election day
10 registration. Right? Voting after noon Monday the
11 day prior. Right?

12 A. Yes.

13 Q. So you have those two definitions?

14 A. Uh-huh.

15 Q. Okay. Are you personally aware of any
16 instances of voter fraud in Fergus County involving
17 someone who used election-day registration?

18 MR. PHILLIPS: Objection. Form.

19 THE WITNESS: Nobody has come and told me.

20 BY MR. BREWSTER:

21 Q. And you are not personally aware either
22 from your own observation?

23 A. Not that I have seen.

24 Q. Same question Petroleum County with
25 respect to election-day registration.

Janel Tucek

1 MR. PHILLIPS: Objection. Form.

2 THE WITNESS: No. Because they -- they
3 come in and register. They are given the ballot
4 right there. They can vote at the -- at the booth,
5 or they can take their slip and go into the -- like
6 in Petroleum County they would just take the -- you
7 know, they registered to vote. And we would walk in
8 to the polling place and say this person is eligible
9 to vote.

10 BY MR. BREWSTER:

11 Q. Okay. So I'm hearing no. No, there have
12 been no instances of voter fraud in Petroleum County
13 involving someone using election-day registration.
14 Correct?

15 MR. PHILLIPS: Objection. Form and
16 foundation.

17 THE WITNESS: Not that I know of.

18 BY MR. BREWSTER:

19 Q. Okay. Next question. Are you aware of
20 any instances of voter fraud in Fergus County
21 involving someone using an absentee ballot?

22 MR. PHILLIPS: Objection. Form.

23 THE WITNESS: I would not have any way of
24 knowing that.

25 BY MR. BREWSTER:

1 Q. Same question with regard to absentee
2 ballots in Petroleum County.

3 MR. PHILLIPS: Objection. Form and
4 foundation.

5 THE WITNESS: Nothing that I know of.
6 BY MR. BREWSTER:

7 Q. Next question. Are you aware of any
8 instances of voter fraud in Fergus County involving
9 someone using the incorrect or fraudulent
10 identification?

11 MR. PHILLIPS: Objection. Form and
12 foundation.

13 THE WITNESS: I don't know that.
14 BY MR. BREWSTER:

15 Q. Same question with respect to voter
16 identification but Petroleum County.

17 MR. PHILLIPS: Objection. Form and
18 foundation.

19 THE WITNESS: That was polling place ID?
20 Is that what we're talking about?

21 BY MR. BREWSTER:

22 Q. Yes. The incorrect or false
23 identification.

24 A. No.

25 MR. PHILLIPS: Objection. Form.

EXHIBIT O

Monica Eisenzimer

1 MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

2 COUNTY OF YELLOWSTONE

3
4 MONTANA DEMOCRATIC PARTY
and MITCH BOHN,

5 Plaintiffs,

Cause Number
DV 21-0451

6 WESTERN NATIVE VOICE,
7 MONTANA NATIVE VOTE,
BLACKFEET NATION,
8 CONFEDERATED SALISH and
KOOTENAI TRIBES, FORT
9 BELKNAP INDIAN COMMUNITY,
and NORTHERN CHEYENNE TRIBE,

10 Plaintiffs,

11 MONTANA YOUTH ACTION,
12 FORWARD MONTANA FOUNDATION,
and MONTANA PUBLIC INTEREST
13 RESEARCH GROUP,

14 Plaintiffs,

15 vs.

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

18 Defendant.

19
20
21 ZOOM DEPOSITION UPON ORAL EXAMINATION OF

22 MONICA EISENZIMER

23 WEDNESDAY, APRIL 13TH, 2022

1 registering a new voter takes much more time. You
2 just said registering a voter.

3 MS. THOMAS: Okay.

4 BY MS. THOMAS:

5 Q. So registering a new voter on election day
6 takes between five to ten minutes, paraphrasing?

7 A. Correct.

8 Q. Okay. And what other kinds of voter
9 activity is happening at your office on election day?

10 MR. MORRIS: Objection to the form.

11 MS. THOMAS: And what's the basis of that
12 objection?

13 MR. MORRIS: Today?

14 BY MS. THOMAS:

15 Q. You can answer.

16 A. People are changing -- you know, they're
17 not just registering to vote. They're changing
18 addresses and names. Trying to come into change a
19 name or an address and then find out they're
20 registered to vote in their polling place. So
21 they're questioning that. They're -- just people
22 questioning -- people come in with questions.
23 Whether they have a registration issue or not, they
24 have issues, so --

25 Q. Okay. So you said people come in with

1 little bit earlier. You're generally aware of HB530.
2 Is that correct?

3 A. Yes.

4 Q. Okay. And your affidavit didn't discuss
5 HB530 or ballot collection. Is that correct?

6 A. Correct.

7 Q. Okay. Would HB530 have any effect on your
8 office's -- your office's ability to conduct
9 elections?

10 MR. MORRIS: Objection to form.
11 Foundation.

12 THE WITNESS: No. Not to my knowledge.

13 BY MS. THOMAS:

14 Q. Okay. Are you familiar with the term
15 "voter fraud"?

16 A. Yes.

17 Q. What do you understand voter fraud to be?

18 A. Misrepresenting some -- theirsself or their
19 right to vote in this election.

20 Q. And are you personally aware of any
21 instances of voter fraud in Flathead County?

22 A. No.

23 MS. THOMAS: I might be done. If I could
24 take like a five-minute break and then I know others
25 on the line may have additional questions. So let's

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief in Opposition to the following on 06-24-2022:

Rylee Sommers-Flanagan (Attorney)

40 W. Lawrence Street

Helena MT 59601

Representing: Forward Montana Foundation, Montana Public Interest Research Grp., Montana Youth Action

Service Method: eService

Ryan Ward Aikin (Attorney)

1018 Hawthorne St.

Missoula MT 59802

Representing: Forward Montana Foundation, Montana Youth Action

Service Method: eService

John C. Heenan (Attorney)

1631 Zimmerman Trail, Suite 1

Billings MT 59102

Representing: Montana Democratic Party, Mitch Bohn

Service Method: eService

Peter M. Meloy (Attorney)

2601 E. Broadway

2601 E. Broadway, P.O. Box 1241

Helena MT 59624

Representing: Montana Democratic Party, Mitch Bohn

Service Method: eService

Matthew Prairie Gordon (Attorney)

1201 Third Ave

Seattle WA 98101

Representing: Montana Democratic Party, Mitch Bohn

Service Method: eService

Jonathan Patrick Hawley (Attorney)

1700 Seventh Avenue

Suite 2100

Seattle WA 98101

Representing: Montana Democratic Party, Mitch Bohn
Service Method: eService

Kathleen Lynn Smithgall (Govt Attorney)
215 N. Sanders St.
Helena MT 59601
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

David Francis Knobel (Attorney)
490 N. 31st St., Ste 500
Billings MT 59101
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

Clayton H. Gregersen (Attorney)
P.O. Box 2529
Billings MT 59101
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

Ian McIntosh (Attorney)
1915 S. 19th Ave
P.O. Box 10969
Bozeman MT 59719
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

David M.S. Dewhirst (Govt Attorney)
215 N Sanders
Helena MT 59601
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

Dale Schowengerdt (Attorney)
900 N. Last Chance Gulch
Suite 200
Helena MT 59624
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

John Mark Semmens (Attorney)
900 N. Last Chance Gulch
Suite 200
Helena MT 59601
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

Leonard Hudson Smith (Attorney)

P.O. Box 2529
Billings MT 59103
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

E. Lars Phillips (Attorney)
1915 S. 19th Ave
Bozeman MT 59718
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

William McIntosh Morris (Attorney)
1915 S. 19th Ave.
P.O. Box 10969
Bozeman MT 59719
Representing: Jacobsen, Christi As Secretary Of State Of Mt
Service Method: eService

Confederated Salish And Kootenai Tribes (Plaintiff)
Service Method: Email

Fort Belknap Indian Community (Plaintiff)
Service Method: Email

Northern Cheyenne Tribe (Plaintiff)
P.O. Box 128
Lame Deer 59043
Service Method: Email

Blackfeet Nation (Plaintiff)
Service Method: Email

Henry James Brewster (Attorney)
10 G Street NE, Ste 600
Washington 20002
Representing: Montana Democratic Party, Mitch Bohn
Service Method: Email

Jonathan Topa (Attorney)
125 Broad Street 18th Floor
New York 10004
Representing: Western Native Voice
Service Method: Email

Electronically Signed By: Alexander H. Rate
Dated: 06-24-2022