

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE MIRANDA M. DU, DISTRICT JUDGE
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4 Bobby D. Sanchez, : No. 3:16-cv-523-MMD-WGC
5 Plaintiff, :
6 -vs- : October 4, 2016
7 Barbara K. Cegavske, : United States District Court
8 Defendant. : 400 S. Virginia Street
9 : Reno, Nevada 89501
:

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11 **TRANSCRIPT OF EMERGENCY MOTION**
12 **FOR PRELIMINARY INJUNCTION (#26)**

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

15 FOR THE PLAINTIFF: Steven Sandven
16 Rendal Miller
Attorneys at Law
17 FOR DEFENDANT STATE OF NEVADA: Lori Story
Attorney at Law
18 FOR DEFENDANT MINERAL COUNTY: Brent Ryman
19 Charity Felts
Attorneys at Law
20 FOR DEFENDANT WASHOE COUNTY: Michael Large
21 Attorney at Law

22 Proceedings recorded by mechanical stenography produced by
23 computer-aided transcript

24 Reported by: KATHRYN M. FRENCH, RPR, CCR
25 NEVADA LICENSE NO. 392
CALIFORNIA LICENSE NO. 8536

1 Reno, Nevada, Tuesday, October 4, 2016, 9:00 a.m.

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4 THE CLERK: 3:16-civil-523-MMD-WGC, Bobby
5 Sanchez versus Barbara Cegavske.

6 Counsel, please state your appearance for the
7 record.

8 THE COURT: Good morning. Please be seated.

9 MR. SANDVEN: Steven Sandven for plaintiffs,
10 Your Honor.

11 MR. MILLER: Rendal Miller for plaintiffs.

12 MR. RYMAN: Good morning, Your Honor.

13 Brent Ryman and Charity Felts from Erickson, Thorpe &
14 Swainston, for the Mineral County defendants.

15 MS. STORY: Lori Story for Secretary of State.

16 MR. LARGE: Michael Large on behalf of the
17 Washoe County defendants.

18 THE COURT: All right. Good morning, counsel.

19 I set the hearing on the Plaintiff's Emergency
20 Motion For Preliminary Injunction. For the record, I have
21 reviewed the motion, the three responses, replies, as well as
22 the United States Statement of Interests. The docket numbers
23 are 26, 37, 38, 39, 44, 45, 46 and 43. I have not yet
24 reviewed all of the exhibits, but will do so after the
25 hearing.

1 I want to focus the arguments on the Section 2
2 violation. And for the purpose of the hearing this morning,
3 I want the parties to know that I find the United States
4 Statement of Interest to be very helpful in clarifying the
5 this two-step process analysis that courts use to determine
6 whether the practices similar to those practices at issue
7 here; and that is, the voter registration, limitations on
8 early voting, and the location of polling sites, results in
9 the denial or abridgement of the right to vote on account
10 of race or color. So, I want the parties to focus on that
11 two-factor test.

12 Some of my questions go, in particular, to that
13 two-factor tests, including factor number one.

14 With that, I'll hear arguments. And let me start
15 with plaintiffs. And for plaintiffs, I want you to focus on
16 the threshold issue of standing. I have some questions
17 related to standing.

18 MR. SANDVEN: Good morning, Your Honor.

19 Just so I'm clear on the procedure today, we're
20 ready to proceed with evidence regarding the Senate factors
21 in the '82 Senate Report, and to lay foundation for all the
22 exhibits, and go through that specific to what you raised in
23 your directive at the beginning.

24 On standing, Your Honor --

25 THE COURT: So, let me do that. So why don't

1 you offer the evidence you have and then I will ask you
2 questions that I have. In other words, you have some
3 additional evidence that you wanted to offer, you said?

4 MR. SANDVEN: Yes. Can I call Bret Healy as a
5 witness, Your Honor?

6 THE COURT: Yes. And Mr. Sandven, I want
7 to make sure the parties have this. A thumb drive was
8 hand-delivered to the Court yesterday, including a list of
9 documents.

10 Have you shared the thumb drive, as well as the
11 documents, with the opposing parties?

12 MR. SANDVEN: Yes, Your Honor. Before the
13 hearing, I went ahead and, on our exhibits 1 through 63, we
14 provided hard copies to each of the exhibits, of each of the
15 exhibits, to each of the defendants; one copy for the County,
16 counties, and one copy for the Secretary of State.

17 Your Honor, we also went ahead and because exhibit
18 number 60 -- exhibits 58 through 61 are extensive, it's
19 several thousand pages, we only made one hard copy for all
20 of the three defendants, but we put everything on a thumb
21 drive in pdf format, and that was provided before the hearing.

22 THE COURT: All right. Thank you.

23 MR. RYMAN: Your Honor, Brent Ryman on behalf
24 of Mineral County. To the extent those things were delivered
25 to the Court yesterday, my understanding was that this needed

1 to be filed before one o'clock yesterday. Certainly, we
2 have not seen any of these documents or the thumb drive until
3 we walked into court this morning a few minutes ago.

4 THE COURT: And for the record, I haven't
5 reviewed the exhibits. I've looked at the list of the
6 exhibits. I haven't looked at the thumb drive. I only know
7 what's on the thumb drive based on the list that was given to
8 me. The objection is noted, but I haven't reviewed anything
9 for the purpose of this hearing, the actual documents, so to
10 the extent there's an objection to the documents being offered
11 for admission, the objection is overruled.

12

13 **BRET HEALY,**
14 called as a witness on behalf of the Plaintiff,
15 was sworn and testified as follows:

14

15

16 THE CLERK: Please state for the record your
17 full name, spell both your first name and your last name.

18 THE WITNESS: Bret Healy. Bret is B-r-e-t.
19 Healy is H-e-a-l-y.

20

DIRECT EXAMINATION

21 BY MR. SANDVEN:

22 Q Mr. Healy, have you come to court today to state your
23 expert opinion on a need and feasibility for establishing
24 one additional in-person border registration site, and one
25 additional early boarding site in both Washoe and Mineral

1 County, and one additional Election Day polling location in
2 Nixon, Nevada, on the Pyramid Lake Paiute Reservation?

3 A I have.

4 Q Did you hear the judge's directives that she wants to go
5 ahead and hear about the nine Senate Factors regarding to a
6 Section 2 claim that's at issue here today?

7 A I did.

8 Q What is your education?

9 A I have a Bachelor's in Animal Science and a Masters in
10 Animal Science.

11 Q What do you do for Four Directions, Inc.?

12 A Help -- worked for enhanced access to the voter process
13 for American Indian tribes, particularly tribal members living
14 on reservations across several states.

15 Q How many early voting locations have you established
16 for voting in Indian Country, the legal definition of Indian
17 Country?

18 A Through the 2016 June Primary, 44 instances across three
19 different states, several different reservations.

20 Q Have you participated in all aspects of native GOTV
21 efforts, Get Out the Vote efforts?

22 A Yes. Everything from fundraising for field operations;
23 voter registration drives; Get Out the Vote drives, whether
24 that be to early sites or to Election Day locations; voter
25 protection efforts, to ensure voter rights are protected on

1 various Indian Reservations and, most especially, working
2 with tribal governments to intercede and work with local
3 governments and state governments to establish equal access,
4 particularly for registration and early voting opportunities.

5 Q Mr. Healy, have you been an expert in any other federal
6 cases involving voting rights?

7 A Yes.

8 Q What case?

9 A Wandering Medicine versus McCulloch.

10 Q That was in 2012?

11 A It was.

12 Q Regarding the establishment of satellite voting locations
13 at three Indian tribes?

14 A Regarding the establishment of satellite locations for --
15 in Montana, late registration for the last 30 days of the
16 election period, including Election Day registration that
17 could only be done at the county election office, and
18 in-person absentee voting for the last 30 days of the Election
19 Day process as well. That was the base of the case on
20 three Indian Reservations in Montana, the Ft. Belknap
21 Indian Community in North Central Montana, the home of the
22 Grosventre -- which is G-r-o-s-v-e-n-t-r-e -- Grosventre and
23 Assiniboin people, the Northern Cheyenne Reservation, and the
24 Crow Nation Reservation.

25 Q What have you done with HAVA, briefly?

1 A In South Dakota, we were invited to participate in a
2 rewrite of the -- or the most recent South Dakota help
3 American vote act plan. We were asked to provide input and
4 a proposal for using a -- the use of HAVA funds to establish
5 satellite on reservation registration and early in-person
6 absentee voting on those reservations.

7 MR. SANDVEN: Your Honor, may I approach the
8 witness with a binder?

9 THE COURT: Yes.

10 MR. SANDVEN: This binder is plaintiff's exhibit
11 A through Y. It's been provided to defendants.

12 THE COURT: I'm sorry. Exhibit A through Y?

13 MR. SANDVEN: Yes. It's in a binder on your
14 bench, Your Honor, that is listed on the Table of Contents
15 and it's labeled plaintiff's exhibits A through Y.

16 And I have your permission to approach, Your Honor,
17 the witness?

18 THE COURT: And copy has been given to counsel
19 as well, opposing counsel?

20 MR. SANDVEN: Absolutely, Your Honor.

21 THE COURT: All right. Thank you.

22 Yes, you may.

23 BY MR. SANDVEN:

24 Q Are you familiar with what's been marked exhibit A?

25 A I am.

1 Q How are you familiar?

2 A It was given to me by President Tex Hall from the
3 National Congress of American Indians.

4 Q What is it?

5 A It's a letter of endorsement, specifically, in President
6 Hall's words: "I know and have worked with Four Directions
7 Executive Director Bret Healy. Mr. Healy has shown
8 exceptional savvy and innovation in his --"

9 COURT REPORTER: Slow down.

10 THE WITNESS: "-- Mr Healy has shown exceptional
11 savvy and innovation in his efforts leading the Four
12 Directions organization."

13 MR. SANDVEN: Plaintiffs offer exhibit A.

14 THE COURT: Any objection, counsel?

15 MR. RYMAN: None from the Mineral County
16 defendants, Your Honor.

17 MR. LARGE: None from Washoe County.

18 MS. STORY: No, Your Honor.

19 THE COURT: All right. Exhibit A is admitted.

20 (Whereupon, Exhibit A -- a letter, was received in
21 evidence.)

22 BY MR. SANDVEN:

23 Q Please turn to what's been marked exhibit B.

24 Are you familiar with this document?

25 A I am.

1 Q What is it?

2 A It is a letter from the Montana and Wyoming Tribal
3 Leaders Council, to Secretary of State, Linda McCulloch, in
4 Montana, and it requests that she work with me to establish a
5 written memorandum: "To that end, we have asked Bret Healy
6 from Four Directions, Inc. --"

7 THE COURT: Let me ask you this, Mr. Healy. I
8 can read documents for myself. You don't have to read the
9 documents.

10 THE WITNESS: Okay.

11 THE COURT: And maybe we can go through this
12 process more quickly.

13 MR. SANDVEN: Absolutely, Your Honor.

14 THE COURT: Do the defendants have any objection
15 to exhibits A through Y being admitted?

16 MR. RYMAN: Your Honor, on behalf of the Mineral
17 County defendants, we don't have any objection here, to the
18 extent this is a preliminary hearing, or a motion -- for
19 motion hearing. The Rules of Evidence are relaxed and we
20 trust you consider them for the weight. We have no objection
21 to admission for these purposes.

22 THE COURT: All right. Thank you.

23 MR. LARGE: Washoe County joins in that.

24 MS. STORY: Secretary of State joins as well,
25 although I remind the Court that we haven't had an opportunity

1 to review them.

2 MR. SANDVEN: Plaintiffs offer exhibits A
3 through Y, Your Honor.

4 THE COURT: All right. Exhibits A through Y are
5 admitted.

6 (Whereupon, Exhibits A through Y -- letters, were
7 received in evidence.)

8 BY MR. SANDVEN:

9 Q Mr. Healy, can you briefly tell the Court who you've
10 been a consultant to what federally recognized tribal
11 organizations, regional tribal organizations, on voting
12 rights, voting access, please.

13 A I've been an advisor for the Inter-Tribal Council of
14 Nevada; Great Plains Tribal Chairmen's Association; The
15 Coalition Of Large Tribes; The Rocky Mountain Tribal Leaders
16 Council, which used to be known as the Montana and Wyoming
17 Tribal Leaders Council. Among tribes, the Oglala Sioux Tribe;
18 the Rosewood Sioux Tribe; Crow Creek Sioux Tribe; Cheyenne
19 River Sioux Tribe; Black Feet Nation, Ft. Belknap Indian
20 Community; Northern Cheyenne Tribe; Crow Nation; Pyramid Lake
21 Paiute Tribe; Walker River Paiute Tribe; Yerington Paiute
22 Tribe; Wide Earth Nation; Red Lake Nation; Leech Lake Band of
23 Ojibwe.

24 THE COURT: Mr. Sandven, what is the area of
25 expertise in which you are offering to qualify Mr. Healy?

1 MR. SANDVEN: At this time, we tender Bret Healy
2 as an expert because of his credentials in establishing
3 satellite voting locations for in-person voter registration
4 and in-person early voting location.

5 THE COURT: Sorry. Slow down.

6 You want to establish him as an expert in what
7 again?

8 MR. SANDVEN: Establishment of satellite
9 in-person voter registration, and in-person early voting
10 locations in Indian Country, Your Honor.

11 THE COURT: So satellite voter registration,
12 in-person voters registration, and in-person Election Day
13 voting.

14 MR. SANDVEN: In Indian Country, Your Honor.

15 THE COURT: Any objection from defense counsel?

16 MR. RYMAN: Objection from the Mineral County
17 defendants, Your Honor. It sounds as if counsel is attempting
18 to offer Mr. Healy as an expert in the law. The Court doesn't
19 need an expert in the law. The Court is --

20 THE COURT: That's not what I'm hearing from
21 them. They're not saying he's an expert in the law relating
22 to the Section 2 Voting Rights Act.

23 MR. RYMAN: That's, essentially, what they are
24 saying, Your Honor. He's, he's attempting to provide him as
25 an expert on establishing in-person satellite voting locations

1 through litigation, through use of the law. That's an
2 expert in the law and we would object on that basis. It's
3 not helpful to the Court. We certainly don't object to
4 Mr. Healy testifying about the facts of this case and his
5 contact with the counties and what he's tried to do to request
6 early voting in this case, but that's not expert testimony.
7 The Court does not need expert testimony on this basis, Your
8 Honor.

9 THE COURT: Mr. Sandven.

10 MR. SANDVEN: Your Honor, in looking at Rule
11 702, I believe that his testimony is helpful to the Court.
12 And because of his experience in this specific field,
13 that's the core of the issue today, is under this Section 2
14 claim -- I'm not asking for him to be declared an expert on
15 Section 2 or the Voting Rights Act or '82 Report. But this
16 is going to go ahead, his expertise will help the Court in
17 determining the process, the appropriate process, if any,
18 for establishment of these particular satellite or low key,
19 remote voting locations for in-person registration and
20 in-person early voting. He's done this in tribes in several
21 states. That's what this is about here today, Your Honor.

22 MR. RYMAN: If I may respond, Your Honor.

23 THE COURT: Yes.

24 MR. RYMAN: What I'm hearing from Mr. Sandven is
25 that Mr. Healy is an expert in suing political subdivisions to

1 force early voting.

2 THE COURT: That's not what I'm hearing, but you
3 can characterize what you've heard.

4 MR. RYMAN: And on that basis, what he's saying,
5 I believe from what he just told the Court, is that Mr. Healy
6 is an expert in Section 2. The Court doesn't need expert in
7 Section 2. That's not helpful.

8 Thank you, Your Honor.

9 THE COURT: All right. Let me do this. I'm not
10 going to grant the motion to qualify this witness as an expert
11 yet. I'm going to hear his testimony. I'll decide whether
12 or not I'll qualify him then. The rules, as counsel know with
13 respect to a hearing before the Court, are more relaxed. And
14 I certainly can decide if I'm going to qualify him and give it
15 -- or not qualify him, but give his testimony the weight it
16 deserves.

17 So I'm going to defer that decision, and it may
18 be that I won't resolve it until I have a written opinion,
19 and I decide how much weight I'm going to give his testimony.

20 So, let's proceed.

21 BY MR. SANDVEN:

22 Q Mr. Healy, how many 22 -- how many in-person early voting
23 offices are there in Washoe County for the 2016 election
24 cycle?

25 A 22.

1 Q Please turn to what's been marked as exhibit number 1.

2 Are you familiar with this document?

3 A I am.

4 Q What is it?

5 A This is a letter from the Walker River Paiute Tribe to
6 the Nevada Secretary of State.

7 Q What's it regarding?

8 A Regarding their request of Mineral County for an
9 in-person voter registration site on the Walker River Paiute
10 Reservation.

11 Q How are you familiar with this document?

12 A I helped prepare the draft for Chairman Sanchez and
13 delivered the correspondence via electronic mail to the
14 Secretary of State's Office.

15 Q What's the date of this letter?

16 A August 12th, 2016.

17 Q When was it delivered?

18 A Uh, the afternoon of August 12th, 2016.

19 MR. SANDVEN: Plaintiff's offer exhibit 1,
20 Your Honor.

21 THE COURT: I assume there's no objection to
22 exhibit 1?

23 MR. RYMAN: None, Your Honor. Thank you.

24 THE COURT: All right. Exhibit 1 is admitted.

25 (Whereupon, Exhibit 1 -- a letter, was received

1 in evidence.)

2 BY MR. SANDVEN:

3 Q Please turn to what's been marked exhibit 2.

4 What is it?

5 A It's a letter from the Walker River Paiute Tribe to the
6 Mineral County Commissioners, and to Christopher Nepper, the
7 Mineral County Clerk-Treasurer.

8 Q What's the date on it?

9 A August 12th, 2016.

10 Q What's it regarding?

11 A A request for an in-person voter registration site and
12 in-person early voting site on the Walker River Paiute
13 Reservation.

14 Q How are you familiar with this document?

15 A I helped prepare it for Chairman Sanchez.

16 Q Did you e-mail this document to anybody?

17 A I did. To Chris Nepper from Mineral County
18 Clerk-Treasurer.

19 Q When?

20 A Afternoon, August 12th, 2016.

21 MR. SANDVEN: We offer plaintiff's exhibit 2.

22 THE COURT: Any objection?

23 MR. RYMAN: No objection, Your Honor.

24 THE COURT: All right. Exhibit number 2 is
25 admitted.

1 (Whereupon, Exhibit 2 -- a letter, was received in
2 evidence.)

3 BY MR. SANDVEN:

4 Q Please turn to what's been marked exhibit number 3.

5 What is it?

6 A A letter from the Pyramid Lake Paiute Tribe to the
7 Secretary of State.

8 Q How are you familiar with this document?

9 A I helped prepare this document for Chairman Hawley's
10 signature.

11 Q What's the date?

12 A August 10th, 2016.

13 Q What's it regarding?

14 A Their request to Washoe County for in-person voter
15 registration on the Pyramid Lake Reservation, in-person early
16 voting site on the Pyramid Lake Reservation, and an in-person
17 Election Day polling location in the Tribal Capitol of Nixon,
18 Nevada.

19 Q Did you hand-deliver this document?

20 A I did.

21 MR. SANDVEN: Plaintiffs offer exhibit number 3,
22 Your Honor.

23 MS. STORY: I would object, to the extent
24 that the attachment is not included in this exhibit. And I
25 reference "attached letter." I can assume what letter that

1 is, but it's not attached.

2 THE COURT: Ms. Story, exhibit 3 is the letter.

3 And what are you objecting to not being included?

4 MS. STORY: It says: "Please find attached
5 letter attached for equal access," and I just believe that
6 attachment should be part of this exhibit, or at least
7 identified.

8 THE COURT: I think that's a valid concern.

9 Mr. Sandven.

10 BY MR. SANDVEN:

11 Q Mr. Healy, what -- looking at the first sentence of
12 exhibit number 3: "Please find attached a letter of request
13 for equal access to the ballot box for the 2016 General
14 Election...", what is being referenced here?

15 A The letter that was sent to Washoe County officials.

16 Q And is that -- and what exhibit is that?

17 A I believe it is exhibit 4.

18 Q You believe or it is?

19 A It is.

20 MR. SANDVEN: So, Your Honor, the next exhibit
21 is the referenced letter.

22 THE COURT: All right. Ms. Story, do still
23 assert your objection?

24 MS. STORY: No objection.

25 THE COURT: All right. Exhibit 3 is admitted.

1 (Whereupon, Exhibit 3 -- a letter, was received in
2 evidence.)

3 BY MR. SANDVEN:

4 Q Please turn to what's been marked exhibit 4.

5 Are you familiar with this document?

6 A I am.

7 Q What is it?

8 A It's a letter from the Pyramid Lake Paiute Tribe for the
9 Washoe County Commissioners and to the Registrar of Voters,
10 Luanne Cutler.

11 Q What is it regarding?

12 A The request from the Pyramid Lake Paiute Tribe for
13 in-person voter registration site, and in-person early voting
14 site, and an Election Day polling site in the Tribal Capitol,
15 Nixon, Nevada.

16 Q Date?

17 A August 10th, 2016.

18 Q Did you hand-deliver this letter?

19 A I did.

20 MR. SANDVEN: Plaintiffs offer exhibit number 4.

21 THE COURT: Any objection?

22 MR. RYMAN: Your Honor, on behalf of Mineral
23 County, we're not going to be objecting to any of these
24 until we get into the expert reports of people who may or may
25 not be here at this point. So, no objection from Mineral

1 County.

2 THE COURT: Exhibit 4 is admitted.

3 And I was going to ask you, counsel, if you wish to
4 offer, it looks like 5 to 23, based on the description, are
5 all e-mails communications, and the parties reference some of
6 them in their briefs.

7 Are you offering them to be admitted --

8 MR. SANDVEN: Yes, Your Honor.

9 THE COURT: -- exhibits 5 through 23?

10 Is there any objection to exhibits 5 through 23
11 being admitted.

12 MR. RYMAN: None, Your Honor.

13 MS. STORY: None, Your Honor.

14 MR. LARGE: Not at this time, Your Honor.

15 THE COURT: All right. Exhibits 5 through 23
16 are admitted.

17 (Whereupon, Exhibits 5 through 23 -- e-mails, were
18 received in evidence.)

19 BY MR. SANDVEN:

20 Q Mr. Healy, I have a question regarding exhibit 17 and
21 exhibit 23 that have been admitted.

22 Exhibit 17, are you there?

23 A Yes.

24 Q Any significance to this e-mail?

25 A Yes.

1 Q What?

2 A Mr. Nepper actually responded within 48 hours of the
3 initial request being e-mailed to his office on Friday
4 afternoon. This was on a Sunday afternoon. And the tone of
5 the e-mail certainly indicated a willingness to discuss the
6 request from Walker River in a fairly engaging way. It was
7 a positive sign.

8 Q Please turn to exhibit 23.

9 Any significance there, to you?

10 A Yes. It's an e-mail from Chris Nepper to myself, dated
11 Friday, August 19th, 2016, in the morning, one week after the
12 request had been made from the Walker River Paiute Tribe for
13 satellite voter registration and early voting site on the
14 Walker River registration. The e-mail stated that he had
15 talked with the Secretary of State's Office, and that they had
16 asked him not to respond, as the issue is at the state level.
17 And that if I had any questions, he directed me the Secretary
18 of State would be able to provide more information.

19 Q Why is that significant?

20 A Because it, at that point it, clearly, appeared to be
21 a state issue, not a County issue, and he was no longer going
22 to be in any discussion mode. Up to that point, we had been
23 back and forth trying to find a time -- find a time that a
24 teleconference would work to discuss the request.

25 Q And then looking at exhibits 15 -- 5 through 15, those

1 11 e-mails between yourself and the Secretary of State's
2 Office, is there anything significant about those on this
3 being a local or state issue?

4 A There was no discussion of local or state issue. Those
5 e-mails were only about scheduling the meeting with the
6 Secretary of State's Office for August 24th.

7 Q And at this meeting, what did you learn?

8 A At the August 24th meeting with the Secretary of State,
9 when I opened the meeting, as they asked me to, I stated that
10 I had learned from Mineral County Clerk-Treasurer that it was
11 a state issue. They immediately said Mr. Nepper had it wrong,
12 that it was strictly a local issue, but then asked what --
13 whether I talked to Mr. Nepper. I indicated that I had not.
14 I read them the e-mail that was in exhibit 23 to them out
15 loud. And then after reading that e-mail, I requested --
16 asked her staff whether they had, in fact, directed Mr. Nepper
17 not to respond, and they stated that they had, in fact,
18 directed him not to respond.

19 Q All right. Please turn to what's been marked exhibit 24.

20 Are you familiar with this document?

21 A I am.

22 Q What is it?

23 A It is off the Secretary of State's website for early
24 voting information.

25 Q What page?

1 A The URL address is NVSOS, dot GOV, front slash, INDEX,
2 dot ASPX, question mark, p-a-g-e equals 1292.

3 Q When did you print this page off?

4 A August 20th.

5 MR. SANDVEN: We offer plaintiff's exhibit 24.

6 MR. RYMAN: No objection from Mineral County.

7 MS. STORY: None, Your Honor.

8 MR. LARGE: None Your Honor.

9 THE COURT: Exhibit 24 is admitted.

10 (Whereupon, Exhibit 24 -- a document, was received
11 in evidence.)

12 BY MR. SANDVEN:

13 Q Referencing exhibit 24, there are conclusions regarding
14 early voting information.

15 Do you see those?

16 A I do.

17 Q You heard the Court at the beginning, are any of these
18 applicable to what we're here for today?

19 A There are, especially three of the statements made on
20 that page.

21 Q What are the three statements on the Secretary's web page
22 that you agree with?

23 A She states the early voting offers the following
24 benefits. And of course, right before that, the voters can
25 vote at any location in the respective County where early

1 voting is offered. And those benefits that are applicable
2 to today's discussion, makes voting more accessible to more
3 citizens, increases voter participation rates, and creates a
4 more informed and thoughtful electorate.

5 Q What is your understanding of the legislature's role on
6 these particular positions?

7 A I have since learned that the legislature and the
8 governor at the time this legislation was passed, I believe
9 in 1993, that that is legislative findings from the actual
10 passage of the early voting by personal appearance legislation
11 in the early 1990s.

12 Q The three conclusions you just cited?

13 A Along with the other two that aren't necessarily
14 applicable to today's discussion.

15 Q Please turn to what's been marked exhibit number 25.

16 Are you familiar with this document?

17 A I am.

18 Q What is it?

19 A It is my curriculum vitae or resume.

20 Q Who prepared it?

21 A I did.

22 MR. SANDVEN: We offer exhibit number 25.

23 MR. RYMAN: No objection, Your Honor.

24 MS. STORY: No objection, Your Honor.

25 MR. LARGE: No objection.

1 THE COURT: All right. Exhibit 25 is admitted.

2 (Whereupon, Exhibit 25 -- Curriculum Vitae, was
3 received in evidence.)

4 BY MR. SANDVEN:

5 Q Please turn to exhibit 26.

6 Are you familiar with this document?

7 A I am.

8 Q What is it?

9 A It is a spreadsheet analysis of estimated costs of the
10 grand total of the Pyramid Lake Paiute's Tribe request to
11 Washoe County and the Nevada Secretary of State.

12 Q When did you prepare it?

13 A Prepared it, uh, early September.

14 Q All right. On the first page of -- or plaintiffs offer
15 exhibit 26, Your Honor.

16 MR. RYMAN: Your Honor, Mineral County objects
17 to the extent there's no foundation for the portion that
18 applies, I presume, to Mineral County, which is page 3.

19 MS. STORY: Secretary of objects as there is no
20 foundation for the numbers provided or what this even --

21 THE COURT: I think the objections are valid,
22 counsel. You need to lay foundation for where the information
23 is obtained.

24 BY MR. SANDVEN:

25 Q On the first page of exhibit number 26, what is your

1 conclusion there and what is it regarding --

2 THE COURT: Well, I don't need to the know
3 the conclusion at this point. I want to know where he got
4 the information about the costs, for example.

5 Did this information come from another source?

6 MR. SANDVEN: I'm ready to answer those -- or
7 ask those questions, Your Honor.

8 BY MR. SANDVEN:

9 Q Mr. Healy, you have costs for voter registration on the
10 first page, dollars total \$792.

11 Do you see where I'm at?

12 A Yes, sir.

13 Q Where did you get that?

14 A Based it on the hours that were included in request from
15 Pyramid Lake and at the highest rate of pay for temporary
16 election workers that Registrar Cutler had informed me for
17 Washoe County temporary workers.

18 Q Looking at the next line, with the numerical value, early
19 vote team leader, eleven, one zero eight, \$1,188, where did
20 you get that?

21 A Again, the hours were based on the hours that the Washoe
22 County Registrar of Voters Office was open during the early
23 vote period, which was the request from the Pyramid Lake
24 Paiute Tribe. And, again, this was based on a discussion
25 with Registrar Cutler on what the minimum staffing would need

1 to be for any early voting site. She informed me that it
2 would have to be three people and one of them -- they couldn't
3 all be of the same political party. And, that it was roughly
4 \$9 an hour. I asked her if that was the total then, \$27 per
5 team. She then did inform me that the team leader earned more
6 money than that, and that that salary level was \$11, and that
7 the salary levels for the associates was \$9 per hour.

8 Q And the next two lines involving team member one and two
9 is the same testimony?

10 A Yes.

11 Q Please go to the next line on the cost to move the voting
12 machine, \$95,475. Where did you get that?

13 A That was simply an estimate. When I discussed that
14 question with Registrar Cutler, she did not know what they
15 paid for moving early vote machines, and suggested that if
16 they were to move four or something like that, they would have
17 to bid it out. To move that, I took an estimate of \$5 per
18 loaded mile, which would be both ways, of course, of loading
19 that early vote machine.

20 Q What is a rover, briefly?

21 A That is someone that checks in on the early voting sites;
22 particularly, to work on the Edge, the voting machine itself.
23 And so that rover travels around. She did indicate that the
24 site at Incline Village, that the rover might only go up there
25 every other day, but that the rover needed to check on those

1 sites on a pretty regular basis.

2 Q How did you base your rover mileage?

3 A Based it on the mileage from the Reno Registrar of Voters
4 Office, out to the Tribal Capitol of Nixon, Nevada.

5 Q On the Election Day costs of \$132, 108, 108 under team
6 leader member -- or team members, team leaders, the staffing
7 total, how did you get there?

8 A Again, from the conversation with Registrar Cutler of the
9 three-person team, that since it was the same voting machine
10 and same complexity of Election Day vote, that it would be the
11 same costs of \$11, \$9 and \$9.

12 Q What are you talking about "move the machine cartridge"?

13 A That, in terms of moving the actual cartridge for the
14 machine, taking a conservative estimate, they would move the
15 machine separately than having the cartridge, which is the
16 memory of the machine, that they would have to move that
17 separately from moving the actual Edge voting machine.

18 Q How did you come up with that movement you just described
19 being \$102.60?

20 A Again, the mileage to and from the Registrar County, the
21 Registrar of Voters Office to the Tribal Capitol of Nixon,
22 Nevada, and back.

23 Q How did you figure your staff time to move the cartridge?

24 A Again, at the highest rate for temporary election workers
25 of \$11 per hour.

1 Q All right. This second page of the exhibit -- no,
2 conclusion, what is this regarding?

3 A This is a comparison to what costs might be involved with
4 the Incline Village early voting site as a comparison, and
5 contrast to the calculations that were in the previous page.

6 Q How did you come up with the team leader amounts?

7 A Again, from the same conversation with Registrar Cutler,
8 a minimum of a three-person team, with \$11 for the team leader
9 and \$9 for the team members.

10 Q How did you come up with the cost for rover amounts?

11 A Similarly for staffing time at the \$11 per hour, and the
12 roundtrip to Incline Village is 75 miles instead of 96 miles.
13 So, a lesser number of miles.

14 Q How did you come up with the Election Day numbers?

15 A Again, using the same analysis of a three member team;
16 \$11 for the team leader, and \$9 each for the two team members.

17 Q How did you come up with \$65,000 being the cost spent on
18 voting locations in Washoe County?

19 A Took a conservative approach, given that my analysis had
20 suggested \$3,750 for Incline Village and around \$4,000 for
21 Nixon, Nevada, of a minimum evaluation of \$3,250, and then
22 calculated that against the remaining 20 sites in, in Washoe
23 County besides Incline Village.

24 Q Please turn to what's the third page. It's page 4 of 4
25 at the top, in this filing with the Court, at document 1126,

1 the last page of exhibit 26.

2 What is this regarding generally?

3 A Taking the same analysis from the staffing costs that
4 Registrar Cutler had discussed with me and making the
5 assumption that those costs would be, at least that in Mineral
6 County, to get an evaluation of the hours of the request from
7 the Walker River Paiute Tribe.

8 MR. SANDVEN: Plaintiffs offer exhibit number
9 26, Your Honor.

10 MR. RYMAN: No objection, Your Honor, from
11 Mineral County to admission of this exhibit for consideration
12 in the context of this motion hearing.

13 MS. STORY: No further objection, Your Honor.

14 MR. LARGE: Your Honor, I share in the
15 objection with Mineral County in terms of, for this hearing,
16 we have no problem with admitting this, but to be sure that
17 this doesn't capsule all the costs that are incurred
18 by Washoe County, which is going to have to be examined on
19 cross-examination. So for the purposes of this hearing, this
20 document is fine. But --

21 THE COURT: All right. The objections are
22 noted. Exhibit 26 is admitted for the purposes of the Court's
23 consideration for the motion of preliminary injunction.

24 (Whereupon, Exhibit 26 -- a document, was received
25 in evidence.)

1 BY MR. SANDVEN:

2 Q Mr. Healy, what do you think this exhibit 26 shows the
3 Court?

4 A It shows that the modest and reasonable request from the
5 Walker River Paiute Tribe and Pyramid Lake Paiute Tribe simply
6 wasn't going to cost very much.

7 Q What is not very much?

8 A Less than \$10,000 for all of the requests on both
9 reservations.

10 Q And you estimated that it would cost \$65,000 for the
11 existing Washoe County satellites?

12 A Yes.

13 Q Was that accurate?

14 A No. Actually, it was low.

15 Q How do you know that?

16 A Later, from a public information request that Washoe
17 County has indicated they spent a minimum of \$100,000 for
18 the Primary in paying election workers, and for just that
19 line item.

20 Q Then jumping ahead, the exhibit you're referring to of
21 nearly \$100,000, is that exhibit number 56?

22 A It is.

23 Q And what are you referencing on exhibit 56, what page of
24 the two-page document?

25 A That is in the second paragraph of the second page.

1 Q And what does it say that you're referencing?

2 A I can tell you that we spent close to \$100,000 to pay
3 early voting workers for the Primary.

4 Q And that's a letter from who to who?

5 A It's a letter from Registrar Cutler to Alvin Moyle.

6 Q All right. So, nearly \$100,000 had been spent on this
7 voting in-person, in-person registration sites at the 22
8 facilities already existing in Washoe County?

9 MR. LARGE: Objection. Misstates the evidence.

10 THE COURT: Would you rephrase your question,
11 counsel.

12 BY MR. SANDVEN:

13 Q What did this \$100,000 cover?

14 A According to the letter from Registrar Cutler, it covered
15 the cost of early voting site workers. It did not cover
16 anything relative to voter registration. It was simply for
17 the early voting sites.

18 Q So the County spent over 100,000, nearly a \$100,000 on
19 early voting workers for the Primary or the General or both
20 for 2016?

21 A For the Primary.

22 Q And you estimated the total costs for both locations on
23 these Indian Reservations at what?

24 A Less than \$10,000.

25 Q Please turn to what's been marked exhibit number 27.

1 THE COURT: Are you seeking to admit exhibit
2 number 56?

3 MR. SANDVEN: Yes, Your Honor.

4 THE COURT: Is there any objection?

5 MR. LARGE: No objection from Washoe County,
6 Your Honor.

7 MS. STORY: No objection, Your Honor.

8 THE COURT: Okay. Exhibit 56 is admitted.

9 (Whereupon, Exhibit 56 -- a letter, was received in
10 evidence.)

11 BY MR. SANDVEN:

12 Q Exhibit 27, are you familiar with this document, sir?

13 A I am.

14 Q What is it?

15 A It is a letter from Mineral County Clerk-Treasurer Nepper
16 to Chairman Bobby Sanchez of the Walker River Paiute Tribe.

17 Q Date?

18 A Dated August 23rd, 2016.

19 Q Regarding?

20 A It is a denial of the request sent by Chairman Sanchez
21 on 12th -- on August 12th for the in-person voter registration
22 site and the in-person early voting site on the Walker River
23 Paiute Reservation.

24 MR. SANDVEN: Your Honor, we offer exhibit
25 number 27.

1 MR. RYMAN: No objection, Your Honor.

2 THE COURT: Exhibit 27 is admitted.

3 MS. STORY: No objection.

4 (Whereupon, Exhibit 27 -- a letter, was received in
5 evidence.)

6 BY MR. SANDVEN:

7 Q What is the reason that Mineral County Clerk-Treasurer
8 gave for denying Walker River Paiute Tribe's request?

9 MR. RYMAN: Objection. Hearsay, best evidence.
10 The document speaks for itself.

11 THE COURT: The objection is overruled. He can
12 state the reason in the letter.

13 THE WITNESS: Stated that they did not have
14 enough --

15 BY MR. SANDVEN:

16 Q Read it. What are you referencing?

17 A (Witness reviews document.)

18 "Unfortunately, due to time constraints, staffing
19 and budget limits, I am unable to accommodate your request."

20 Q Thank you.

21 Please turn to what's been marked as exhibit 28.

22 Are you familiar with this document?

23 A I am.

24 Q What is it?

25 A It is the summary of my findings from surveys conducted

1 in September of 2016 on the Walker River and Pyramid Lake
2 Paiute Reservations on the understanding of the electoral
3 process by tribal members living on these reservations.

4 Q All right. We got to talk to the Court now about the
5 two different surveys that were conducted and how the exhibits
6 and the data fits in.

7 When was the first survey conducted involving
8 Pyramid Lake Paiute Tribe, Walker River Paiute Tribe?

9 A A survey was conducted in August of 2016 on the Pyramid
10 Lake Reservations. The surveys were collected on August 10th
11 and August 11th. On the Walker River Paiute Reservation, they
12 were collected on August 24th, 2016.

13 Q Who conducted the first survey?

14 A First survey was being conducted by the Native American
15 Voting Rights Coalition.

16 Q Who does that consist of?

17 A It consists of the National Congress of American Indians;
18 Native American Rights Fund; Lawyers Committee on Civil Rights
19 Under Law; the American Civil Liberties Union; Arizona State
20 University Indian Legal Clinic; Navajo Nation Human Rights
21 Commission; Four Directions; and the Fair Elections Legal
22 Network, along with some assorted other individuals that are
23 involved with the Coalition.

24 Q Okay. Look at your Table of Contents and go ahead and
25 tell the Court what was the questionnaire. What exhibit was

1 the questionnaire on the first survey performed in --

2 THE COURT: Before we go to the questionnaire,
3 would you ask Mr. Healy to describe the survey process.

4 BY MR. SANDVEN:

5 Q Please describe the survey process that -- with detail --
6 for the first survey performed in August 2016.

7 A Okay. Firstly, the survey instrument was developed
8 primarily by Dr. Jean Schroedel, a Political Scientist at
9 Claremont Graduate University in California.

10 Q Her doctorate was from MIT, correct?

11 A Her doctorate was from MIT.

12 And with some additional academic input from
13 Dr. Dan McCool from the University of Utah, with practical
14 input from Four Directions and others on the practical
15 realities on Indian Reservations. And, also, a discussion on
16 how to, how to design the survey instrument in order to get
17 the data that the Coalition was seeking to gather.

18 Q Who drafted the questionnaire?

19 A It was, again, primarily, it was drafted by Dr. Jean
20 Schroedel from Claremont Graduate University. But, there
21 was added input from Four Directions, Fair Elections Legal
22 Network, Native American Rights Fund; a limited amount from
23 the American Civil Liberties Union. Somewhat of a team
24 approach once the core document was drafted. And the document
25 was drafted to attempt surveys in four states with Native

1 American populations. The other three being South Dakota,
2 Arizona, New Mexico. So it was a broader survey, not specific
3 to any one Indian Reservation.

4 And secondly, then, in terms of how the survey was
5 used, as we started piloting the survey, found that it was
6 helpful to have tribal members actually fill out the survey
7 themselves rather than it being an interview and questionnaire
8 type process. So after the first dozen or so surveys in the
9 field in early October that I conducted or field managed for
10 the Coalition, we changed it to a -- again, with academic
11 input from Dr. Jean Schroedel that it was an appropriate way
12 for academic rigor to have native -- have tribal members fill
13 out their own survey.

14 Once we did that, we were then moving on to a
15 variety of reservations in Nevada, and South Dakota after
16 that, but on the Pyramid Lake Paiute Reservation, we conducted
17 those surveys on August 10th and 11th. Associated with that,
18 and you will see from the survey instrument, we compensated
19 tribal members for their time, much like any marketer does, so
20 that they would feel that their opinions were valuable.

21 The surveys took from about 15 to 20 minutes, some
22 as long as 25 minutes. But nearly as I can recall, no tribal
23 member took more than 30 minutes to complete the survey.

24 Q When did the process begin that you just described?

25 A The --

1 Q For determining how and when and where to do the survey
2 that occurred in August?

3 A Well, the discussion of the initial goals of which
4 States, that conversation was ongoing from December and
5 January of -- December of 2015 and January 2016. And then the
6 Coalition had asked for Four Directions to secure permission
7 from the Nevada tribes to conduct such a survey. At that
8 point, there was not funder identified. And O.J. Semans, the
9 Director of Four Directions traveled to the Inter-Tribal
10 Council of Nevada meeting in late February of 2016 to secure
11 that permission via resolution by the Inter-Tribal Council of
12 Nevada.

13 Q How many people were surveyed at Pyramid Lake Paiute
14 Tribe?

15 A 299 tribal -- 299 participants completed the survey.

16 Q How many, how many tribal members at Walker River?

17 A Walker River, uh, 61 participated.

18 Q What questionnaire was utilized for this August survey?
19 What exhibit is it?

20 A Exhibit 51.

21 Q How many pages is it?

22 A In the exhibits it's 10 pages. In the data that's been
23 brought to court today, it is 9 pages. Confidentiality was
24 promised to the survey participants. The tenth page was only
25 to select for a raffle winner. Once we selected that raffle

1 winner, those -- that tenth page was destroyed. Again, to
2 protect the confidentiality of the survey participants.

3 Q What was your role in the first survey?

4 A I was asked by O.J. Semans, the Executive Director of
5 Four Directions, on behalf of Four Directions, to field
6 manage the survey in Nevada. Assisting me in that effort
7 was former and now re-elected Chairman of the Fallon
8 Shoshone -- or Fallon Paiute Shoshone Tribe, Alvin Moyle.
9 Mr. Moyle and myself. And then after the first couple of
10 days, Dr. Jean Schroedel from Claremont Graduate University
11 was on the ground in Nevada, along with a team of her graduate
12 students. She had seven graduate students along with her, so
13 once the piloting of the survey instrument had been done the
14 first few days of August, her team arrived on August 7th, and
15 then the bulk of the Nevada respondents, tribal respondents
16 were taken that next week, and always with that team of at
17 least two or three graduate students, as well as Dr. Jean
18 Schroedel, as we went to various reservations in Nevada to
19 collect this data.

20 Q All right. At the top of exhibit 51, it has the acronym
21 NAVCRCDIG, what is that?

22 A NAVRC, again, is the Native American Voting Rights
23 Coalition. DIG, an internal acronym, Data Information
24 Gathering.

25 Q How are you familiar with this document?

1 A Again, we had a role in helping devise it from the
2 practical side of the question, along with the academics that
3 drafted the core of the document. And so we were involved in
4 the evolving survey questionnaire.

5 MR. SANDVEN: Plaintiffs offer exhibit 51, Your
6 Honor.

7 MR. RYMAN: Your Honor, Mineral County objects
8 to both exhibit 51, exhibit 28, which is a compilation of,
9 apparently, the information that was put together from the
10 surveys, exhibited in 51, are any other use of these surveys,
11 the actual survey form itself was not produced until late in
12 the afternoon yesterday. I've only had a brief chance to
13 digest what's in these boxes that Mr. Sandven has given to us
14 this morning. However, from even a preliminary review of this
15 survey, it's clear that it exudes bias.

16 Apparently, the participants were paid money to
17 participate in the survey and entered into a raffle. The
18 questions, even on preliminary review, are clearly biased.
19 For instance -- pardon me, Your Honor. I just got this
20 yesterday.

21 For instance, on page 28 -- or exhibit 28, question
22 K, quote: "Knowing that you and your family risk a Class E
23 felony if you forget to sign a mail-in voter registration
24 form of someone that you assisted, would you prefer that there
25 was an on-reservation voting registration site to register to

1 vote at?"

2 Your Honor, I have not had a chance to have any
3 expert review this for the academic rigor that Mr. Healy was
4 discussing. But from my review, it doesn't seem that it would
5 pass it. Mineral County objects to these documents and any
6 opinion that flows from them.

7 Thank you.

8 MR. SANDVEN: Your Honor, if you'll --

9 THE COURT: Hang on a minute. I think the other
10 counsel may want to join in.

11 MS. STORY: The Secretary of State shares in
12 that objection in that we haven't had a chance to review. The
13 questions are clearly biased. I mean the way they're worded,
14 it tells the participant what the answer should be. And, we
15 have not had any opportunity to examine the scholastic rigor
16 of this survey. I would object to the use of it in any way
17 as well.

18 MR. LARGE: Your Honor, same objection.

19 MR. SANDVEN: Your Honor, exhibit 51 and the
20 data that came from this exhibit was not utilized for exhibit
21 28. What I'm trying to explain to the Court at this point in
22 the proceeding is that there were two surveys. I'm telling
23 the Court the first survey. And Mr. Healy will testify
24 regarding a second survey in September.

25 The subject of the second survey, it was utilized

1 for exhibit 28, which hasn't even been offered yet. I will go
2 ahead and, as we go through the testimony, describe when any
3 data from the second survey is being utilized.

4 THE COURT: Well, are you -- but are you seeking
5 to admit exhibit 51?

6 MR. SANDVEN: It's a blank questionnaire,
7 Your Honor, yes.

8 THE COURT: So I want to make sure -- I want to
9 understand what is it at this point you're seeking to admit so
10 I can understand the objection.

11 You're seeking to admit exhibit 51. I think
12 Mr. Ryman then referenced exhibit 28 and 58. But, you're
13 only seeking to admit exhibit 51, which is the blank form
14 itself?

15 MR. SANDVEN: At this time, Your Honor.

16 THE COURT: All right. Any objection to the
17 survey form itself being admitted, which is exhibit 51?

18 MR. RYMAN: No, Your Honor, not for the purposes
19 of this hearing today.

20 THE COURT: All right. Exhibit 51 is admitted.

21 (Whereupon, Exhibit 51 -- survey form, was received
22 in evidence.)

23 BY MR. SANDVEN:

24 Q All right. Mr. Healy, so we're talking -- you've
25 described to the Court the first survey that was conducted by

1 this working group in August?

2 A Yes.

3 Q All right. And the data that came from that survey, 51,
4 what is that in the table of contents, the first survey data?

5 A Exhibit 58, books 1 through 4 for the judge, and those
6 were the August 10th and 11th, Pyramid Lake Paiute survey
7 responses, 299 of them. And exhibit 59 would be the survey
8 responses from the Walker River Paiute Tribal members. Again,
9 exhibit 51, the survey tool. The survey responses are in
10 exhibit 59 for Walker River.

11 Q All right. Then there was a second survey conducted,
12 correct?

13 A Yes.

14 Q Please tell the judge your role and reasoning for
15 conducting the second survey earlier this -- or in September?

16 A As we have learned for about Nevada election processes
17 regarding, especially, voter registration and early voting
18 opportunities, and in keeping in mind that the overall survey
19 was designed for four states, multiple reservations, with
20 a lack of specificity for exactly the interaction between
21 Nevada election opportunities, election structures, and
22 practical life on the Paiute Reservations at Pyramid Lake
23 and Walker River, I designed a secondary survey to go deeper
24 into those issues, particularly getting to the practical
25 realities of how voter registration can or cannot happen on

1 each of these reservations, how voting in-person can or cannot
2 happen, some of the issues that might be in play regarding
3 being able to use the mail-in ballot, being able to register
4 to vote, and what times one could register to vote.

5 The second survey was designed to get at those
6 answers and to get information from tribal members
7 themselves, what their economic circumstances were, what
8 their understanding of the electoral process was, what
9 their experience with discrimination of any kind might be.
10 And that is the design and purpose of the second survey that
11 were specific to the Pyramid Lake Reservation, to the Walker
12 River Reservation, rather than to all tribal reservations in
13 four different states, which would have been the purpose of
14 the first survey.

15 Q How many tribal members did you go ahead and survey on
16 the Pyramid Lake Paiute Tribe?

17 A For the second survey, the September survey, Alvin Moyle
18 had helped me at Pyramid Lake and there were 65 survey
19 respondents. I should add that I had put a screen in the
20 questionnaire for the second survey to ensure that we had
21 voting age tribal members, those that were going to be 18 by
22 Election Day, and also that they were not only living on the
23 Walker River and Pyramid Lake Reservation, but that they were
24 enrolled members of the Tribe.

25 When you factor that for the Pyramid Lake surveys,

1 there were 11 that didn't fit that screen, so it ended up with
2 54 Pyramid Lake Paiute Tribal members that had completed the
3 second survey in September, which consisted of 21 questions.

4 At Walker River, similarly, with a screen for
5 enrolled members and for being voting age, there were 61
6 respondents, and 54 of those respondents were enrolled members
7 of the Walker River Paiute Tribe.

8 Q What exhibits are the data and the surveys from the
9 second survey you just described? What, what is it marked?

10 A The complete survey responses, including those that
11 weren't enrolled members, it's the complete data set of 65 at
12 Pyramid Lake are in exhibit 60. The complete set, including
13 those that are not enrolled members of Walker River, a total
14 of 61 respondents are in exhibit 61.

15 Q All right. Just for organizational purposes, what's
16 on the jump drive that have been provided to each of the
17 defendants?

18 A On the jump drive includes both September surveys that --
19 on the Walker River Reservation.

20 Q What exhibit number and then describe it.

21 A The jump drive includes the data from exhibits 59, 60,
22 and 61.

23 Q All right.

24 MR. RYMAN: And, Your Honor -- Mr. Sandven, if I
25 may. I apologize for interrupting -- are the documents that

1 have been provided to us this morning the same thing that's on
2 the jump drive?

3 BY MR. SANDVEN:

4 Q All right. And you heard the question?

5 All right. What's this? (Holding up box.) These
6 boxes?

7 A They are paper copies of all four exhibits, 58, 59, 60
8 and 61. What is not on the jump drive is the exhibit 58. And
9 I simply could not, could not download the scans onto a jump
10 drive because of the massive number. It's about 2,700 pages,
11 scan pdf(s) for exhibit 58.

12 Q So exhibit 58 is, approximately, 2,700 pages? Yes?

13 A Little less than that. But, yes.

14 Q Exhibit 59 is approximately how many pages?

15 A About 540.

16 Q Same question for 60.

17 A It would be about 240 pages for exhibit 60. About 224
18 pages for exhibit 61.

19 Q All right. For the second survey, which is exhibit 60
20 and 61, how many tribal members did you go ahead and survey
21 at Pyramid Lake?

22 A 54 tribal members, 65 respondents total.

23 Q Explain the difference.

24 A The pre-questions of the survey, screened for being 18
25 years of age or older by the General Election date this fall;

1 and, in addition, that they were actually enrolled members
2 of the Paiute -- of the Pyramid Lake Paiute Tribe and the
3 Walker River Paiute Tribe, not just living on those two
4 reservations.

5 Q How many people were surveyed at Walker River?

6 A 54 enrolled members, 61 total.

7 Q Why the difference?

8 A Again, prescreening for enrolled membership. They had
9 not checked that they were an enrolled member, so they were
10 not included in any data analysis.

11 Q What were your findings regarding tribal member
12 understanding of the election process; specifically,
13 registration to vote, in your second survey?

14 A It was clear from compilation of the data, that Pyramid
15 Lake Paiute Tribal members and Walker River Paiute Tribal
16 members have a limited understanding of the election processes
17 in Nevada; especially that, and getting registered to vote.

18 Q What are you basing that upon?

19 A Again, upon the survey responses of the second survey
20 taken in September. For example, a question on exhibit 28 --

21 MR. RYMAN: Objection, Your Honor, on the basis
22 that we set forth earlier. This information comes from the
23 survey results that we're objecting to.

24 MR. SANDVEN: I -- I'm laying foundation, Your
25 Honor, and I haven't went ahead and asked for admission of

1 exhibits 58 through 61 at this time. He's going -- we're
2 laying foundation for the survey.

3 MR. RYMAN: Objection, Your Honor. There's no
4 foundation for Mr. Healy's testimony.

5 THE COURT: I'm sorry? There's no foundation
6 for Mr. Healy's testimony?

7 MR. RYMAN: Mr. Healy is testifying as to his
8 understanding of Native Americans' understanding of the
9 ability to register to vote, which is solely based, I believe,
10 on what he found in these surveys that we've objected to.

11 MR. SANDVEN: He did them himself, Your Honor.

12 THE COURT: I'm sorry?

13 MR. SANDVEN: He performed this -- these
14 surveys, on the ground, himself, Your Honor.

15 THE COURT: Well, the objection, though, is that
16 his testimony is going to be based on the survey results,
17 which you're not seeking to admit yet because you're trying --
18 it's a little circular because you're trying to lay a
19 foundation. I'm going to allow you to lay a little bit of
20 foundation.

21 So the objection, at this point, is overruled.

22 BY MR. SANDVEN:

23 Q Please proceed regarding the limited understanding of the
24 election process and getting registered to vote.

25 What did you analyze?

1 A Uh, both understanding of the online registration
2 process, which was offered as an alternative to in-person
3 voter registration by the Washoe County Registrar Of Voters
4 Office. So I analyzed -- or drafted questions that would get
5 at that understanding by tribal members.

6 And for example, from exhibit 28, the question: "Do
7 you know how to register to vote online?" About 25 percent of
8 the Walker River tribal members responded, said they knew how
9 to vote online. A slightly greater number at Pyramid Lake.
10 28 percent said they knew how to vote online. However, when
11 I asked a check question, asked "What website do you have
12 to use to register to vote at Walker River," approximately
13 7 percent of the survey respondents could accurately name
14 the Secretary of State's website. At Pyramid Lake, less than
15 2 percent of the survey respondents could accurately name the
16 website address of the Secretary of State's website in order
17 to use that online registration tool. So, again, a limited
18 understanding.

19 For mail-in application, asked the question
20 straight: "Do you" -- question F -- "do you know how to
21 register to vote with mail-in application?"

22 MS. STORY: Your Honor, objection. We're -- how
23 is this foundational? This is a discussion of the survey
24 that he took and the results that he obtained. This is not
25 foundation. This is substance.

1 THE COURT: I think the objection is valid.

2 Mr. Sandven.

3 MR. SANDVEN: All right. Your Honor, on
4 exhibits 60 and 61 are the questionnaires. Exhibit 60 is the
5 September 22nd, 2016 surveys conducted by Mr. Healy. This is
6 the raw data, Your Honor. That 240 pages and exhibit number
7 61 is the raw data. Those surveys conducted at Walker River,
8 we would first ask for admission of plaintiff exhibit number
9 60, the raw data, Your Honor.

10 MR. LARGE: Your Honor, on behalf of Washoe
11 County, we would object to that survey for the same reason as
12 Mineral County objected earlier. There's no basis in regard
13 that the information that was retrieved from that. He hasn't
14 laid a proper foundation for its admission. And there's
15 nothing in the way of conducting that -- the information
16 that was asked, whether or not there was an omission, I mean,
17 in terms of surveying polling or omitting error in this, the
18 questions are clearly biased in this regard and there hasn't
19 been a proper foundation laid by this witness for the
20 admission of that raw data.

21 MR. RYMAN: Your Honor, on behalf of Mineral
22 County, of course, the same objections. I'm not a
23 statistician or political scientist. I haven't had the
24 chance to consult one on these surveys that we just got
25 last night. One thing that I would add is that the survey

1 participants were told these would be kept strictly
2 confidential, and now Mr. Sandven is here trying to
3 introduce them in court. It doesn't seem right to me,
4 Your Honor.

5 THE COURT: Mr. Sandven, any response?

6 MR. SANDVEN: Can I ask a few more questions to
7 those two specific questions, Your Honor?

8 THE COURT: Yes, you may. And I also -- go
9 ahead. I have some questions for the witness as well.

10 BY MR. SANDVEN:

11 Q You heard the confidentiality question; these aren't
12 supposed to be brought in court. Please explain to the Court.

13 A There's no -- there's no identifying data on any of the
14 surveys other than they were collected at the Walker River
15 Pyramid Lake Paiute Reservation. There's no individual
16 identifying data. That is protecting the confidentiality of
17 the survey respondents.

18 Q What is the first question on the survey we're talking
19 about and how many questions are there?

20 A There's 21 questions. And I don't have that exhibit in
21 front of me.

22 MS. STORY: Your Honor. I'm not sure what
23 survey we're talking about.

24 MR. SANDVEN: The second survey, exhibit
25 number --

1 THE COURT: Mr. Sandven, I know -- I admitted
2 the questionnaire itself for the first survey. That is
3 exhibit 51. Do you have a similar exhibit for the second
4 survey that contains just the questions?

5 MR. SANDVEN: Uh, there's a response -- all the
6 surveys have responses on exhibit number 60 and 61. What we
7 could do, Your Honor, is just go through -- open up the first
8 survey on exhibit number 60, the September 22nd, 2016, PLPT
9 surveys. And if I could get one in front of the witness,
10 please.

11 MR. RYMAN: Your Honor, on behalf of Mineral
12 County, we're certainly not adverse to, obviously, the Court
13 looking at these things or having the witness look at them
14 for purposes of what the questionnaire states. We're simply
15 objecting to the raw data in the responses.

16 THE COURT: I understand.

17 MR. SANDVEN: All I need is one. One survey.

18 MR. SANDVEN: May I approach the witness with
19 one survey? The first one, two, three -- six pages. It's a
20 six-page survey of exhibit number 60.

21 THE WITNESS: There should be only four.

22 MR. SANDVEN: Or it's -- yeah.

23 THE COURT: Are there more?

24 MR. SANDVEN: It is a four-page survey. The
25 first 4 pages of exhibit number 60.

1 BY MR. SANDVEN:

2 Q What is the first question?

3 A Question A: "How much do you trust non-tribal
4 governments, on the scale of zero to ten, with 10 equaling
5 complete trust, and zero equaling no trust at all?"

6 Q Do you consider that a biased question?

7 A No.

8 Q Why not?

9 A It's simply asking what level of trust they have for
10 various levels of governments, either the county government,
11 the Washoe, Mineral; State of Nevada; and the federal
12 government.

13 Q Second question.

14 A "Have you ever felt discriminated against when conducting
15 business off reservation?"

16 Q Is that biased?

17 A No.

18 MR. RYMAN: Objection, Your Honor. There's
19 been no foundation laid for Mr. Healy's understanding of what
20 is or is not a biased question. It's the same problem I was
21 objecting to with the data from the surveys.

22 THE COURT: All right. I have a ruling for you.

23 Mr. Healy, you prepared the questions that are on
24 the second survey, is that correct?

25 THE WITNESS: Yes.

1 THE COURT: And how was the second survey
2 actually conducted? Were they -- tell me the process for
3 conducting it so I can determine whether or not the responses
4 are reliable.

5 THE WITNESS: Okay. With the survey responses
6 collected on September 21st at the Walker River Paiute
7 Reservation, Elvita Martinez, who is a tribal employee and
8 someone who has been involved with election activities, in
9 fact she has served as an Election Day worker for Mineral
10 County many, many times at the polling location at Schurz.
11 She, as she had for the first survey, had some of the young
12 folks in the community went out, some door to door, some at
13 the Community Center, asking folks for their survey response.
14 And similar to the August survey, a small stipend to
15 compensate them for their time of \$10 was paid. That's
16 how it was conducted on the Walker River Reservation.

17 At Pyramid --

18 THE COURT: So do the individuals -- for
19 example, so someone knocks on someone's door, hands them the
20 survey form, they complete the survey there and then they
21 return the survey, or do they go somewhere to complete the
22 survey?

23 THE WITNESS: It was done -- the few that were
24 done at the door were done without coming back. And in all
25 cases, the actual tribal member themselves filled out the

1 survey responses. Elvita and her team didn't put pen to paper
2 on this. This was the tribal member themselves writing down
3 their answers to the survey.

4 At Pyramid Lake, former Chairman Moyle and myself
5 conducted the survey in Tribal Council chambers in Nixon,
6 Nevada, at the Tribal Capitol. Again, tribal members came in,
7 were handed the survey. They took their time, as much time as
8 they chose to take. And, again, it was their answers in their
9 own words and in their own handwriting.

10 THE COURT: And you said that there is a page --
11 does the second survey contain a page that has the identifying
12 information of the individual who conducted the surveys so you
13 ensure that the same individual doesn't complete it twice?

14 THE WITNESS: Since we were -- first and
15 foremost, Elvita had conducted the first survey as well; and,
16 no, there were no folks trying to gain the system to come
17 around the second time. And Chairman Moyle and I conducted
18 the survey at Pyramid Lake. And, no, there were no -- we
19 would have recognized them had they come back again trying to
20 complete the survey a second time.

21 THE COURT: All right.

22 Now you were seeking to admit exhibits 60 and 61, is
23 that correct, counsel?

24 MR. SANDVEN: Yes, Your Honor.

25 THE COURT: And I understand the defendants'

1 objection that -- well, there are a number of objections, but
2 the primary objection is the survey questions elicit biased
3 responses, is that correct? Any other objection besides that?

4 MR. LARGE: Well, Your Honor, on behalf of
5 Washoe County, we have one, which is we're here for
6 preliminary injunction hearing and a preliminary injunction
7 was filed on September 20th. So, the information that was
8 achieved in this survey on September 21st and 22nd, uh, not
9 only was created for this litigation, but it seems a little
10 bit -- I mean, I know that there is such a thing as trial by
11 ambush and I know that this hearing is much more relaxed in
12 terms of an evidentiary hearing. But this is -- the bias of
13 these questionnaires, the rationale, and the lack of a chance
14 to review any of this, or have anyone, uh, take a look at what
15 standards were used in developing this survey, uh, creates
16 major issues for -- on behalf of all defendants. But, I'll
17 speak on behalf of Washoe County.

18 MR. RYMAN: If I may, Your Honor. In response
19 to your question as to our main objection being biased,
20 Mineral County's main objection is this is inadmissible
21 hearsay. Any of the information that's in these surveys
22 should not be admitted. We didn't get them until this
23 morning. We never saw any of the survey forms until
24 yesterday, after the deadline for submission.

25 There is, I believe -- and I would submit, even

1 though I'm not an expert, what appears to be clear bias in
2 these surveys. There's self-selection bias in that the
3 candidates who responded to the surveys were paid to do it
4 and, apparently, volunteered for these things. There's all
5 kinds of sampling bias. It's completely unscientific.

6 Not only should it not be admitted, but Mr. Healy's
7 opinions, which are wholly predicated on these, should not be
8 admitted as well.

9 Thank you.

10 THE COURT: Mr. Sandven, why don't you respond
11 to Mr. Large's objection that the second survey was not
12 conducted until September 23rd, which was after the motion
13 for TRO was -- for preliminary injunction was filed.

14 MR. SANDVEN: Your Honor, can I ask a couple
15 questions specific to that issue?

16 THE COURT: Do you know the answer --

17 MR. SANDVEN: Yes, I do.

18 THE COURT: -- to my question?

19 What's your answer to my question?

20 MR. SANDVEN: Yes, I do, Your Honor.

21 Yeah, in the Gonzalez decision, Your Honor, they
22 talked about bringing data to the Court at a preliminary
23 injunction hearing. In the first survey, that included
24 several federally recognized Indian tribes that aren't subject
25 to the analysis here today. I wanted information that was

1 specific to these two tribes and I wanted information that was
2 specific to the Nine Senate Factors.

3 THE COURT: But you knew that before you filed
4 the motion because the second, the second factor in the
5 two-factor analysis involves a more localized evaluation. So,
6 you knew you needed the local information before you even
7 filed the motion. But, the survey wasn't conducted until
8 after the motion was filed.

9 MR. SANDVEN: Right. And there -- Your Honor,
10 and the reason there was an Amended Complaint, and the reason
11 that a second survey was conducted -- and Mr. Healy can answer
12 some questions with more specificity on it than I am, but I
13 know that there was issues regarding the data from the first
14 State -- or from the first survey on how it could be utilized.
15 There was an issue regarding that that wasn't clarified until
16 recently. All right? And if you let me ask Mr. Healy, or you
17 ask Mr. Healy several questions --

18 THE COURT: Why don't you get to that question,
19 Mr. Healy.

20 THE WITNESS: On the --

21 THE COURT: What the difference in the first
22 survey that needed to be clarified; what issue was it?

23 THE WITNESS: The only issue with the first
24 survey was how the data could be used and, uh, the discussion
25 with the Coalition partners, particularly the Fair Elections

1 Legal Network and Native American Rights Fund. We clarified,
2 especially since the project itself was premised on the
3 permission from the Nevada tribes via the Council resolution
4 in February of 2016 that clearly indicated that the tribes,
5 by allowing the survey work to be done, could in fact, and
6 should and did co-own the data. Once that was resolved, the
7 data from the first survey was then eligible to be used and
8 the Pyramid Lake and Walker River Paiute chairman asked me to
9 do some preliminary analysis on that earlier survey.

10 THE COURT: I'm not sure that I understand why
11 that would require or compel a second survey.

12 MR. SANDVEN: Your Honor, bottom line, uh,
13 there -- the funding source for the first survey was concerned
14 about the release of information in litigation; hence, a
15 second survey was conducted.

16 After that concern was resolved by the grantors from
17 the first survey, this Native -- Native Rights Coalition,
18 after -- let me clarify.

19 First survey we thought we could use the data, some
20 folks told us we couldn't. We started a second survey because
21 of that.

22 THE COURT: Did you learn that after you filed
23 the motion --

24 MR. SANDVEN: Yes.

25 THE COURT: -- for preliminary injunction that

1 you could not use the survey?

2 MR. SANDVEN: It, it wasn't a couldn't, Your
3 Honor. It was a concern by one of the partners. That's why
4 I amended the Complaint. And then that issue was resolved
5 on the first survey, so we have two surveys now that are
6 eligible, with their data, for today's hearing.

7 THE COURT: All right. I'm going to
8 conditionally admit exhibit 60, 61 because I want to hear
9 continuing testimony. And I'll make a final ruling when I
10 issue the written order whether or not I'll consider it or
11 not.

12 BY MR. SANDVEN:

13 Q What is your --

14 THE COURT: Let me ask you this, Mr. Sandven.
15 Did you think that the results of the first
16 survey -- well, are you trying to admit the results of the
17 first survey? You've identified two exhibits, right? Exhibit
18 58, 59 are the results from the first survey?

19 MR. SANDVEN: Yes, Your Honor. That's exhibits
20 58 and 59 and we want to admit that data also from the
21 first survey because that's used for one or two of Mr. Healy's
22 conclusions.

23 THE COURT: So since that issue -- so the
24 issue that you identified, the concerns about using the
25 results of the first survey have been resolved and you are

1 now comfortable with offering it, is that correct?

2 MR. SANDVEN: Yes, Your Honor.

3 THE COURT: Were you -- did you think you have
4 enough information based on the first survey to file the
5 Motion For Preliminary Injunction?

6 MR. SANDVEN: Yes, Your Honor.

7 THE COURT: But the first survey doesn't contain
8 -- I haven't looked at the first survey, but my understanding
9 as to the other reason I thought the second survey was
10 conducted, was Mr. Healy thought that there should be
11 questions that go to more local issues, that reflect the
12 tribal members' understanding of the local election process.
13 That, to me, tells me that the first survey was more general
14 across several tribes and not just the two in Nevada.

15 So, how does the first survey results go to assist
16 the Court in determining the second factor of the two-factor
17 analysis?

18 MR. SANDVEN: Your Honor, there's nine
19 conclusions that you'll hear from Mr. Healy. And
20 approximately three of those conclusions, three or four
21 of those conclusions that were in Mr. Healy's findings that
22 were attached are based on both surveys together.

23 THE COURT: I understand they are, but my
24 question is without the second survey, did you have a basis
25 to file your motion?

1 MR. SANDVEN: Yes, I do, Your Honor.

2 THE COURT: All right. So, let me see -- which
3 one -- what's the first survey? Exhibit 58?

4 All right. I've skimmed through the survey form on
5 exhibit 58 and there are several questions that pertain to
6 Nevada. My ruling stands. I am going to conditionally admit
7 exhibits 60 and 61.

8 And you're moving to admit exhibit 58, 59. The
9 ruling is the same. I'll conditionally admit them and then
10 I'll make a final decision when I issue the written order.

11 (Whereupon, Exhibits 58 and 59 -- documents, were
12 received in evidence.)

13 BY MR. SANDVEN:

14 Q Mr. Healy, now that we've discussed the interaction
15 between the two surveys, the data from the survey conducted
16 in September, what were your findings from that data regarding
17 the understanding of the election process?

18 A That tribal members from the Pyramid Lake and Walker
19 River Paiute Tribes had a limited understanding of the
20 electoral processes in Nevada, especially that of getting
21 registered to vote.

22 Q How are you getting that from exhibit 60 and 61?

23 A It is the analysis of 60 and 61 that is included in
24 exhibits 28 through 32 that I'm going to that conclusion.

25 MR. RYMAN: Your Honor, Mineral County

1 objects to this expert testimony when the witness has not
2 been qualified. And of course, our objections to his
3 qualifications were already stated.

4 THE COURT: Well, I didn't qualify him, but I'm
5 deferring that decision and I'm hearing the testimony. And
6 I'll decide if I'm going to qualify him and, if I do, how much
7 weight I'm going to give his testimony.

8 BY MR. SANDVEN:

9 Q Your first opinion from this data, what is it again?

10 A The tribal members from the Pyramid Lake and Walker River
11 Paiute Tribes have a limited understanding of election
12 processes in Nevada, especially getting registered to vote.

13 Q How are you getting that from exhibit 60 and 61?

14 A It is the analysis of the raw data in exhibit 60 and 61
15 that is included, for example, in exhibit 28, 29, 30, 31 and
16 32.

17 Q What about the understanding of online voter
18 registration?

19 A Roughly three-fourths of tribal members on both
20 reservations stated that they did not know how to register to
21 vote online. When I asked a check question of those that said
22 they did know how to register to vote online, which one needs
23 to use a Secretary of State's website, less than 7 percent of
24 Walker River tribal members knew the correct address. Less
25 than 2 percent of Pyramid Lake tribal members knew the correct

1 address.

2 Q What about mail-in or paper registration applications?

3 A Again, asking the question do you know how to register to
4 vote with a mail-in application, 46 percent of Walker River
5 Paiute Tribal members said they knew how. 38.89 percent of
6 Pyramid Lake Paiute Tribal members said they knew how. Less
7 than 50 percent in either case.

8 But, asking more detailed questions: "Did you know
9 that if your relative helps you to register to vote on a
10 mail-in application and forgets to sign his or her name, they
11 have committed Class E felony in Nevada, a one year potential
12 sentence?"

13 On box 14 of the Nevada voter registration
14 application --

15 Q What exhibit are you referencing, 33?

16 A Yes, 33 is the Nevada voter registration application.

17 Q What are you referencing here?

18 A Box or line 14.

19 Q What does it say?

20 A "Important. You are assisting a person to register to
21 vote and you are not a field registrar appointed by a
22 County Clerk, slash, Registrar, or an employee of a voter
23 registration agency, you must complete the following: Your
24 signature is required. Failure to do so is a felony."

25 Q What is this document?

1 A It is a voter registration application for the State of
2 Nevada.

3 Q How are you familiar with this document?

4 A I obtained, uh, this document from the Washoe County
5 Register of Voters Office.

6 Q How do you know this is the current voter registration
7 application?

8 A Because I've collected it in September of 2016.

9 MR. SANDVEN: We offer exhibit number 33.

10 THE COURT: Any objection?

11 MS. STORY: No objection.

12 MR. RYMAN: None.

13 THE COURT: Exhibit 33 is admitted.

14 (Whereupon, Exhibit 33 -- Registration Voter
15 Application, was received in evidence.)

16 BY MR. SANDVEN:

17 Q Anything else on the Class E felony?

18 A Well, the reason that I asked the question is, obviously,
19 if one is familiar with the mail-in application process, you
20 would know that that box 14 states that language. And when
21 asking the more detailed question, roughly 13 percent of
22 tribal members on each reservation knew of that potential
23 felony on box 14.

24 Q So your first conclusion, what Senate factors do you
25 believe that addresses?

1 MR. LARGE: Objection. Calls for a legal
2 conclusion.

3 THE COURT: Counsel, what's your response to
4 that?

5 MR. SANDVEN: Your Honor --

6 THE COURT: It's your argument to make how the
7 data applies under each factor.

8 MR. SANDVEN: Thank you, Your Honor. I'll
9 proceed.

10 BY MR. SANDVEN:

11 Q What's your second conclusion?

12 A The potential for Pyramid Lake Paiute Tribal members
13 and Walker River Paiute Tribal members to be charged with a
14 Class E felony is an effective deterrent to asking for help
15 from fellow tribal members, or offering fellow tribal members
16 to register to vote with the mail-in option.

17 MR. LARGE: Objection, Your Honor. That is a
18 legal conclusion.

19 MR. SANDVEN: The question is how does the
20 threat of a felony affect your willingness to register to
21 vote with that application? How does the threat of felony --

22 THE COURT: No, his conclusion is what he's
23 objecting to, not the question.

24 MR. SANDVEN: Can I re-ask the question, Your
25 Honor?

1 THE COURT: Yes.

2 BY MR. SANDVEN:

3 Q Did you ask any questions regarding the impact of the
4 felony threat?

5 A Yes.

6 Q What question on your survey?

7 A (Witness reviews document.)

8 I asked a series of questions on this issue.

9 Q What did you ask and what were your findings from your
10 survey?

11 A Question H: "Knowing that forgetting to sign a mail-in
12 registration application makes your relative a potential
13 felon, are you willing to ask them to help you, your family
14 members, or other tribal members to register to vote this
15 way?"

16 Less than 20 percent of tribal members on either
17 reservation answered affirmatively that they would be willing
18 to ask their family members or another tribal member to help
19 them register to vote.

20 The other question directed to that issue, question
21 I: "Knowing that forgetting to sign a mail-in registration
22 application of someone you assist in registering to vote makes
23 you a Class E felon, are you willing to help tribal members on
24 your reservation register to vote this way?"

25 And, again, less than 20 percent of respondents

1 on either reservation were willing, knowing that, to help
2 register others to vote.

3 Q Did you ask any County officials about this felony issue?

4 A I did.

5 Q What did you learn?

6 A When I stopped at the Lyon County Clerk-Treasurer's
7 Office and asked the question of the first staff person
8 that agreed to discuss it, I asked whether there were any
9 standard, whether there's anything in writing as to how
10 that statute or that line 14 was interpreted, because my
11 interpretation was that "assist" is a pretty broad term.

12 And I was first told that it was only if you put
13 pen to paper and filled out the application for the voter
14 that you would be in jeopardy over line 14. I asked if there
15 were anything in writing, a, you know, a district attorney's
16 opinion, an Attorney General's opinion, a case law that set
17 out the standard of what "assist" meant and, uh, she was
18 unaware of any.

19 A second staff member then joined the discussion and
20 had much the same, it's only if you fill it out. I asked the
21 same question, is there anything in writing or is it just the
22 interpretation of this office, or is that an interpretation
23 that is shared by all County election officials across the
24 State?

25 Q Let me get this straight. You asked both counties, or

1 you asked Lyon County or -- and Washoe County? What counties
2 did you ask?

3 THE COURT: Do you know what County?

4 THE WITNESS: At this point I'm only talking
5 about the conversation with Lyon County, and then I had a
6 follow-up conversation in Washoe County.

7 Q Why did you ask Lyon County?

8 A Because I knew where the County courthouse was. I was
9 just trying to find out more information relative to this
10 felony issue, in part because we are helping conduct voter
11 registration on the Pyramid Lake and Walker River Paiute
12 Reservations. We don't want to have the folks that work for
13 us --

14 Q Understood. Understood.

15 What are the differences you heard between Lyon
16 County and Washoe County regarding their understanding of
17 line 14?

18 A If I can finish with the discussion at Lyon County, I'll
19 get to that.

20 Then, the Clerk-Treasurer, Nikki Bryan, came out,
21 had a further discussion. She agreed that "assist" was
22 broader than that, that she really didn't have a written
23 answer, but that it was not something to worry a lot about
24 because it would take a lot of evidence to prosecute somebody
25 under that statute; and, it, literally, would have to be a

1 complaint. That it was not something to get too worried
2 about.

3 I then followed up with a conversation with
4 Registrar Cutler. Same issue. Her office, their
5 interpretation was if you --

6 Q This is at Washoe County now?

7 A This is Washoe County. That if you don't put pen to
8 paper, you're not in violation to that. But as I had a
9 further, more detailed conversation with Registrar Cutler,
10 she did state that she would be unwilling to put anything --

11 MR. LARGE: Objection to the extent that it
12 calls for -- it's hearsay, Your Honor.

13 THE COURT: What's your response, counsel?

14 MR. SANDVEN: I can ask the questions
15 differently.

16 THE COURT: You may.

17 BY MR. SANDVEN:

18 Q Mr. Healy, what did you learn the differences were
19 between Washoe County and Lyon County regarding the
20 interpretation of the felony threat in line 14?

21 A There was no standard in either courthouse.

22 Q How do you know that?

23 A Questions I asked.

24 Q How does that affect tribal members utilizing the
25 application number 33?

1 A Given that it states clearly that if you forget to
2 sign -- that you must sign this if you have assisted a voter
3 that it is a felony, by the responses by the tribal members at
4 Pyramid Lake and Walker River, it, clearly, causes concern.
5 Less than 20 percent are willing to either help or ask for
6 help from family members to register to vote using the mail-in
7 paper voter registration application.

8 Q Have there been any prosecutions, to your knowledge,
9 regarding this matter?

10 A Yes.

11 Q What exhibit are you referring to?

12 A Exhibit 50.

13 Q How are you familiar with this document?

14 A It is on the Secretary of State's web page. It is a
15 press release.

16 Q I'll let you get there.

17 What's the date of the press release?

18 A July 13th, 2016.

19 Q Where did you get it?

20 A The Secretary of State's website.

21 Q And how -- what does this have to do with the felon issue
22 we're discussing here now?

23 A In paragraph 2, the criminal Complaint filed in Nye
24 County, a variety of counts, but -- relative to this issue,
25 the box 14, one count of prohibited acts of employees, voters

1 registration agencies, or persons assisting voters. That is
2 that portion of the registration application.

3 Q What's the date on this press release?

4 A July 13th, 2016.

5 MR. SANDVEN: Plaintiffs offer exhibit 50.

6 MR. RYMAN: No objection, Your Honor.

7 MS. STORY: No objection.

8 MR. LARGE: No objection.

9 THE COURT: Exhibit 50 is an admitted.

10 (Whereupon, Exhibit 50 -- Press Release, was
11 received in evidence.)

12 BY MR. SANDVEN:

13 Q Mr. Healy, from your September study, what did you learn
14 about the relationship of online voter registration in Nevada
15 and the requirement of a driver license or Nevada I.D.?

16 A In Nevada, in order to use online voter registration,
17 which is one of only two methods available to tribal members
18 on these two reservations after October 8th of the postmark of
19 October 8th for mail-in application, that kind of registration
20 closes in Nevada from the 9th or the 8th of October to the
21 18th, which is the last day of voter registration that can be
22 done. But in that 10-day period, there's only two methods.
23 One is online voter registration. In order to use online
24 voter registration, in addition to having some knowledge and
25 ability to work toward it from the internet standpoint, one,

1 first, has to have a Nevada I.D. Not all tribal members have
2 drivers licenses or Nevada I.D.s. those are the two and only
3 two permissible identifications that can be used for online
4 voter registration.

5 In order to get a Nevada I.D., for the sake of
6 argument, that one is not going to go through the full
7 process. It's more expensive for a Nevada Driver's license,
8 one must pay twenty-two dollars and 25 cents to the State of
9 Nevada for that Nevada I.D. But in order to secure that I.D.,
10 one must go to a DMV office. The nearest DMV office to the
11 Tribal Capitol of Schurz on the Walker River Reservation is a
12 49-mile roundtrip to Yerington, 70-mile round trip to
13 Hawthorne, or roughly the same as a roundtrip to the community
14 at Fallon.

15 For Pyramid Lake tribal members, it is either a
16 96-mile round trip into Reno to a DMV office, or slightly
17 shorter, 93 miles roundtrip over to the community of Fallon.
18 So, there is an incredible travel burden on these tribal
19 members, in addition to having to come up with twenty-two
20 dollars and 25 cents, which, for a lot of tribal members, is
21 quite a little money.

22 Q So how many Pyramid Lake tribal members said they could
23 afford it?

24 A That is in exhibit 30. The question was posed: "Can
25 you afford to drive 70 to 96 miles roundtrip and pay the State

1 of Nevada twenty-two dollars and fifty cents -- that is an
2 error on my part. It is twenty-two dollars and twenty-five
3 cents -- for a Nevada I.D. in order to utilize online voter
4 registration?"

5 At Walker River, less than 25 percent of respondents
6 indicated that they could afford the travel burden and the
7 twenty-two dollars and fifty cents in the question, to the
8 Nevada state -- or the State of Nevada for the Nevada I.D.

9 At Pyramid Lake, a slightly higher number of tribal
10 members that responded, 32 percent said they could bear that
11 burden.

12 Q What did you learn about reliable transportation?

13 A Question P of the September surveys was asked: "How
14 reliable is your car?" With the -- given answers that they
15 could check, answer one, I can get in my car right now and
16 travel 100 miles with no concerns." Response two, "I would
17 need to check oil and tires to make sure I can make the
18 journey." Or, answer three, "I would be concerned my car
19 would not easily be able to make the journey." And response
20 four, "I do not own a car."

21 For Walker River Paiute Tribal members, 35 percent
22 said that they -- their car was sound enough that they could
23 get in and drive 100 miles with no concerns. Little less than
24 20 percent said they would have to check things out, check
25 their oil, check their tires in order to determine whether

1 they could make that journey. 27 or 28 percent concerned that
2 their car wouldn't make that 100 mile journey. And little
3 less than 20 percent said they didn't own a car.

4 At Pyramid Lake, 32 percent said they could get
5 in the car and drive 100 miles with no problems. 32 percent
6 said they would have to check the oil, check the tires to make
7 sure they could make the journey. Roughly, a fourth said that
8 their car simply wouldn't make the journey. And a little over
9 11 percent said they didn't own a car.

10 Q What did you learn about online voter registration and
11 the need for a computer and access to internet?

12 A Firstly, it's, of course, obvious that one needs a
13 computer of some sort to access the internet, to access the
14 Secretary of State's website to use online registration. So
15 one, first, needs a computer. Secondly, needs an internet
16 connection of sufficient capacity to be able to do online
17 business. And those resources are limiting on the Walker
18 River and Pyramid Lake Reservations.

19 Q What did you find specifically, and what questions did
20 you ask? What percent of Walker River members, and what
21 percent of the Pyramid Lake members own a computer, from your
22 survey?

23 A From exhibit 30, 39 percent of Walker River tribal
24 members that responded to the survey own a computer. 55
25 percent of Pyramid Lake Paiute tribal members stated they

1 owned a computer. In regard -- oh.

2 Q What about access to internet, sir?

3 A On the Walker River Reservation, less than 10 percent
4 said they had high speed internet into the home. Roughly,
5 approximately one-third of Pyramid Lake Paiute tribal members
6 said they had internet, high speed internet access into the
7 home.

8 I then compared this to U.S. census data from the
9 computer and internet use in the United States from the 2013
10 brief. That's the most recent document from the census on
11 that issue. And for comparison purposes, Nevada computer
12 ownership is at 90 percent of Nevadans statewide, with 79.4
13 per sent high speed internet to the home statewide.

14 When comparing this by race nationally, for
15 Anglos 90 percent computer ownership, in excess of 80 percent
16 high speed internet to the home. For Hispanic, 84 percent
17 computer ownership, 70 percent high speed internet to the
18 home.

19 THE COURT: Mr. Healy, do you have the date as
20 for the respective Counties, mineral and Washoe?

21 THE WITNESS: I do not.

22 THE COURT: What about the resources at the
23 Tribal Community Center, is there internet access on computers
24 for use by everyone?

25 THE WITNESS: No. The tribal centers are, of

1 course, the tribal government and they, obviously, conduct a
2 variety of business. While both tribes have offered to make
3 a room available and to help with the resources they have
4 available for an early voting site and the like, in order for
5 tribal members to do that on a random basis, interfering with
6 tribal government functions and whatnot is not a likely
7 solution.

8 BY MR. SANDVEN:

9 Q Is there sufficient resources at the tribal building to
10 do this satellite locations that you desire?

11 A Yes.

12 Q How do you know that?

13 A Discussions with both Chairman Hawley and Chairman
14 Sanchez -- actually, when the first requests were put in, we
15 made that clear in the conversations with the Washoe County
16 Registrar of Voters Office.

17 Q When was that?

18 A That was on August 9th, would have been the first
19 conversation.

20 Q You let them know that -- what tribal building was
21 available where for voting location?

22 A I let them know that Pyramid Lake Paiute Tribe would make
23 a location available and would make sufficient internet access
24 available for an in-person site.

25 Q What would the costs be --

1 A They would --

2 Q -- to the County?

3 A They would have provided that for free.

4 Q Please turn to what's been marked exhibit 62.

5 All right. So you just described a location
6 that's -- was made available to the County by the Pyramid
7 Lake Tribe?

8 A Yes, that the Tribe would make a location available.

9 Q Are you familiar with the pictures and what's been marked
10 exhibit 62?

11 A I am.

12 Q How are you familiar with those pictures?

13 A That file was e-mailed to me by Chairman Bobby Sanchez
14 as a room that would be lockable and be able to be used for
15 an early voting site at the tribal building in Schurz.

16 Q So it isn't just Pyramid Lake who's offering voting
17 locations, this is the one at Walker River?

18 A Correct. But, it was not included in the request to
19 Chris Nepper on August 12th.

20 Q How are you familiar with these pictures?

21 A As I said, they were e-mailed to me by Chairman Sanchez.

22 Q The Chairman of Walker River Paiute Tribe?

23 A Yes. Yes.

24 Q And you, along with the representation that the County
25 could use this location for voting?

1 A Yes, they are willing to do that.

2 Q At no cost?

3 A At no cost.

4 MR. SANDVEN: We offer exhibit 62 and 63 -- 62.

5 MR. RYMAN: No objection.

6 THE COURT: Exhibit 62 is admitted.

7 (Whereupon, Exhibit 62 -- Photographs, were received
8 in evidence.)

9 BY MR. SANDVEN:

10 Q Moving back to online voting, there is another option to
11 online registration during the last 10 days of Nevada's voter
12 registration period, correct?

13 A Yes.

14 Q What is it?

15 A It is in-person voter registration at the County Clerk
16 or Registrar of Voters Office.

17 Q Did you learn anything from your survey regarding this
18 was a feasible alternative for tribal members?

19 A The answer is yes.

20 I'm turning to the appropriate exhibit. Exhibit 31.

21 Q What did you learn from your survey?

22 A Similar to the resources issue relative to driving off
23 reservation to get an I.D. to use online registration,
24 question C and J go to the transportation and availability.
25 Question J, which we've not discussed yet -- we did also ask

1 on the survey what model year of a car did the tribal member
2 own and/or, if they didn't own a car, to check that.

3 For the Walker River Paiute Tribe, the cars are
4 16 years old as an average. And 18 percent don't own a car.

5 At Pyramid Lake, average model year is a bit newer,
6 ten-year-old vehicle fleet, 2006 being the average model
7 year, and 13 percent not owning a car relative to financial
8 resources however.

9 We asked also the reliability of the car, that
10 would also impact whether you could make that trip; 96 miles
11 roundtrip to Reno, 70 miles roundtrip to Hawthorne from
12 Schurz. And along with having a reliable car, one has to be
13 able to put gas in the tank. So, we asked the question:
14 "Could you afford to spend \$35 or more in order to vote in the
15 upcoming General Election?"

16 For that question, a third of Walker River Paiute
17 tribal members indicated they could put together \$35 in order
18 to vote, while two-thirds, sixty-six and two-thirds percent
19 said no.

20 For Pyramid Lake, a lesser number. One-fourth, or
21 25.53 percent of tribal members that responded to the survey
22 indicated that they could afford to spend \$35 in order to
23 vote, and 75 percent -- in excess of 75 percent said, no,
24 they could not put together \$35 in order to vote.

25 And for reference purposes, I chose that number

1 because that is slightly less than the IRS mileage rate for
2 2016 for a 70-mile roundtrip from Schurz to Hawthorne and
3 back. Obviously, there would be more miles involved at
4 Pyramid Lake, but that IRS rate calculates to around \$37
5 for that roundtrip, and so 35 was the number selected. And
6 that also would indicate you've got to put some gas in the
7 tank. Obviously, it wouldn't take a full tank of gas to make
8 that trip. But those costs are real, IRS dictates it at 54
9 cents.

10 Q There's no early voting sites at Walker River, or on the
11 reservations of Walker River or Pyramid Lake, how does that
12 70-mile roundtrip to Hawthorne, 96-mile roundtrip to Reno
13 affect the folks you interviewed, you surveyed?

14 A Well, again, they simply don't have the financial
15 resources to make that trip. Question C: "Can you afford to
16 drive 70 to 96 miles?"

17 While I was asking it in the context of online voter
18 registration, it matches very closely with can you afford to
19 spend \$35. Resources are an issue.

20 Q At the Walker River Paiute Tribe of the tribal members
21 you interviewed, how many, what percent, own a car?

22 A 72 percent own a car, but the more important issue is
23 is it a reliable car that could make that journey. That
24 question, that answer is 35 percent. So, 65 percent, roughly
25 65 percent of Walker River Paiute members can't make the trip.

1 Q What was the average age of a car?

2 A 16 years on the Walker River Reservation.

3 Q And what percent considered a car reliable enough to
4 travel 100 miles without concern?

5 A 35 percent.

6 Q What's the average age of a car owned by a Pyramid like
7 Paiute Tribal members?

8 A Ten years.

9 Q And what percent of them own a car reliable enough to
10 travel 100 miles without concern?

11 A 32 percent.

12 Q What is this 70-mile roundtrip to Hawthorne cost for
13 Walker River Paiute Tribal members? What did you learn there?

14 A Well, the cost that I assumed in the analysis is IRS
15 mileage rate for --

16 Q What's the total cost?

17 A Total cost --

18 Q If you have a reliable car, if you have the money for the
19 70-mile roundtrip to Hawthorne, for Walker River Paiute Tribal
20 members?

21 A Approximately \$37.

22 Q What percent of tribal members at Walker River Paiute
23 Tribe, Pyramid Lake Paiute Tribe have felt discriminated
24 against when conducting business off reservation?

25 A The question posed in the survey, "Have you ever

1 felt discriminated against from conducting business off
2 reservation?"

3 The answer at Walker River for those enrolled
4 members who responded to the survey, 66.67 percent at Pyramid
5 Lake. 61, a little over 61 percent.

6 Q And what did you learn from your survey on the tribal
7 members at Pyramid Lake and Walker River on where they prefer
8 to conduct business?

9 A The question asked in the survey, "Do you feel more
10 comfortable conducting business in the tribal administration
11 building through your tribe, or at the County courthouse in
12 Washoe or Mineral County?"

13 In the case of Walker River, enrolled members
14 responding, over 95 percent said they were more comfortable
15 at the Walker River Tribal administration building.

16 At Pyramid Lake, slightly under 95 percent, 93.75
17 said they were more comfortable at the Pyramid Lake tribal
18 building as opposed to the County courthouse in Reno.

19 Q What percent of Pyramid Lake and Walker River members
20 believe that Washoe County is discriminating -- or against --
21 just Pyramid Lake members? How many of those members believe
22 that Washoe County is discriminating against tribal members
23 who live on their reservation?

24 A In regard to the question asked, laying out the fact
25 that there is an early voting site and Lake Tahoe, which is

1 a 75-mile roundtrip, uh, and then knowing that Washoe County
2 had refused an early voting site on the Pyramid Lake
3 Reservation, Pyramid Lake tribal members responding to
4 that question, in excess of 80 percent said that they thought
5 that was, in fact, discriminating against Pyramid Lake Paiute
6 Tribal members who live on the reservation.

7 Q Did you ask anything about comparing the trust between
8 the federal government and the state?

9 A Yes. It comes --

10 Q What did you learn there?

11 A And this comes from the survey conducted in August.
12 The question posed: "Which government do you most trust to
13 protect your rights?"

14 And we asked this question of tribal, local, state,
15 and federal. Responses from the Pyramid Lake Paiute Tribe,
16 50 percent said they most trusted their tribal government. A
17 little less than 9 percent said they most trusted the County
18 or local governments. 10 percent said they trusted the State
19 of Nevada to most protect their rights. 30 percent said they
20 trusted the federal government the most to protect their
21 rights.

22 At Walker River, 55.5 percent of tribal members said
23 they trusted their tribal government most to protect their
24 rights. Little over 11 percent said they most trusted local
25 government, which would include, of course, Mineral County.

1 Less than 7 percent said they most trusted the State of Nevada
2 to protect their rights. And a little more than 26 percent
3 said they most trusted the federal government to protect their
4 rights.

5 Q What did you learn about Walker River and Pyramid Lake
6 tribal members being discriminated or intimidated as Native
7 Americans when registering to vote or when casting a ballot?

8 A This is still in exhibit 32, and this data is also
9 from the survey conducted in August of 2016. And the
10 question posed: "Have you ever felt discriminated against
11 or intimidated as a Native American in either registering or
12 voting in non-tribal, federal, state, and local elections?
13 Which?" Asking whether it was registering or in voting. And,
14 asking an open-ended question. "Please explain."

15 And of the Pyramid Lake Paiute tribal members who
16 completed the survey, 137 of them gave a response on this
17 question. At Walker River, 32 out of the 60 -- and that's a
18 misprint. That's 61 -- Walker River Paiute tribal members
19 gave a response.

20 Of those that gave a response, roughly 75 percent
21 of Pyramid Lake Paiute tribal members felt they felt no
22 discrimination. But the more troubling number, of course,
23 is that 25 percent of Pyramid Lake Paiute tribal members,
24 25 percent of the Walker River Paiute tribal members felt
25 discrimination, not just in conducting business off

1 reservation, as that other question got to, but felt
2 discrimination when either registering to vote or in trying
3 to vote.

4 Q What did you learn about Pyramid Lake Paiute tribal
5 members' preference regarding on-reservation and in-person
6 registration voting sites?

7 A First, in regard to in-person voter registration, in
8 excess of 85 percent at Pyramid Lake and 88 percent at Walker
9 River Paiute Reservations said they'd prefer there's an on
10 registration voter registration site.

11 And for an early voting site, question U of the
12 September survey, early voting, was posed this way: "Early
13 voting in-person in Nevada is available off reservation in
14 Reno, Sparks, and Hawthorne, but is not available on either
15 the Pyramid Lake or Walker River Indian Reservation. Would
16 you prefer that early voting be available for Pyramid Lake
17 and Walker River Paiute tribal members on reservation in
18 Nixon and Schurz?"

19 Tribal members at the Walker River Paiute
20 Reservation, 90.57 percent answered affirmatively yes.

21 At the Pyramid Lake Paiute Reservation, 92.45
22 percent answered affirmatively yes, that they would prefer an
23 early voting site be available on reservation.

24 Q Did you have any question regarding the Nevada Secretary
25 of State's -- or the two defendant counties outreach to tribal

1 members at either of these nations?

2 A Yes.

3 Q What did you learn?

4 A Again, in exhibit 32, the second page of the exhibit
5 headline: "Study of Voting Access and Desire for on
6 reservation, voter registration, early voting sites, that
7 section of the survey, question T on the survey: "To your
8 knowledge, has any County official or official from the Nevada
9 Secretary of State's Office ever inquired about equal access
10 to the ballot box for tribal members living on the Pyramid
11 Lake and Walker River Indian Reservations?"

12 In the case of Walker River, 92 percent said no.

13 In the case of Pyramid Lake Paiute tribal members,
14 94 percent said no.

15 Q Have you asked anyone at the Secretary of State's Office,
16 or defendant counties, whether or not they've done any
17 outreach at either Pyramid Lake Paiute Tribe or Walker River
18 Paiute Tribe?

19 A In the meeting on August 24th.

20 Q What -- have they done it to your knowledge?

21 A No.

22 Q What are you basing that upon?

23 A In regard to the Secretary of State, based on the meeting
24 on August 24th.

25 Q Where did you learn from the counties there had been no

1 outreach?

2 A That's inferred from this data, but also the fact that
3 in the case of Washoe County, they actually have a community
4 outreach program. Had that been in any kind of way active on
5 the reservation, these numbers -- uh, certainly the folks
6 would have been aware of it.

7 Q What, what did you learn or how did you learn, at the
8 August 24th meeting with the Secretary of State, that there
9 had been no outreach to tribes regarding election issues or
10 voting issues or voting access issues?

11 A I asked her. I asked her whether her office had ever
12 done any study of Native American voting access in Nevada.
13 The answer was no.

14 Q What about her predecessors?

15 A They said they were going to check on that and get back
16 to me. I also asked whether they had had any interaction with
17 Nevada tribal leaders before these requests from Walker River
18 and Pyramid Lake and they answered that there -- she answered
19 there had not been.

20 Q Moving on to mail-in ballots. Any questions in your
21 survey regarding whether or not that's an acceptable
22 alternative for tribal members? You got mail-in ballots;
23 that's good enough?

24 A (Witness reviews document.)

25 Yes. It's exhibit 31-B. Again, this data is

1 from the survey conducted in August on the two reservations.
2 Question posed: "If you mail your ballot in, how much trust
3 do you have that your vote will be counted? If you have not
4 used this method, still tell us how much trust you have in
5 this form of voting." The potential answers were "complete
6 trust, some trust, no trust."

7 In the instance of Pyramid Lake tribal members
8 responding to the survey, complete trust of 24 percent.

9 In the instance of Walker River, 20.41 percent.

10 So, 75 to 80 percent of tribal members on these
11 two reservations question whether their ballots are even going
12 to be counted if they use this option. And most telling is
13 28.72 percent of Pyramid Lake Paiute members in that August
14 survey of nearly 300 folks have no trust at all that their
15 ballots will be counted by using the mail-in ballot option.
16 For Walker River, that complete lack of trust number is 36.73
17 percent. So, again, 75 to 80 percent have no trust or have
18 concerns whether their ballots will even be counted. Complete
19 trust of less than 25 percent in either case.

20 Q Have there been any studies on this?

21 A Yes. On mail balloting in general, there has.

22 Q What's your understanding of the published study from
23 MIT, from Charles Stewart, that's attached to 31-B?

24 A As part of 31-B, uh, in Stewart's article: "There is a
25 leaky pipeline when it comes to mail-in balloting, that there

1 are so many places that things can go awry." As a conclusion,
2 however, he comes to, that a fifth of ballots through the
3 mail -- and this is across the entire United States -- simply
4 aren't being counted using mail-in balloting.

5 Q Did you do any studying or do any of the survey questions
6 deal with comparing voting turnout between Anglo and tribal
7 members living at Pyramid Lake and Walker River tribes?

8 A Yes, we asked that as well.

9 Q What did you learn there?

10 A And this data is from the September surveys. Exhibit 29,
11 the question posed was: "In 2014, Barbara Cegavske, a member
12 of the Republican party, ran for election" -- and this is the
13 Nevada Secretary of State -- "against Kate Marshall, a member
14 of the Democratic party."

15 Q What exhibit are you on now?

16 A Exhibit 29.

17 Q Proceed.

18 A "Did you vote for either Barbara Cegavske or Kate
19 Marshall in the 2014 General Election?" The question was
20 asked because that was the most recent General Election. And
21 it was, "yes, no, or do not remember."

22 Those that said they voted in that election, 8
23 out of 54 respondents at Pyramid Lake, and 8 of the 54
24 respondents at Walker River indicated that they had voted
25 in the 2014 General Election. That is a rate of the response

1 surveys of less than 15 percent, 14.81 to be exact --

2 MS. STORY: Objection, Your Honor. I mean,
3 that misrepresents the question posed and the response given.

4 THE COURT: Which question?

5 MS. STORY: He just testified that they -- the
6 question is did you vote for these candidates in the General
7 Election and he just testified that they indicated that they
8 voted at all in a General Election. We all know that many
9 people don't vote for every race. They vote, but they don't
10 necessarily vote for every race.

11 So, his conclusion seems to be misstating this
12 exhibit evidence.

13 MR. SANDVEN: Your Honor, my question was
14 asking if any of the questions, or he had done any
15 interviewing, comparing Anglo turnout versus tribal member
16 turnout at Walker River and Pyramid Lake.

17 THE COURT: But my understanding of the
18 objection is that he's answering that question using the
19 data that doesn't support the question.

20 MS. STORY: Right.

21 THE COURT: So, let me look at the question,
22 which -- first of all, you haven't moved to admit any of these
23 exhibits, exhibits 29, 30, 31, and 32.

24 MR. SANDVEN: I move at this time, Your Honor.

25 THE COURT: Any objection?

1 MS. STORY: Uh, you know, the ones that have
2 been stated, obviously, as to the source of the questions,
3 the bias of the questions, the way they, uh, selected persons
4 to participate in the survey causes -- is grounds for an
5 objection.

6 THE COURT: Well, let me try to understand. So
7 exhibits 29, 30, 31, 32 are summaries of the information from
8 the surveys.

9 Is that correct, Mr. Sandven?

10 MR. SANDVEN: Yes, Your Honor.

11 THE COURT: So to the extent -- so I understand
12 there's objections to the actual data, the underlying data and
13 the underlying survey?

14 MS. STORY: Yes.

15 THE COURT: And like I said, I am,
16 preliminarily, admitting that data. Aside from that
17 underlying objection, is there any objection to the exhibits
18 themselves being admitted?

19 MS. STORY: Well, to --

20 THE COURT: Do you dispute that the summary is
21 incorrect, or can you not tell because you haven't had time
22 to look at the information?

23 MS. STORY: B.

24 THE COURT: Check B, you can't tell?

25 MS. STORY: Yes, Your Honor. We can't tell.

1 We haven't had a chance to examine this, to show it to anyone
2 who could answer questions for us. And as I originally
3 objected, his testimony is different than what this question
4 is posed and I believe that an inaccurate statement of what
5 this exhibit says should be acknowledged and corrected.

6 THE COURT: Well, I'm going to sustain the
7 original objection; and that is, that his answer doesn't seem
8 to be supported by the survey response. And then let me
9 address the -- is there anyone else that wants to be heard
10 on the admissibility of exhibits 29 through 32?

11 MR. RYMAN: Thank you, Your Honor.

12 For Mineral County, the same objections as before.
13 I had assumed that you were provisionally accepting those to
14 be disposed of in the motion. So, no objection to that
15 process.

16 THE COURT: Yes. So my ruling on the
17 exhibits -- well, Mr. Sandven, do you want to address the
18 question that I posed to counsel? And I think this is a
19 fair concern from them; and that is, they haven't had a
20 chance to compare the underlying data to verify whether or
21 not the summary is even accurate.

22 What's your response to that? Should I ignore the
23 summary then?

24 MR. SANDVEN: Say again. Can you say that --
25 I'm sorry. Your last question?

1 THE COURT: Should I ignore the summary then
2 because they haven't had a chance to review it to ensure
3 it's accurate, to tell me whether or not they agree with the
4 summary?

5 MR. SANDVEN: They're going to have the chance
6 on cross-examination to go ahead and ask any questions they
7 have.

8 THE COURT: Well, that's not answering the
9 question about the summary, so for them to -- if one concern
10 they have is they don't know if exhibits 29 through 32
11 correctly -- is correctly reflective of the underlying data
12 and correctly summarized the underlying data, they're not
13 going to do it now on the time that they have.

14 MR. SANDVEN: It was my understanding, and I
15 thought Your Honor was going to go ahead and accept them
16 provisionally.

17 THE COURT: I am for the other exhibits. I
18 haven't ruled on exhibits 28 through 32 yet -- 29 through
19 32 -- actually, I'm sorry. It's 28 through 32.

20 So, you see the very valid concern. You gave
21 the defendants' counsel these exhibits this morning. That
22 contains a lot of information. And they are saying they
23 haven't had a chance to review them in order to effectively
24 cross-examine this witness.

25 MR. SANDVEN: Yeah, the summary of these

1 findings was an exhibit that was, I believe, attached to
2 your affidavit with the reply briefs. Uh, I, I think the
3 findings were. And then the data has been provided in the
4 most friendly format that we thought we could by pdf format
5 on the jump drives. The study was completed recently, Your
6 Honor.

7 THE COURT: And reply briefs were filed
8 yesterday?

9 MR. SANDVEN: Yes, Your Honor.

10 THE COURT: All right.

11 Ms. Story, you were going to say something.

12 MS. STORY: Well, I was just going to restate
13 that just because the summary was provided with the reply
14 yesterday, it still hasn't provided us with the time necessary
15 to review -- and the data was just provided this morning, so.

16 THE COURT: Right. You had the summaries
17 yesterday. You wouldn't be able to verify that it accurately
18 reflects the underlying information.

19 Well, for these five exhibits, exhibits 28 through
20 32, I will also, provisionally, admit them. I will try to
21 verify the summary. I may give defendants counsel the
22 opportunity to provide some supplement tomorrow, but I want
23 to think about that, since I want to have an order written
24 and issued by Friday.

25 MR. SANDVEN: Your Honor, can I ask -- my

1 witness has diabetes. Can I ask how he's doing, if we -- or
2 how long do you plan on going or -- he's on insulin.

3 THE COURT: Would you like to take a break,
4 Mr. Healy?

5 THE WITNESS: If we could for a few minutes.

6 THE COURT: All right. We'll take a restroom
7 break at this point. We'll take a 15 minute break.

8 MR. SANDVEN: 15 minutes, Your Honor?

9 THE COURT: Yes.

10 (Recess taken.)

11 THE COURT: Please be seated.

12 Mr. Sandven.

13 BY MR. SANDVEN:

14 Q There were some questions regarding the payment that was
15 made on the -- there was a payment made of how much on the
16 first survey?

17 A The survey conducted by the Native American Voting
18 Rights Coalition in August, respondents were offered \$15
19 for their time to complete the survey. And it was a much
20 longer --

21 Q How much was offered on the second survey?

22 A \$10.

23 Q You heard the concerns. And to someone who is novice in
24 surveying, hey, you're paying people to go ahead and conduct
25 this survey.

1 What's your response?

2 A Literally, no different than offering gift cards, uh,
3 15, 20 percent off your next purchase. American enterprise
4 is filled with offers to get someone's opinion that you have
5 to compensate them a little bit for their time. This is no
6 different.

7 Q The working group that you described earlier on the
8 first survey, they authorized the payment, correct?

9 A Yes. It was part -- it was part of the plan of the
10 execution and implementation of the survey.

11 Q And what doctors were on that survey team?

12 A Dr. Jean Schroedel, a full tenured Professor at Claremont
13 Graduate University. As you stated before or asked me before,
14 her Ph.D. was from MIT. She oversaw not only the development
15 of the survey, but the on-ground implementation and execution
16 of the survey.

17 So, that was part and parcel of the discussion of
18 that first survey. And, certainly, to protect the academic
19 rigor, all those factors were considered. The ultimate
20 objective was not only to provide solid data, but also to
21 be able to publish and referee the academic journals. So,
22 the payment of \$15 certainly fit within that realm of
23 political science and social sciences.

24 Q All right. You also heard some questions on
25 confidentiality. Do you have any confidentiality concerns

1 with the data of the first survey being put in court as an
2 exhibit?

3 A No. There is no individual identifying information on
4 any of the 299 Pyramid Lake surveys nor the 61 Walker River
5 surveys.

6 Q Please tell the Court what the role with the Inter-Tribal
7 Council was, of Nevada, on authorizing the surveying of
8 information, briefly.

9 A Inter-Tribal Council of Nevada was approached by Four
10 Directions, specifically O.J. Semans in February 2016, to
11 secure permission to do such a survey. And in fact, this
12 was even prior to any grant funding having been committed.
13 We knew that we needed to get permission from tribal leaders
14 to conduct on-reservation survey research. That was the
15 importance of securing that resolution from the Inter-Tribal
16 Council of Nevada.

17 Q Please turn to what's been marked exhibit number 46.

18 THE COURT: Before you move on, Mr. Sandven, I
19 have a question for Mr. Healy.

20 With respect to exhibits 28 through 32, these are
21 the, kind of the summary. And as I look through this, I want
22 to make sure I understand the summary. You basically, for
23 the most part, take -- identify the question codes from the
24 actual survey and then you basically added the total response,
25 one way or the other, and gave a percentage based on the

1 information in the survey, correct?

2 THE WITNESS: Yes.

3 THE COURT: So that's the sum of your summary?
4 It's, basically, a mathematical calculation?

5 THE WITNESS: Yes.

6 THE COURT: All right. Thank you.

7 BY MR. SANDVEN:

8 Q Please turn to Exhibit 46.

9 How are you familiar -- are you familiar with this
10 document?

11 A I am.

12 Q How are you familiar with this document?

13 A I prepared it.

14 Q What is it?

15 A It is an analysis of voting patterns in the 2014
16 Secretary of State race in Nevada. All the data was pulled
17 from public sources.

18 In this analysis, I compared the communities of
19 Hawthorne and Schurz and Mineral County, and compared the
20 communities of Incline Village and Nixon in Washoe County.

21 Q Why did you choose those locations to compare?

22 A Well, in Mineral County, uh, clearly, Hawthorne is a
23 county seat and it is the -- roughly, 65 percent of the
24 population of the County lives in Hawthorne and it is a
25 community that is in excess of 80 percent Anglo.

1 Schurz is, of course, the Tribal Capitol for the
2 Walker River Paiute Tribe, a community that is in excess of
3 80 percent native. And then in the Washoe County analysis,
4 Incline Village, of the communities in Washoe County, is
5 the most Anglo, nearly 87 percent Anglo. And Nixon is -- the
6 precinct of Nixon is the most -- highest number of Native
7 Americans in the Tribal Capitol for the Pyramid lake Paiute
8 Tribe, nearly 90 percent native.

9 So I wanted to look at polarization of voting by
10 race, and this was the most logical analysis to do. And when
11 one looks at the Secretary of State's race in 2014, which
12 was, uh, about a five point race, it was fairly close, 52 and
13 change, and 47 and change, with current Secretary, Barbara
14 Cegavske, winning that race.

15 MS. STORY: Objection, Your Honor. Is there a
16 question pending? I mean --

17 THE COURT: The objection is sustained.

18 What's the question, counsel?

19 MR. SANDVEN: We offer exhibit number 46.

20 THE COURT: Any objection?

21 MR. RYMAN: Yes, Your Honor. Objection on the
22 basis of hearsay and foundation. And I hear they're based on
23 public sources. I didn't hear what those public sources are.

24 And that's all.

25 MS. STORY: Same objection, Your Honor.

1 MR. LARGE: Your Honor, I'm also going to
2 object based on the relevance. There is an analysis here in
3 terms of Nixon, Nevada. But, apparently, based on the reply
4 brief that was filed yesterday, they're filing on behalf of
5 the Pyramid Lake Tribe, so how relevant is it the Nixon voter
6 polarization, when they're filing on behalf of -- there is
7 no analysis of Wadsworth, Nixon, and Sutcliffe, which are all
8 precincts in the Pyramid Lake Reservation?

9 MR. SANDVEN: I can lay some more foundation,
10 Your Honor.

11 THE COURT: Why don't you raise the foundation
12 and then you have to address relevance.

13 That's exhibit 46?

14 MR. SANDVEN: Yes, Your Honor.

15 THE COURT: Are you going to lay some
16 foundation?

17 MR. SANDVEN: Yes, Your Honor.

18 BY MR. SANDVEN:

19 Q Why did you choose the City of Hawthorne again?

20 A It's the County seat of Mineral County.

21 Q What information did you use to come up with the figure
22 43.74 percent went to the defendant Secretary of State? Where
23 did you draw this data from to put this together?

24 A Uh, the Secretary of State's website and/or the County
25 websites. This was an assistant of mine pulled together the

1 publically available information.

2 Q What is the publically available information?

3 A Secretary of State's website.

4 Q Why did you compare Nixon and Incline?

5 A Again, to look at whether Native Americans on the
6 reservation voted differently than Anglos in another portion
7 of Washoe County.

8 MR. LARGE: Objection. Same objection,
9 Your Honor. His analysis is based on Nixon as opposed to
10 the Pyramid Lake Tribe, which is, apparently, what they are
11 referencing in terms of the polarization of Native American
12 voters on the Pyramid Lake Reservation, which, apparently, is
13 what they are seeking to -- the polarization rate should be
14 based upon all the Pyramid Lake Tribe, not just Nixon, Nevada.

15 BY MR. SANDVEN:

16 Q Why Nixon, Nevada?

17 A Specifically, if one is analyzing Wadsworth in that
18 same data set, you have to account for the fact that Wadsworth
19 is a lot less native than Nixon, Nevada, is. Wadsworth is
20 about 70 or so percent -- 65 percent or so native. It is not
21 a pure, if you will, Paiute Tribal member precinct. Nixon,
22 Nevada, is. That's why I selected to look at how Pyramid Lake
23 Paiute tribal members voted, in a precinct that one doesn't
24 have to guess because it's almost 100 percent Pyramid Lake
25 Paiute tribal members that live there.

1 It is highly unlikely that Pyramid Lake Paiute
2 tribal members that live in Wadsworth or in Sutcliffe,
3 voted much different than the Pyramid Lake Paiute tribal
4 members that voted in Nixon. That could be done with more
5 sophisticated analysis, but the proportion of the vote was
6 heavily, still, against Secretary Cegavske in the Wadsworth
7 precinct. And when you combine analysis and account for race,
8 you're going to get the same answer.

9 MR. LARGE: Move to strike. Assumes facts not
10 in evidence.

11 THE COURT: It is speculative, but I'm going to
12 deny the request to strike and overrule the objection.

13 In other words, what, potentially, the Wadsworth
14 voter would have not voted.

15 MR. SANDVEN: Can you respond to the judge, Your
16 Honor -- or respond to the judge.

17 THE WITNESS: (No response.)

18 MR. SANDVEN: I didn't hear the question.

19 THE COURT: I said it's speculative. How is
20 he going to correct that? It's not the information he was
21 comparing. He already testified that he looked at Nixon, but
22 if he were to look at Wadsworth, he didn't think the data
23 would be much different.

24 BY MR. SANDVEN:

25 Q Yeah, why are you making that determination?

1 THE COURT: Well, let me ask you this. Isn't
2 that -- are you speculating that the Wadsworth data would not
3 be much different?

4 THE WITNESS: What I'm speculating is the
5 Pyramid Lake Paiute members living in Wadsworth do not vote
6 differently than Pyramid Lake Paiute members living in Nixon.

7 THE COURT: And it's not based on any research
8 you did. You're speculating?

9 THE WITNESS: I'm speculating. It would be easy
10 to calibrate that at a break today.

11 THE COURT: All right.

12 BY MR. SANDVEN:

13 Q Please go to what's been marked exhibit number 52.

14 A Okay.

15 Q Are you familiar with this exhibit?

16 A I am.

17 Q How are you familiar with this exhibit?

18 A These are written responses from tribal members taking
19 the August survey.

20 Q Tribal members from where?

21 A Walker River, Paiute Tribal -- Walker River Paiute
22 Reservation and the Pyramid Lake Paiute Reservation.

23 Q You have 52 -- there's two exhibits, 52 and 53. What is
24 52? Pyramid Lake or Walker River?

25 A It's Pyramid Lake. These are written responses. Those

1 that chose to take a little bit of time in that 30-minute
2 survey to write down, explaining how they felt discriminated
3 against.

4 Q What question are you referencing in the survey?

5 A Question 29. And, again, that question was: "Have
6 you ever felt discriminated against or intimidated as
7 Native American either registering or voting in non-tribal
8 elections?"

9 Q How many responses are in this exhibit from Pyramid Lake
10 tribal members?

11 A (Witness reviews document.)

12 Nine -- ten.

13 Q Why did you -- and there were how many surveys conducted
14 at Pyramid Lake?

15 A 299.

16 Q And so these are from the first survey?

17 A They are.

18 Q All right. And these would be found in what exhibit
19 that's already been admitted, is it 60?

20 A No. It would be in exhibit 58.

21 Q Exhibit 58. So you pulled 10 pages out of there?

22 A No. I pulled Pyramid Lake Paiute members that had
23 responded to that question, not in a random 10 responses.
24 These were Pyramid Lake Paiute members.

25 Q Why did you pull those 10 responses?

1 A Because they had actually gone to the third part of the
2 question and said please explain. And they've explained how
3 they felt intimidated or discriminated against as Native
4 Americans.

5 Q Why did -- why did you find this significant?

6 A It is in the tribal members own words, not a solicitation
7 of, hey, have you ever felt, and tell us how. It was -- they
8 took the opportunity and the time to write down their
9 observations, how they felt, and explained how they felt
10 they were discriminated against or intimidated when they
11 were trying to register to vote, or to vote as a Pyramid Lake
12 Paiute Tribal member.

13 Q What were some of those responses?

14 MR. LARGE: Objection. Calls for hearsay.

15 THE COURT: The responses from the survey?

16 MR. LARGE: Yeah. Yes, Your Honor.

17 THE COURT: The objection -- earlier, there was
18 a hearsay objection to the actual survey itself. My ruling
19 remains the same. This is one question from the survey.
20 That objection is permanently overruled at this time and I'll
21 address it in the written order.

22 THE WITNESS: If one goes to the fifth response,
23 for example --

24 BY MR. SANDVEN:

25 Q And just so we're all on the same page, we're looking at

1 exhibit 52?

2 A Exhibit 52.

3 Q And we're looking at the fifth page.

4 A The fifth page, where the respondent checked both
5 registering and voting in feeling discrimination.

6 Q And the response?

7 A "Yes. I felt discriminated and insulted. We are
8 probably given -- we are practically giving away our land
9 as participating in these elections. Have one person in
10 government rule over it, land that we once owned."

11 Q Anything else significant in those responses? And we
12 don't need go through all of them.

13 A Just that they took the time to, again, explain how they
14 felt discriminated against. A second -- just a minor one,
15 "Second glances, second glances taken at me while voting."

16 And that would be the seventh response in that
17 exhibit.

18 MR. SANDVEN: And Your Honor, this has been
19 provisionally admitted already?

20 THE COURT: Well, you haven't moved for the --
21 these are just -- it's just a copy from the actual data,
22 right? You haven't moved for them to be admitted.

23 MR. SANDVEN: I move for admission of
24 plaintiff's exhibit 52.

25 THE COURT: I assume, counsel, you have the same

1 objection?

2 MS. STORY: Yes, Your Honor.

3 MR. LARGE: Yes, Your Honor.

4 THE COURT: The objection so noted. Exhibit 52
5 is admitted.

6 (Whereupon, Exhibit 52 -- a document, was received
7 in evidence.)

8 THE COURT: And exhibit 53 is the same, but from
9 the Walker River?

10 MR. SANDVEN: Yes, Your Honor.

11 THE COURT: You don't have to go through the
12 foundation. If you want to move to admit them, my ruling
13 remains the same. It is provisionally admitted.

14 (Whereupon, Exhibit 53 -- a document, was received
15 in evidence.)

16 BY MR. SANDVEN:

17 Q Go to exhibit 53, please.

18 A Okay. I have it.

19 Q These are responses from Walker River. Why did you pull
20 these pages from the survey, the first survey?

21 A Again, these were Walker River Paiute tribal members who
22 chose to explain how it is that they felt.

23 Q Same question, number 29?

24 A Same question, 29.

25 Q Any responses in here you would like to point out to the

1 Court? You don't need to read all of them.

2 A The third response in this exhibit, uh, one that -- a
3 respondent that checked registering to vote feeling
4 discriminated against. And the comment was, "Nothing but
5 complaints, constantly, about us even being there."

6 MR. SANDVEN: Nothing further on direct,
7 Your Honor.

8 THE COURT: All right. You haven't moved to
9 admit Exhibit 46.

10 MR. SANDVEN: Whoops. I'm sorry.

11 THE COURT: Well, you did and then I don't know
12 if you gave up. You haven't really asked.

13 MR. SANDVEN: I move for admission of
14 Exhibit 46.

15 THE COURT: And there was an objection as to
16 relevance. I assume -- there was objection as to foundation.
17 I'm going to overrule the objection as to foundation because
18 I think this witness has laid the proper foundation for the
19 source of the information.

20 I assume there continues to be an objection as to
21 relevance, is that right, Mr. Large?

22 MR. LARGE: Yes, Your Honor.

23 THE COURT: What's your response, Mr. Sandven?

24 MR. SANDVEN: This deals with the two -- this
25 deals with communities where there can be -- or is the voting

1 locations that are desired that is subject to this action.
2 And Incline, Nixon, are both in Washoe County. You can see
3 the polarization in the vote.

4 THE COURT: The objection as to relevance is
5 overruled. I understand the argument that offering data from
6 Nixon alone isn't sufficient to reflect full polarization
7 because there are residents of -- or there are tribal members
8 who reside at other locations. But, Nixon is a Tribal
9 Capitol, and I think the data does reflect at least the
10 voting, the votes of those living in Nixon. So, the objection
11 as to relevance is overruled. Exhibit 46 is admitted.

12 MR. SANDVEN: Thank you, Your Honor.

13 (Whereupon, Exhibit 46 -- a document, was received
14 in evidence.)

15 MR. SANDVEN: And nothing further on direct,
16 Your Honor.

17 THE COURT: Okay. Thank you.

18 MR. RYMAN: Your Honor, if I may begin with a
19 bit of cross.

20 MR. SANDVEN: Your Honor -- and we'll just keep
21 going and we'll worry about a lunch break at a later time, or
22 how are you intending on going today?

23 THE COURT: Depending how long the cross is, I
24 would like to finish with Mr. Healy's testimony before we take
25 a lunch break.

1 MR. SANDVEN: Yes, Your Honor.

2 THE COURT: And Mr. Sandven, do you have any
3 other witnesses aside from Mr. Healy?

4 MR. SANDVEN: I don't think so, Your Honor.
5 I'm not sure until I hear some of questions from the Court
6 on cross.

7 THE COURT: I don't plan to ask many questions
8 on cross. It will be the defense counsel who will be asking
9 questions on cross.

10 MR. RYMAN: Oh, I don't have too many, Your
11 Honor.

12 **CROSS-EXAMINATION**

13 BY MR. RYMAN:

14 Q Good morning, Mr. Healy. My name is Brent Ryman. I
15 represent the Mineral County defendants in this case. How
16 are you doing?

17 A I'm doing fine. Thank you.

18 Q Obviously, I have not had much time to review the pile
19 of documents that have been given to me this morning, but I
20 do have some questions about the surveys.

21 Let's talk about the August survey, and I want to
22 talk about the August survey as it was applied to the Walker
23 River Paiute Tribe.

24 Understood?

25 A Yes.

1 Q Who drafted those survey questions?

2 A The first draft, and most of the work was done by
3 Dr. Jean Schroedel, Claremont Graduate University, with input
4 from the various partners in the Native American Rights
5 Coalition. The other academic that participated in providing
6 some input was Dr. Dan McCool from the University of Utah.

7 Q Did you draft these questions?

8 A No. We provided input, but didn't draft any question,
9 per se.

10 Q Who --

11 A We made suggestions.

12 Q My apologies.

13 Who told you this survey could not be used in this
14 litigation?

15 A Who told -- repeat the question, please.

16 Q There was some concern that the August survey results
17 could not be used in this litigation, correct?

18 You remember that testimony?

19 A Yes.

20 Q Who told you that?

21 A Native American Rights Fund.

22 Q And what was the concern?

23 A The concern was in regard to what the agreement was with
24 the funder on the data. That has been resolved.

25 Q And what was the agreement with the funder?

1 A I don't know. I've never seen it.

2 Q What was your understanding of the concern from the
3 funder?

4 A I'm not aware that there was any concern from the funder.
5 I'm not sure they had a conversation with the funder relative
6 to this issue.

7 Q And you don't know what the basis was for this survey to
8 not be used in this litigation, apparently, is that correct?

9 A I have never saw the agreement, so, no.

10 Q Do you know who the funder is?

11 A Yes.

12 Q Who is that?

13 A The Kellogg Foundation.

14 Q Kellogg Foundation?

15 A Yes.

16 Q Do you know how much they paid for this survey?

17 A Uh, I know what the grant amount, in rough terms, is for
18 all four states.

19 Q What's that?

20 A Around \$275,000.

21 Q And what were the other states?

22 A Stated in previous testimony, Nevada, South Dakota,
23 Arizona, and New Mexico.

24 Q Are you familiar with the concept of sampling bias?

25 A Yes.

1 Q What's that?

2 A As with any statistical sample, it's whether or not you
3 are accurately sampling that population.

4 Q And what was done to eliminate sampling bias in
5 this survey, specifically as it relates to Walker River
6 Paiute Tribe?

7 A For which survey?

8 Q The August survey that we're talking about. I'll let you
9 know when we move to the next one.

10 A So what was done to --

11 Q What was done to eliminate sampling bias, specifically,
12 in this survey as applies to the Walker River Paiute Tribe?

13 A In the design of the survey, it was the goal and design
14 to go on to tribal lands and secure survey respondents and to
15 use a \$15 compensation for their time as a way to secure those
16 responses.

17 Q And tell me how that equates to eliminating sampling
18 bias?

19 A Very simply, for Walker River, given the entire
20 tribal population living on the reservation, 60 respondents
21 represents, around, 10, 12 percent of the overall population.
22 There is always an issue with smaller sample sizes. But
23 when you start to survey that deep of the level of the actual
24 population, those concerns usually go away.

25 Q How was that sample selected?

1 A That sample was selected by collecting those surveys on
2 the reservation from the tribal members in question.

3 Q How was it determined who would get the surveys, which
4 is the same question I just asked? How did you determine what
5 the sample would be?

6 A By those that made themselves available to give their
7 opinion and provide and complete the survey.

8 Q So they volunteered?

9 A They did.

10 Q Are you familiar with the selection effect -- selection
11 effect. Excuse me.

12 A Yes.

13 Q What's that?

14 A That in any sampling scheme, unless you can randomly
15 assign treatments and randomly assign subjects, you're always
16 going to be subject to selection effects.

17 Q Would you agree that it's a distortion of statistical
18 analysis resulting from the method of collecting samples?

19 A No, I wouldn't agree with that.

20 Q And what would you say it was again?

21 A Pardon?

22 Q What would you say it was again, the selection effect?

23 MR. SANDVEN: Objection. Asked and answered.

24 THE COURT: The objection is overruled.

25 You may answer.

1 THE WITNESS: Okay. What was the question
2 again?

3 THE COURT: What do you say is the selection
4 effect?

5 MR. RYMAN: Thank you, Your Honor.

6 THE WITNESS: When you cannot randomize samples,
7 randomize the experimental units, you are going to have a
8 selection effect, period.

9 BY MR. RYMAN:

10 Q And in regard to the Walker River Paiute Tribe's response
11 to the August survey, these people volunteered, correct?

12 A They did.

13 Q Are you familiar with self-selection bias?

14 A What document are you reading from?

15 Q My personal notes, sir.

16 Are you familiar with self-selection bias?

17 A As defined by who?

18 Q So, are you familiar with self-selection bias or not?

19 A As defined by who? Where is your academic source?

20 Q Have you heard the term -- I guess it's a phrase --
21 self-selection bias before?

22 A In what academic field?

23 THE COURT: It's a general question. Have you
24 heard that term before?

25 THE WITNESS: I don't believe I've heard that

1 exact term, but self-selection, uh, selection bias, yes. When
2 you cannot randomly assign people to experimental treatment,
3 there's going to be selection bias no matter how you conduct
4 the survey.

5 BY MR. RYMAN:

6 Q So self-selection bias exists whenever the group of
7 people being skewed has any form of control over whether to
8 participate, correct?

9 A That would be correct.

10 Q So, that existed here?

11 A It exists in almost every field of social science because
12 you can't tell people to eat a certain product and see how it
13 works.

14 Q And this survey, in particular, was no exception, is
15 that correct?

16 A No exception from the fact that it was folks that showed
17 up and took it. No, there was not an effort to randomly,
18 uh, assign tribal members to whether they were going to be
19 surveyed or not; that is correct.

20 Q And those people were paid, is that correct?

21 A They were.

22 Q Tell me about the raffle.

23 A Simply, that their name went into a raffle for \$150,
24 amongst all of the survey respondents in all of Nevada.

25 Q And how was that paid?

1 A Pardon?

2 Q Oh, I'm sorry. There wasn't \$150 for the Washoe or for
3 the Walker River Paiute Tribe?

4 A No.

5 Q It was \$150 for the whole State?

6 A Yes.

7 Q Oh.

8 And as I understood your testimony earlier, paying
9 survey participants is no different from something that
10 American enterprise does all the time to offer gifts, is
11 that correct?

12 A That is true.

13 Q Tell me about American enterprise?

14 A Business?

15 Q What is it? I'm not familiar with the entity.

16 A American free enterprise, sir.

17 Q Is that what you were talking about?

18 A Yes.

19 Q Explain to me your testimony again about how that
20 justifies giving -- paying survey recipients in this case.

21 A I'm saying survey research is conducted in United States
22 by business all the time offering small compensation for the
23 survey recipients' time to answer the survey.

24 Q And are those surveys used as the basis for lawsuits
25 against public entities?

1 A I'm not aware. But I would point out, again, that this
2 was conducted and overseen by a full tenured professor in
3 political science from Claremont Graduate University, who got
4 her Ph.D. in Political Science from MIT.

5 Q And did you speak to her in formulating these questions?

6 A She formulated the questions.

7 Q And you've never spoken with her about formulating
8 questions?

9 A We provided limited input in how one might actually
10 conduct the survey on American Indian reservations. But in
11 terms of the formulation of the questions, no, I did not
12 formulate the questions in the August survey.

13 Q So you have no idea what Dr. Schroedel did to eliminate
14 selection bias in this survey?

15 A That would be correct; I don't know what she did to
16 eliminate the bias.

17 Q You just don't know?

18 A I don't know.

19 Q Me neither.

20 Let's look at the survey itself. And I believe
21 it's exhibit 51, if you need to turn to it. This is the form
22 survey that's been admitted, the NAVRCDIG survey tool.

23 A Uh-huh.

24 Q There's a, well, I guess two-paragraph passage at the
25 beginning that appears to be directed to someone to, quote,

1 read out loud.

2 Do you see that?

3 A Yes.

4 Q Would you read that out loud for me.

5 A Read this out loud? "Hi, my name is, and I'm here
6 because the Native American Voting Rights Coalition wants
7 to --"

8 COURT REPORTER: Slow down.

9 MR. RYMAN: Slowly for our court reporter.

10 THE WITNESS: "I'm here because the Native
11 American Voting Rights Coalition wants to answer some very
12 important questions about how easy or hard it is for native
13 people to vote. We want to discover what your experiences
14 have been. This will take about 20 to 25 minutes."

15 Q Next paragraph, please.

16 A "We know your time is valuable, so we will give you \$15
17 as compensation. All of your responses will be kept strictly
18 confidential.

19 "Thanks again for participating in the survey. If,
20 at the end of the survey you want to be included in the
21 drawing to win the \$150, we will ask that you give us your
22 name and contact information. Also, we might want to contact
23 you later if we need to clarify some of your answers."

24 Q Thank you, Mr. Healy.

25 One of those sentences said, quote, "all of your

1 responses will be kept strictly confidential."

2 Did I read that correctly?

3 A Yes.

4 Q And you interpret that to mean simply the last page where
5 they put their name, is that correct?

6 A Yes, their data is confidential.

7 Q Now do you not consider the responses to all of the
8 questions in this survey to be responses?

9 A If you look at page 10 of the survey, at the bottom of
10 page 10: "I hereby give my permission for my responses to the
11 survey questions to be used, so long as all my identifying
12 information is removed." That was done.

13 Q And it's your testimony that those were signed, even
14 though we don't have any of them, apparently, in our exhibits,
15 is that correct?

16 A They have been, uh, destroyed once the raffle, when it
17 was taken.

18 Q Oh, those don't even exist anymore?

19 A They don't. Again, protecting the confidentiality of the
20 survey responders.

21 Q Mr. Healy, have you had the opportunity to review the
22 affidavit of my client, Chris Nepper, of Mineral County,
23 Clerk-Treasurer, that was submitted, along with the Mineral
24 County's opposition brief?

25 A Do you have the document with you?

1 Q I do, but I just want to know if you've had an
2 opportunity to review it.

3 A Which document are you talking about?

4 Q The affidavit of Mineral County Clerk-Treasurer,
5 Christopher Nepper, that was submitted along with the Mineral
6 County's opposition to the Emergency Motion For Preliminary
7 Injunction?

8 A I did glance at it.

9 Q Excuse me. That's a long document title.

10 In that document, my client asserts that Mineral
11 County's budget for the entire 2016 General Election is less
12 than \$14,000.

13 Did you see that document?

14 A Can I look at the document?

15 Q Sure. It -- actually, Mr. Healy, I don't have any pages
16 that I haven't written on.

17 THE COURT: I have --

18 MR. RYMAN: Whether you're familiar with that or
19 not --

20 THE COURT: I have an electronic document.

21 MR. RYMAN: Oh, thank you, Your Honor. You've
22 bailed me out again.

23 THE COURT: Do you have the docket number? I
24 can look it up.

25 MR. RYMAN: I do. It's 39, according to my

1 colleagues.

2 MS. STORY: It's actually 40.

3 MR. RYMAN: 40.

4 THE COURT: 40 dash what?

5 MS. STORY: It's stand-alone 40.

6 MR. RYMAN: I filed it as a separate affidavit.

7 THE COURT: It's -- hang on. Let me verify.

8 THE CLERK: Your Honor, it's 40 dash -- it's the
9 very first --

10 THE COURT: 40-1?

11 THE CLERK: 40-1 -- no, actually, 40, period.

12 THE COURT: Are there exhibits attached to it?

13 THE CLERK: Correct.

14 MR. RYMAN: Your clerk was not especially
15 pleased with how I filed that.

16 And, specifically, page 6, Your Honor.

17 THE WITNESS: Thank you.

18 (Witness reviews document.)

19 BY MR. RYMAN:

20 Q Mr. Healy, take your time to read page 6 for me.

21 MR. SANDVEN: Your Honor, can we throw that on
22 the screen? I don't have that document with me.

23 THE COURT: I'm not able to put it on the
24 screen. I just have it on my iPad.

25 Do you have a copy of the responses? It's attached.

1 MR. SANDVEN: Not all the affidavits. If I
2 could get --

3 MR. RYMAN: I'll share with Mr. Sandven,
4 Your Honor.

5 BY MR. RYMAN:

6 Q Mr. Healy, can you still hear me?

7 A I can.

8 Q If you'll go to line 10, after you've had a chance to
9 review it, you'll see that my client, Mr. Nepper, estimated
10 or indicated that the total election budget -- thank you,
11 Mr. Sandven -- the total election budget for Mineral County
12 is \$13,685.

13 Do you see that?

14 A Yeah, I see that he states that.

15 Q Do you dispute that's the total election budget for
16 Mineral County?

17 A I would have to know how he calibrated -- calculated
18 numbers. For example, does that include only the extra
19 expenses above and beyond the salaries for himself, for the
20 folks that work in his office? Does that include overhead of
21 a depreciation on election machinery?

22 What is included in that estimate?

23 Q Well, the way he calculated it was to look at the
24 election budget, which is exhibit 8 to that affidavit. And
25 do you see that it reads 13,685?

1 A Okay. But was that election budget for extra expenses?
2 Did it include the internal costs of him operating the
3 Clerk-Treasurer office and the staffing that goes along with
4 that, given that that is the office at which folks can
5 register to vote and early vote?

6 Q So you do dispute that number? You think it may be
7 higher?

8 A Well, of course, unless he's accounted for all costs, it
9 likely is a fair amount higher than that.

10 Q Okay. We'll ask him about that.

11 Let's look at line 5 --

12 A Okay.

13 Q -- where he has estimated, in response to your estimate,
14 4,777.48 as what it would cost to comply with the request for
15 additional early voting and voter registration.

16 Do you see that?

17 A I see that.

18 Q And do you dispute that number?

19 A I have no idea how he calculated it.

20 Q You calculated that number, correct -- or a number?

21 A Yes. But in exhibit 26, I actually outlined all of
22 the assumptions, salary levels, hours. I actually put a
23 spreadsheet together.

24 Q I see. And your number, ultimately, was 42,097.80 is
25 that correct?

1 A Yes.

2 Q Are you aware of the Nevada law that requires submission
3 of an election plan to the State by a certain date?

4 A I believe I saw that in one of the filings.

5 Q Were you aware of it before you helped Mr. Sandven make
6 Sanchez make this request of the County?

7 A I was not.

8 Q Had you known about that date, would you have helped him
9 make the request earlier?

10 A Not necessarily. Actually, Chris Nepper, Clerk Nepper,
11 rather, in his August 14th e-mail, never once suggested that
12 it was too late. Actually, he suggested happy to talk about
13 the request.

14 Q Why did you not disclose the survey results to Mr. Nepper
15 in that request?

16 A Why would I have done that?

17 Q Why did you not do it because the survey would be helpful
18 to him in his consideration of these things, don't you think?

19 A I don't understand your question.

20 Q Do you think it would have been helpful for Mr. Nepper
21 to have known about all of the data that you had compiled in
22 considering whether to grant or deny Mr. Sanchez' request for
23 additional early voting and voting registration?

24 A How would that survey data have helped him?

25 Q Do you not think it's relevant to the request, the

1 information from the survey?

2 A The request when it happened?

3 Q Yes.

4 A What part of the survey do you think would have been
5 helpful?

6 Q Why did you not present the survey to Mr. Nepper?

7 A Again, why would I have?

8 Q Let's talk about Mr. Nepper's considerations.

9 You disagree that an election budget is an important
10 concern for the Clerk-Treasurer?

11 A Yes.

12 Q Why?

13 A Because he has to operate on a budget.

14 Q So you agree that it's an important concern?

15 A I agree it's important concern to him, not to whether
16 or not there is an unequal access to the ballot box for the
17 tribal members living on the Walker River Reservation.

18 Q Okay. Just to clarify, because my original question was
19 poor.

20 You do agree that the budget is an important concern
21 to Mr. Nepper?

22 A The budget, to Mr. Nepper, I'm sure is important to him.

23 Q What about security, ballot security? Do you agree that
24 ballot security is an important concern to Mr. Nepper?

25 A Of course it would be. And as expressed in one of the

1 exhibits earlier, there is a place on the Walker River Tribal
2 Reservation in which security is not a problem.

3 Q What I --

4 A In fact, if you review the manual from Mineral County,
5 it lays out the security needed and whatnot, and it's not
6 that difficult.

7 Q How about compliance with Nevada law? Do you agree
8 that compliance with Nevada law is an important concern for
9 Mr. Nepper?

10 A As is compliance with federal law is important.

11 Q So, yes, you do?

12 A In conjunction, it is important to follow federal law.
13 It's important to follow State law.

14 Q And in order to do that, Mr. Nepper would need to
15 understand if someone believed there was some type of
16 disparity in racial ability to vote on the reservation?

17 Do you dispute that statement?

18 A Are you stating that he should -- uh, that someone else
19 has to point it out to him? Is that what you're asking?

20 Q I am. If someone did a survey that they now come here
21 and state the federal court should issue an injunction based
22 upon, why would that not be provided to my client for
23 consideration?

24 A What part of the survey would have helped him make that
25 determination differently?

1 Q Let me ask this question. Do you think that any portions
2 of the data gathered by the August survey are relevant to
3 whether early voting should be allowed on the reservation?

4 A Perhaps.

5 Q Which ones?

6 A I'd have to review the survey.

7 Q Then why didn't you provide them to my client before
8 today?

9 A It was a request in August. It wasn't a provide this or
10 we'll sue letter. It was a -- we were requesting, in Chairman
11 Sanchez' words, in-person voter registration site on the
12 Walker River Reservation, and an in-person early voting site
13 on the Walker River Reservation. It was not respond or else.
14 It was this is what we'd prefer.

15 So, why would one present data with a request like
16 that? The data that was in the request, sir, was the mileage,
17 the differential access that's evident, clearly, in a 70-mile
18 roundtrip that in order to register to vote in-person or to
19 vote in-person has those burdens to bear.

20 Additionally, especially for voter registration,
21 after October 8th, you no longer can register to vote unless
22 you drive to Hawthorne.

23 And I also learned along the way that at the Mineral
24 County courthouse, the last two days of the voter registration
25 period are extended by a couple of hours, from 5:00 to

1 7:00 p.m., on both the Monday and Tuesday at the close of
2 registration. So the facts that were in front of Mr. Nepper
3 in the request in early August were that there was a 70-mile
4 disparity, a harder burden, if you will, for tribal members
5 to make that journey. That is self-evident.

6 Q And then we don't need the survey to understand that?

7 A You don't need the survey. You can use Google Map to
8 determine it's a 68- or 70-mile roundtrip, depending on which
9 side of Hawthorne. I drive it from the courthouse. It's a
10 35-mile trip to the Edge of Schurz, but the reality is you
11 don't need a survey to tell you how far it is.

12 Q Even so, I still have a couple questions about your
13 survey.

14 Let's talk about the September survey which, which I
15 believe has been provisionally admitted as exhibit 60, because
16 we don't have any blank copies. You testified that a certain
17 percentage of respondents could not identify the appropriate
18 website to go to register to vote, is that correct?

19 A What are you -- which questions are you referring to?

20 Q I will be referring to question E.

21 A Okay. What was the question?

22 Q You earlier testified that a certain percentage of
23 respondents could not properly identify the website to
24 register to vote, is that correct?

25 A Correct.

1 Q What did they have to do to identify that website?

2 A Simply identify whether it's a Secretary of State's
3 website or State of Nevada. I also counted that as a positive
4 answer.

5 Q And the survey question actually only lists two
6 responses, correct?

7 A Yes. Name the address, or don't know.

8 Q And, actually, it says, quote, website address with a
9 blank, is that correct?

10 A Yes.

11 Q Were they required to type in HTTP, colon, back slash,
12 back slash, whatever the Secretary of State's website was?

13 A No. Actually, as I said, we accepted State of Nevada,
14 Secretary of State. Any response that indicated they had any
15 idea at all. Most, actually, checked don't know.

16 Q And who told them that they could simply list, quote,
17 Secretary of State there?

18 A Who told them that?

19 Q That's my question.

20 A The document speaks for itself. It asks the question
21 that way.

22 Q Could it reasonably be interpreted by a surveying
23 respondent that they needed to type in a complicated web
24 address there to answer that question affirmatively?

25 A Hypothetically, perhaps.

1 Q Could that have contributed to some type of error in this
2 survey?

3 A I don't think so. And here's why. If you go to question
4 C or, actually, rather, question D: "Do you know how to
5 register to vote online?"

6 That didn't require you to type in a single URL or
7 anything. It just asked, straightforward, do you know how to
8 register to vote online? And an overwhelming majority of the
9 tribal members in the Walker River Reservation declined, said
10 they did not know.

11 Q Did you ever ask them if they had Googled which website
12 to register?

13 A No. We had not asked them if they knew how to use
14 Google. But some of the other data, less than 10 percent of
15 the tribal members that responded said they even had internet
16 connections in the house.

17 Q There was a line of questioning earlier from Mr. Sandven
18 regarding the fear of felony issue.

19 Do you recall that?

20 A I do.

21 Q And, apparently, you asked the Lyon County Clerk as to
22 the definition of how the statute was interpreted, is that --
23 am I saying that correctly?

24 A I did. I also asked the Washoe County Registrar of
25 Voters.

1 Q Do you know whether either of those entities have
2 jurisdiction over crimes committed on tribal land?

3 A I'm not certain because Nevada is Public Law 280 State.
4 I am uncertain as to that exact issue.

5 Q You testified earlier, in regard to exhibit number 50,
6 that there was, apparently, a Nye County prosecution for this
7 felony crime, is that correct?

8 A Yes.

9 Q Do you know whether the Nye County prosecution occurred
10 on tribal land?

11 A I do not know that.

12 Q Have you been to the Schurz Tribal Community Centers?

13 A Been to the tribal administration building and, yes, to
14 the Community Center, where they hold community feeds. I have
15 been there.

16 Q Do you know if WiFi is offered there?

17 A I know the tribal administration building has WiFi.

18 Q Public WiFi?

19 A Public as in how?

20 Q As in --

21 A Available?

22 Q WiFi available to the public.

23 A I'm unaware if they make it available outside of the
24 tribal employees.

25 Q I suppose the question would be do you know whether WiFi

1 is available there for tribal members?

2 A I'm unaware whether that is available for tribal members.

3 Q What about computers; do you know if computers are
4 available for tribal member use?

5 A Where?

6 Q At the Tribal Community Center in Walker River Paiute
7 Tribe?

8 A Not in the community -- not in the center that I was at,
9 which is right behind the tribal administration building. No,
10 there's no computers in there that I'm aware of.

11 Q And you are aware that the two plaintiffs who reside in
12 Mineral County are already registered to vote, is that
13 correct?

14 A I am aware of that.

15 Q Are you aware of the current voter registration members
16 in Schurz?

17 A Current as in where? As when?

18 Q As of yesterday, five o'clock, for instance.

19 A I do not know.

20 Q What about Mineral County; do you have any idea in
21 Mineral County?

22 A I do not.

23 Q Regarding exhibit 31-B, which has to do with survey
24 responses regarding trusting mail-in ballots --

25 A Okay.

1 Q -- you would agree that that's not relevant to Schurz,
2 correct?

3 A I would agree what?

4 Q Schurz is not a mail-in precinct; do you understand
5 that?

6 A I don't think you understand. This question was
7 whether you trusted using a mail-in ballot, which you can
8 still do from Schurz, even though there is Election Day
9 voting available.

10 Q I see.

11 A This question was, of course, designed for a broader
12 audience, whether you trust using the mail to participate in
13 the electoral process. Specifically, here, the question posed
14 is if you mail your ballot in, how much trust do you have that
15 your vote will be counted.

16 Q I see. And what does that have to do with Schurz?

17 A Voters in Schurz can cast a mail-in ballot, correct?

18 Q You tell me.

19 A Well, I know that they can. Do you know that they can?

20 Q And what does this question have to do with voters in
21 Schurz, sir?

22 A Voters in Schurz asked -- actually, Walker River Paiute
23 tribal members, not all of them, obviously, reside in
24 Schurz. But, nonetheless, tribal members in the Walker River
25 Reservation, asked whether they trust a mail-in ballot said

1 no, by an overwhelming, nearly 80 percent response. So, it
2 certainly affects the voters in Schurz who can cast a mail-in
3 ballot.

4 Q There was an allegation in plaintiff's motion that,
5 quote, no Indian has ever been elected to office in either
6 Washoe or Mineral County.

7 Were you familiar with that allegation?

8 A I believe I saw that.

9 Q Did you do anything to research that allegation?

10 A I did not.

11 MR. RYMAN: I'm very close, Your Honor.

12 BY MR. RYMAN:

13 Q Mr. Healy, how was it decided to pay \$15 to the survey
14 respondents for the August survey?

15 A That was a broad discussion and, ultimately, cleared by
16 Dr. Jean Schroedel as being academically sound, and of the
17 broader coalition.

18 Q And were you part of that discussion?

19 A I don't believe I, actually, was a part of that specific
20 discussion, no.

21 Q What about the decision to pay, was it \$10 for the
22 September survey?

23 A It was \$10, yes.

24 Q How was the \$10 paid in the September survey?

25 A How was it paid?

1 Q Yes.

2 A It was paid to the survey respondents.

3 Q Cash, credit, check?

4 A It was cash.

5 Q And was that paid when the surveys were completed and
6 returned?

7 A Yes.

8 Q What was the total price of that, if you know?

9 A It looks like there were 65 at Pyramid Lake, that would
10 be about \$650; and of 61 at Walker River, about another \$610.

11 Q Just multiply by 10.

12 Was anybody else paid for surveys, other than the
13 61 respondents from the Walker Lake -- Walker River?

14 A How do you mean?

15 Q Did anybody else get paid for the survey?

16 A That's all the folks that took the survey.

17 Q Okay. So, no, no one else got paid for the survey?

18 A No.

19 Q How was the \$10 decided upon for September?

20 A I made that evaluation based on the August survey, that
21 it was a shorter survey. And in fact, that's also how the
22 number of target -- or the goal for the number of respondents
23 was also based on that, based on, again, that broader academic
24 rigorous review for the earlier survey, that 60 was going to
25 be enough at Walker River, et cetera.

1 Q I had --

2 A But, the dollars, I decided that.

3 Q I asked you a number of selection bias questions in
4 regard to the August surveys.

5 What was done to eliminate selection bias in regard
6 to the September surveys?

7 A Followed the exact same protocol as the August surveys.

8 Q So, you don't know?

9 A Pardon?

10 Q You don't know what was done?

11 You testified earlier that you did not know what was
12 done to eliminate selection bias, correct?

13 A I did not know, but I adopted the same protocol.

14 Q Okay. Thank you, Mr. Healy.

15 MR. RYMAN: Thank you, Your Honor.

16 MR. LARGE: I'll try to be brief, Your Honor.

17 **CROSS-EXAMINATION**

18 BY MR. LARGE:

19 Q Mr. Healy, I'm Michael Large on behalf of Washoe County.
20 Good afternoon.

21 A Good afternoon.

22 Q I want to get back to something that opposing -- or my
23 co-counsel asked you in regard to the imposition of who has
24 authority to bring criminal actions for native members on the
25 tribal lands.

1 You mentioned PL 280, is that correct?

2 A I did mention that.

3 Q Are you sure that Nevada is a PL 280 State?

4 A I don't recall.

5 Q Okay. If they were not a PL 280 State, who has
6 jurisdiction to prosecute felonies for any members on the
7 federal -- on the reservations?

8 A I don't quite understand your question. What is it
9 again?

10 Q If Nevada is not a PL 280 State, which I'll represent it
11 is not, who has jurisdiction to prosecute felonies for tribal
12 members on tribal lands?

13 MR. SANDVEN: Objection. That calls for some
14 legal conclusions. This is a pretty complex area of the law,
15 Your Honor.

16 THE COURT: I don't know that it calls for a
17 legal conclusion.

18 You're just trying to say it's the federal
19 government that has the authority, is that correct?

20 MR. LARGE: That's correct, Your Honor.

21 BY MR. LARGE:

22 Q Does the federal government have authority to prosecute
23 felonies?

24 A Yes, it does.

25 Q Did you ask the federal government, the U.S. Attorney's

1 Office, how many voter registration cases they've prosecuted
2 out of Nevada based on the election fraud?

3 A I did not ask them, no.

4 Q Okay.

5 Now, who are you employed by?

6 A Who am I employed by?

7 Q Yes.

8 A I'm self-employed.

9 Q Uh, do you work for the Four Directions group?

10 A I'm a pro bono consultant for Four Directions.

11 Q Okay. How long have you been a pro bono consultant for
12 Four Directions?

13 A Oh, going on about 14 years, I guess.

14 Q And when was your first involvement in Nevada?

15 A 2010.

16 Q And what does that involvement entail?

17 A Voter registration and get out and vote.

18 Q I'm going to draw your attention to your plaintiff's
19 exhibit E, if I may.

20 A E, on that first set A through Y?

21 Q On A through Y.

22 A Okay. For E -- okay.

23 Q You recognize this document?

24 A I do.

25 Q What is it?

1 A It's Resolution 1609 of the Inter-Tribal Council of
2 Nevada.

3 Q What does it do? What does it -- what is its purpose?

4 A It outlines that they like working for Four Directions,
5 along with Carlyle Consulting, to work for enhanced access to
6 the ballot box.

7 Q Okay. Why don't you go over to the third page of that
8 exhibit -- sorry -- exhibit F.

9 A Exhibit F?

10 Okay.

11 Q Do you recognize that document?

12 A I do.

13 Q And what is that one?

14 A It's a -- it's Resolution 16-ICTN 10.

15 Q What is the date of that resolution?

16 A 19th of February, 2016.

17 Q And I'm going to draw your attention to the fifth
18 "whereas" there. It says: "If the State is meeting the
19 requirements of the Voting Right Act for the tribal nations --
20 under Subsection 1 -- including language minority assistance
21 provisions, whether Native American voters are experiencing
22 barriers and/or discriminating in registering to vote, casting
23 a ballot, and are interacting with local election officials,
24 what motivates..." et cetera.

25 Do you see that?

1 A I do.

2 Q Is that what you're doing today?

3 A What are you asking about?

4 Q Is this Inter-Tribal Council memo outlining what Four
5 Directions was employed to do?

6 A Nobody employed Four Directions by the Inter-Tribal
7 Council of Nevada. I think you must understand what kind of
8 resources they have.

9 Q So, they enter a Resolution --

10 A Yes.

11 Q -- to work with Four Directions on behalf of tribes in
12 Nevada?

13 A Yes.

14 Q And it has no force and effect?

15 A No, very little, because tribal governments still
16 have sovereignty over their own reservations, even if they
17 belong to Inter-Tribal Council of Nevada, which is a, I think,
18 501(c)(3) -- I'm not certain. But, it is a inner tribal
19 organization not with any authority over tribal members or
20 tribal lands.

21 Q So in your pro bono efforts on behalf of -- as a pro bono
22 expert for Four Directions, you're not charging anything?

23 A Not charging anything to who?

24 Q The Tribe; to either Pyramid Lake Tribe, or the Walker
25 River Tribe?

1 A No, not a dime to the Tribe.

2 Q Are you charging anything to Four Directions?

3 A No.

4 Q Are you charging anything to the Inter-Tribal Council of
5 Nevada?

6 A No.

7 Q When were you first aware of this Resolution?

8 A In -- well, the date of it, shortly after that, because
9 O.J. Semans had gone to that Inter-Tribal Council of Nevada
10 meeting late February.

11 Q So between February 19th, 2016 and August 9th or 10th,
12 when you met -- first came to Washoe County, what was Four
13 Directions doing to make sure that Native American rights and
14 in-person voter registration, early voting, and Election Day
15 voting was accomplished pursuant to this directive?

16 A Which resolution are you talking about?

17 Q Resolution F.

18 A Is it 16 ITCN 10?

19 Q Yes.

20 A Okay. And the question, again, was what we were doing?

21 Q What were you and Four Directions doing for the last six
22 months in terms of providing notice to the Washoe County or
23 the State of Nevada, or Mineral County for that matter, in
24 terms of getting election in-person registration, early voting
25 and Election Day voting?

1 A We had not talked to Washoe County.

2 Q Why not?

3 A Pardon? Why not? Well, in part, I live in South Dakota,
4 so it's not just always a trot down the road. Secondly, we
5 were working with tribes to see what their level of engagement
6 is, and sometimes tribal leaders have other things that are
7 more important and it slips further down the priority list.
8 ITCN, again, doesn't have authority over tribal governments or
9 tribal members or tribal leaders.

10 Q When was the first time you reached out to the Pyramid
11 Lake tribe in regard to early vote -- or early voting on
12 Pyramid Lake?

13 A I had a discussion with Chairman Hawley at, I believe it
14 was May 20th, at an ITCN meeting in Reno.

15 Q And did you contact Washoe County in regard to that
16 conversation at that time?

17 A I think my testimony is pretty clear. The first time I
18 had a conversation with Washoe County was on the 9th of
19 August. Because had I done that before, then I would have
20 known that Kate Saylin wasn't the Registrar of Voters.

21 Q Okay.

22 I want to talk about the Pyramid Lake Tribe
23 and especially, in particular, Washoe County, with the
24 registration, the in-person registration.

25 Do you know of any other sites in Washoe County that

1 have in-person registration from October 9th to October 18th?

2 A I do not.

3 Q So it's only the Registrar's Office that has in-person
4 registration from October 9th to October 18th in Washoe
5 County?

6 A That's my understanding.

7 Q Okay. Now, the letter that was sent, that you helped
8 draft on behalf of Pyramid Lake, from the chairman of the
9 Tribe to Washoe County requesting an in-person registration
10 site.

11 Do you remember that letter?

12 A Yeah. I'm going to go to it, if I can --

13 Q Please.

14 A -- in the book.

15 Q Exhibit I.

16 A Okay.

17 Q Oh, I'm sorry --

18 A Exhibit 4 in the book I've got.

19 Q I've got exhibit J.

20 A To be clear, we're talking about the letter dated
21 August 10th from Pyramid Lake to the Washoe County
22 Commissioners and Luanne Cutler?

23 Q Yes.

24 A Okay.

25 Q Do you see where it says, "We request that Washoe County

1 provide a satellite voter registration office for the 2016
2 General Election staffed by the Registrar of Voters Office on
3 our reservation in Nixon, Nevada."

4 Do you see that?

5 A I see it.

6 Q Do you know of anywhere else in Washoe County that has
7 that access, that has a voter registration office?

8 A I do not. I'm not aware of one.

9 Q Do you know how many employees the Registrar of Voters
10 has?

11 A Yes, actually, I do.

12 Q How many?

13 A Six.

14 Q Including the Registrar?

15 A I think so.

16 Q In either the August or the September -- strike that.

17 What percentage of Pyramid Lake tribal members
18 aren't registered to vote?

19 A I don't know that.

20 Q What percentage of Pyramid Lake tribal members don't have
21 a driver's license?

22 A I don't know that.

23 Q What percentage don't have a Nevada I.D.?

24 A I don't know that either.

25 Q I want to turn your attention to exhibit 26 really quick,

1 if I may.

2 A Is that on the numbered system I've got?

3 Q Yes.

4 A What is the exhibit?

5 Q The spreadsheet that you created.

6 A Okay.

7 Q The first line item is just "voter registration." How
8 did you determine that?

9 A The number of hours that was in the Pyramid Lake request,
10 which was for the last eight days of the voter registration
11 period, two of those days would have fallen on the 6th and 7th
12 of October. The remainder of that request, the six days,
13 would have fallen, whether mailed in or in-person -- mailed
14 in or registration out in the field, would no longer be
15 sufficient, so it would have been the six days plus the two,
16 72 hours in total, I think -- not think -- using courthouse
17 hours as the place. So, eight days times nine hours,
18 8:00 a.m. until 5:00 p.m. And, \$11 per hour, assuming that
19 you would have one person out there being able to do voter
20 registration under the supervision and authority of the
21 County as a temporary employee, much like all of the temporary
22 employees for all of the early voting sites in Washoe.

23 Q Are you aware of what a voter registration database is?

24 A I am.

25 Q Do you understand the security in regard to voter

1 registration databases?

2 A I do, but that is irrelevant in this consideration
3 because with a phone and/or fax, or even a Smartphone, a
4 voter registration person could be at a remote location
5 and communicate back with the folks at the County office
6 and make this work.

7 Q So the six employees that we have in the County --

8 A Uh-huh.

9 Q -- one of them you want out there in Nixon?

10 A That's not what I said and that's not what --

11 Q Let's turn to exhibit 2-J then. We want --

12 A Exhibit J?

13 Q Exhibit J to the letter again --

14 A Yeah.

15 Q -- the Pyramid Lake letter.

16 A Yep.

17 Q "Staffed by the Registrar of Voters Office." Are you
18 aware of that?

19 A Yes.

20 Q So you want a member of the Registrar of Voters Office in
21 Nixon, Nevada, to register voters?

22 A That's a pretty narrow interpretation. Similar, you
23 have about 22, uh, early voting sites, 21 of them outside the
24 Registrar's Office. So, minimally, you got 63 temporary
25 employees of the County working early voting sites. That's

1 exactly what could happen for a voter registration site,
2 having a temporary employee -- not one of the six -- but
3 working under the supervision, under the responsibility of
4 the County office. That's what we're talking about.

5 Q Okay. Are you aware of Nevada law, in terms of the
6 registrar opening an auxiliary office?

7 A I'm not aware.

8 Q Did you articulate to Ms. Cutler, at your meeting on
9 August the 22nd, that all you wanted was a temporary employee
10 out there?

11 A I didn't meet with her on the 22nd.

12 Q Or the 20 -- was it the 23rd?

13 A I met with her on the 23rd and the 24th.

14 Q On either of those days, did you say that all you wanted
15 was a temporary employee out there?

16 A The conversation never got that far because when I was
17 articulating the request, she said that, uh, that there is
18 just no way to do a registration site out there and she
19 offered field -- offered training for field registrars as an
20 alternative to in-person voter registration for the period of
21 the request of Pyramid Lake -- which I would further note six
22 of those days were during a period when a field registrar
23 wouldn't have been of any use whatsoever. And when I further
24 inquired, even on the field registrar, whether that would
25 be a paid position by the County, or that there were field

1 registrars available, she indicated, no, that it would not.
2 We would have to find a volunteer that was willing to work for
3 free that could be a field registrar. Again, that wouldn't
4 help with the October 9th to October 18th period.

5 We did actually find someone to volunteer and fill
6 that role. Her name is Janet Davis. And we are, hopefully,
7 trying to get as many registered voters as we can out there.

8 And when Janet Davis called the Washoe County
9 Registrar of Voters Office, she was informed that the field
10 registrar training was already over. That it was scheduled
11 on the 2nd and 11th of August, which was prior to the
12 conversation I had with Registrar Cutler on the 23rd.

13 Now, to Registrar Cutler's great credit, when I met
14 with her in September, I believe it was September 23rd, and
15 asked is that, is that actually there's no training available
16 at all? And at that point, at that meeting, she told me I
17 needed to talk to Heather and that I could, perhaps, put
18 Janet Davis in touch with Heather to get that field registrar
19 designation, as to avoid that box 14 felony problem.

20 She also did suggest --

21 Q I appreciate the narrative, but why don't you answer the
22 question that I asked, which was did you, on your meeting on
23 August 23rd or 24th, ever say that all you wanted was a
24 temporary employee?

25 A I don't recall.

1 Q Okay. In terms of your surveys in August 10th and 11th
2 from the Pyramid Lake Paiute Tribe, how many of those
3 respondents are from Sutcliffe?

4 A I do not know. I haven't fully analyzed the data.

5 Q How many are from Wadsworth?

6 A This is a rough estimate because we did two days of
7 surveys. The first day was at Tribal Council Chambers in
8 Nixon at the Tribal Capitol, and 127 surveys were collected
9 from there. The next day, over in Wadsworth, at the Community
10 Center there, I believe 172 additional surveys were collected
11 there.

12 Q And how many of those respondents live in Nixon?

13 A I do not know. It was, uh -- the surveys were conducted
14 at those two locations. We didn't have a screen on where they
15 lived in order to be able to participate.

16 Q On the September 22nd, 2016 Pyramid Lake survey, how many
17 of those respondents were from Sutcliffe?

18 A Not aware.

19 Q How many were from Wadsworth?

20 A Not aware.

21 Q How many were from Nixon?

22 A Not aware. We screened for Pyramid Lake Paiute members,
23 not geo-location.

24 Q Do you know what the closest early voting site to
25 Sutcliffe is?

1 A I don't. I suspect it's little bit shorter than 96
2 miles.

3 Q Do you know what the earliest -- what the closest early
4 voting site to Wadsworth is?

5 A Again, not sure, but it will be somewhat closer than
6 Nixon, because Nixon is 16 miles from Wadsworth. Wadsworth
7 is right on I-80.

8 Q Do you understand that there is an Election Day polling
9 place at Nash's Elementary School in Wadsworth.

10 A I am aware of it. That is a 32-mile roundtrip to the
11 folks that live in Nixon.

12 Q So, 16 miles one way?

13 A Yes.

14 Q Okay.

15 MR. LARGE: No further questions.

16 **CROSS-EXAMINATION**

17 BY MS. STORY:

18 Q Good afternoon, Mr. Healy. I'm Lori Story and I
19 represent the Secretary of State's Office.

20 A Good afternoon.

21 Q And I work with the Attorney General's Office.

22 You testified that your educational background is in
23 animal sciences, is that correct?

24 A It is.

25 Q And during your studies of animal sciences, what classes

1 did you take in drafting and conducting surveys?

2 A You mean for social science, uh, research?

3 Q Sure.

4 A None.

5 Q What training have you had in drafting and surveying
6 questions?

7 A Again, I followed the protocols that were enacted for the
8 August survey that was overseen, again, by a full tenured
9 professor at Claremont Graduate University, Dr. Jean
10 Schroedel.

11 Q Which you testified you didn't know what protocols those
12 were?

13 A Didn't know what she had done relative to selection bias.
14 In terms of the practical conduct of the survey, how
15 all that came together, I worked with her two weeks straight
16 as we did surveys in Nevada and in South Dakota.

17 Q And did you talk about how to frame questions to, uh,
18 obtain a particular answer?

19 A No, I did not.

20 Q So how many -- how were the participants chosen at the
21 Pyramid Lake Reservation for the August survey?

22 A How were they chosen?

23 Q Uh-huh.

24 A Those that volunteered that showed up either on -- in
25 Nixon, Nevada, on August 10th, or in Wadsworth, Nevada, on

1 August 11th.

2 Q And how were they asked to volunteer and show up?

3 A That was mostly word of mouth.

4 Q And what -- who spread the word of mouth?

5 A Tribal members.

6 Q And what was the word of mouth that was spread?

7 A That there's a survey.

8 Q About?

9 A About voting. And, and, clearly, that there -- they
10 would be able to be compensated for their time. \$15 on the
11 Paiute Reservation in Nevada, at Pyramid Lake and at Walker
12 River, and at reservations in South Dakota, that's a
13 meaningful amount of money.

14 Q What were they instructed to do in order to volunteer
15 and participate?

16 A They showed up at the Tribal Council chambers on August
17 10th, which is where the survey was being given; and on August
18 11th, at Wadsworth at the Community Center.

19 Q So they were all gathered into one room?

20 A No, it was about four-and-a-half hours at Nixon, Nevada,
21 so, a number of folks rolling over. It wasn't folks all in a
22 room at one time, by any stretch. And at Wadsworth the same;
23 for over six hours. So, roughly, 25 to 30 people an hour were
24 arriving at the Community Center and completing the surveys.

25 Q Who devised the message that was spread word of mouth to

1 the particular -- or potential participants?

2 A Tribal members.

3 Q Who told them?

4 A I don't know. I wasn't --

5 Q Message --

6 A -- wasn't part of those conversations of word of mouth.

7 Q So, you testified you were the field manager for these
8 surveys?

9 A Yes. We set the time and where we would be collecting
10 the surveys. We did do that.

11 Q And so what --

12 A And, we worked with tribal leaders to obtain further
13 permission beyond the ITCN resolution from February that we
14 could, in fact, do the survey research on their tribal lands.

15 Q And when you say "we," who are you talking about?

16 A The Native American Voting Rights Coalition. But, on the
17 ground in Nevada, that consisted of myself, Alvin Moyle --
18 albeit as an honorary member of the coalition. He helped
19 with discussion discussions with lots of Tribal leaders.
20 O.J. Semans' daughter, Donna Semans had traveled to Nevada to
21 help with the surveys. Dr. Jean Schroedel from Claremont
22 Graduate University helped in the field with the survey.
23 She also, as earlier testimony, helped devised the survey
24 instrument. And, seven graduate students in the social
25 sciences from Claremont Graduate University participated --

1 Q I asked you about field management.

2 A You just did ask me about field management. All those --

3 Q Yes. And are all those people --

4 A All those people were involved in managing the instrument
5 in the field.

6 Q Okay. So you, you testified that you offered suggestions
7 to Dr. Schroedel as to how to conduct a survey on tribal land.
8 What, exactly, were those suggestions that you offered?

9 A I don't recall right off the top of my head, but it
10 would have been, for example, that some earlier discussion
11 that it would be a one-on-one interview, that that was
12 probably not going to work just because of the resistance
13 of tribal members to wait an hour to two hours in line to
14 participate in a survey. So we discussed it, made sure
15 that it was academically rigorous, that the proposed way of
16 having tribal members, in their own handwriting, fill out the
17 surveys, rather than doing it in an interview process, that
18 was a suggestion of mine that she adopted.

19 Q So, I recall reading in the brief that, originally,
20 the survey was filled out by the workers, is that correct?

21 A Pardon?

22 Q I -- originally, I read in one of the briefs that the
23 original surveys were conducted by the surveyors reading the
24 questions and filling out the questions themselves, is that
25 correct?

1 A No, that's not correct. And in fact, we very quickly,
2 threw that process out the door. But, as with any project,
3 money costs money, so most of the time the -- that portion was
4 crossed out.

5 I actually managed the very first 12 surveys that
6 were taken. They were taken at the Inter-Tribal Council of
7 Nevada. It was actually tribal members that were employees
8 of ITCN. And 12 employees gathered in a conference room and I
9 read the questions, but they were filling out the surveys
10 themselves.

11 And after doing that, and then the next day, doing
12 the same over at the Fallon Paiute Reservation, reading the
13 questions to folks that were filling out the surveys, by the
14 time we got through with the third round of doing it that way
15 over at the Fallon Senior Center outside of Fallon, Nevada, on
16 the Fallon Paiute Shoshone Reservation, it became clear that
17 strategy was no longer going to work, and then we moved to
18 providing guidance questions, if tribal members had questions
19 about the survey, and that they then were filling the surveys
20 out themselves. So the first --

21 Q What was the preamble that -- or instruction that you
22 gave to these people when they first came into the room to
23 take the survey?

24 A That this data was being gathered by the Native American
25 Voting Rights Coalition, wanted to have an idea what

1 experiences they had had with registering to vote, voting,
2 what their attitudes were, what their knowledge base was.

3 Q Did you say experiences or did you say what problems?

4 A I don't recall my exact language. Experiences and
5 attitudes.

6 Q Did you ever search out or do any research to see if
7 there were alternative means of transportation for the members
8 of the Tribe, say, at the Pyramid Lake Tribe?

9 A Alternative transportation from where to where.

10 Q Any public transit from the Tribe into town?

11 A Not aware that there is any.

12 Q Did you ever look at their website?

13 A Uh, Pyramid Lake has some tribal transportation in and
14 amongst, but, ma'am, I think you're suggesting that the Tribe
15 needs to pick up the cost for the County and the State --

16 Q I'm not suggesting anything, sir. I'm just asking if you
17 ever looked at their website --

18 A I did not.

19 Q -- or if you ever investigated whether there were
20 other methods for the members to travel?

21 A I actually saw a Pyramid Lake van owned by the Pyramid
22 Lake Tribe.

23 Q Did you ever do any research as to the availability of
24 public computer and internet in the Paiute Public Library?

25 A No, I did not.

1 Q Did the Secretary of State and any of her staff ever tell
2 you that she had the authority to direct Mr. Nepper or direct
3 the Registrar in Washoe County as to where they should put
4 their polling locations?

5 A I asked whether they had any --

6 Q Did she ever tell you that?

7 A Her office told me that they could step in if the County
8 was not running an election properly, that they had regulatory
9 authority to promulgate rules relative to how elections are
10 conducted.

11 Q Did she tell you that she could tell the County Clerks
12 where to locate their polling places?

13 A She did not use those words.

14 Q Did you she tell you that she had the authority to tell
15 the County Clerks or Registrars where to locate Voter
16 Registrar Offices?

17 A She did not tell me that. But, again, she did
18 tell me -- or her staff told me, I believe it was Wayne Thurly
19 (phonetic), that if an election was not being run correctly,
20 that the Secretary of State could step in to make sure that it
21 was.

22 MS. STORY: Thank you.

23 THE COURT: Mr. Sandven, any brief redirect?

24 **REDIRECT EXAMINATION**

25 BY MR. SANDVEN:

1 Q You don't have -- Mr. Healy, you were asked a lot of
2 questions regarding why didn't you turn over survey results to
3 the County.

4 When did you complete your review of all the
5 survey -- of all the raw data? When was that completed?

6 A Mid September for the first survey.

7 Q So you didn't --

8 A And I did not review all the data. It was only a
9 portion.

10 Q All right. When did you, did you complete your review of
11 data from the second survey?

12 A It would have been within a week of conducting the
13 survey, so by the 29th or 30th of September.

14 Q All right. And it was, approximately, how many pages
15 from the first survey to go ahead and review?

16 A Well, the answer is not the pages, it's the 45 questions
17 times 360, 370 responses to completely -- to review all of the
18 data. Simply not, not doable in the time frame allotted.

19 Q So all you had was the raw data at the time that the
20 requests were initially being made to the Counties on August
21 9th?

22 A Yeah, at that point, I didn't even have all the data in
23 any kind of organized format, hadn't been scanned, et cetera.

24 Q You were asked some questions regarding having a computer
25 at a tribal building or the tribal government building where

1 all the tribal government service occur.

2 A Yes.

3 Q All right. Why is that any different than having a
4 computer at your house?

5 A Well, very simply, the tribal government is not making
6 that computer available to you to step in, interfere with
7 tribal business, and do so. I doubt that any County office
8 would allow random folks from the public to come in to use
9 their computers for voter registration.

10 Q All right. ITCN is an abbreviation for what?

11 A Inter-Tribal Council of Nevada.

12 Q All right. That's a regional tribal chair organization,
13 correct?

14 A It is.

15 Q It consists of the 27 tribes in Nevada?

16 A Yes.

17 Q All right. It was suggested in cross-examination that
18 you didn't move very quick after going ahead and getting that
19 resolution enacted by ITCN, and you didn't start making
20 requests until August 9th.

21 Why did it take you so long?

22 A Well, first, it goes with that pro bono work for Four
23 Directions as a consultant. One actually has to make a living
24 in between things. But, I'd had some conversations with
25 tribal chairman and -- in May -- and then followed up with

1 some e-mail. And as I said, tribal leaders sometimes get busy
2 and I wasn't getting a lot of return responses and whatnot.
3 That changed, of course, when I was on the ground in Nevada
4 and we continued the conversation.

5 Q And the authorities, even though some of the plaintiffs
6 are tribal chairmen, even the tribal chairmen of the tribes,
7 their authorities are limited by the tribal constitution,
8 correct?

9 A They are.

10 Q And that's why you went ahead -- and if you turn to
11 exhibit 36 -- Pyramid Lake, the whole body, the whole
12 governing body went ahead and enacted a resolution?

13 A Is it 36? I've got a different exhibit.

14 Q 39.

15 A Okay.

16 Q All right. So this is an example of a resolution that
17 was obtained regarding supporting a satellite voting location,
18 correct?

19 A Correct.

20 Q All right. You don't get a resolution overnight?

21 A No.

22 Q What's the process?

23 A Well, one -- first of all, it has to get it on the
24 agenda, which can be difficult from time to time. You have to
25 make sure that quorum exists, which sometimes doesn't. And

1 there's a lot other things that have a higher priority than
2 issues that --

3 Q But it's a Tribal government comprised of how many Tribal
4 Council members?

5 A I believe 7 to 9; about, 9 or 10 at Pyramid Lake.

6 Q All right. How are you familiar with this document?

7 A I'm familiar because I presented it at the request of
8 Chairman Hawley. He had a family emergency that evening and I
9 was.

10 Q When did you present it?

11 A Uh, September, September 2nd.

12 Q Was this Tribal Council Resolution enacted?

13 A It was passed and enacted, yes, 6 to 1.

14 Q And how -- where is the certification on this exhibit?

15 A It's on the third page, signed by Brenda Henry, the
16 Tribal Secretary.

17 Q How do you know it is a true and correct copy of the
18 resolution enacted by Pyramid Lake Tribal Council?

19 A Because Linda Henry, the Tribal Secretary, e-mailed it to
20 me later that evening after it had been passed.

21 MR. SANDVEN: Plaintiffs offer exhibit number
22 36, and I'm going to ask questions from it.

23 THE COURT: 36?

24 MR. SANDVEN: 39, Your Honor. 39.

25 THE COURT: Any objection?

1 MS. STORY: No, Your Honor.

2 MR. LARGE: No, Your Honor.

3 MR. RYMAN: None.

4 THE COURT: All right. Exhibit 39 is admitted.

5 (Whereupon, Exhibit 39 -- a document, was received
6 in evidence.)

7 BY MR. SANDVEN:

8 Q Page 3 of 4 of this exhibit.

9 A Okay.

10 Q Third and fourth "whereas"(s). Were there discussions
11 among the elected tribal leaders at Pyramid Lake at this
12 meeting you attended regarding early voting sites?

13 A Yes.

14 Q What was the conversation, briefly.

15 A They thought it was unfair and unequal access for their
16 tribal members as compared to other places in Washoe County.

17 Q Discussion regarding the driving distances in the third
18 whereas?

19 A Yes.

20 Q Fourth whereas, same question?

21 A Yes.

22 Q You talked about the October 9th to 18th period during
23 cross-examination.

24 A Yes.

25 Q Why isn't that -- why was that significant to you? Why

1 were these dates selected, in a nutshell? What --

2 THE COURT: You are talking about the voters
3 registration time frame, aren't you?

4 MR. SANDVEN: Yes, Your Honor.

5 THE COURT: All right. So, what's the question?

6 BY MR. SANDVEN:

7 Q All right. Why, why do you consider that a significant
8 period that wasn't addressed by the Counties' response?

9 A Very simply because that is the last 10 days in which to
10 register to vote in Nevada. And the ways to accomplish that
11 voter registration are greatly curtailed, and put a great
12 burden on tribal members on the Paiute Lake and Walk River
13 Paiute tribal -- or Walker River Paiute Reservations to try
14 to attempt to get to register to vote in that last 10-day
15 period.

16 It's the most valuable territory in an election.
17 Folks get more and more engaged and/or excited about
18 candidates not in August, not in July, but when it gets
19 close to the actual Election Day. Those are the last days
20 in which one can register to vote. If you don't have an
21 opportunity to do so with the online registration tool,
22 you're back to having to take those long trips, that their
23 money is not there, to get to the election -- or get to the
24 election office at the Registrar of Voters Office in Reno, or
25 the Clerk-Treasurer's Office in Hawthorne.

1 And, I think it's further underscored of how
2 important that time frame is when you look at what Mineral
3 County does in adding two extra hours to the 8:00 to 5:00
4 courthouse day for those last two days on the 17th and 18th
5 of October. It's not just nine hours of voter registration
6 availability at the County Clerk's Office. It's 11.

7 Q What exhibit are you referring to there?

8 A I don't -- I'm not certain.

9 Q Do you have your Table of Contents there --

10 THE COURT: Counsel, do you know what exhibit
11 he's referring to?

12 MR. SANDVEN: I'm looking for it right now,
13 Your Honor.

14 THE WITNESS: I think it's exhibit 62 maybe --
15 no, it's not 62. My apologies.

16 MR. SANDVEN: 57, Your Honor.

17 THE COURT: And that exhibit, I don't think, has
18 been admitted.

19 Miss Clerk will tell me.

20 THE CLERK: Which exhibit?

21 MR. SANDVEN: 57. I'm going to ask a couple
22 questions regarding this.

23 THE CLERK: No, Your Honor, that has not.

24 THE COURT: All right.

25 What's the question?

1 BY MR. SANDVEN:

2 Q Are you there?

3 A I am.

4 Q Are these the extended working voting hours that you were
5 just describing?

6 A They are.

7 Q What County?

8 A Mineral.

9 Q How are you familiar with this document?

10 A It was provided to the newspaper. Which the newspaper in
11 which it ran was provided to me, and it is a photocopy of that
12 page where the notice was.

13 Q For the week ending September 22nd, 2016?

14 A I believe so, yes. It's noted at the top of the page.

15 Q And the hours were extended on October 17th from when to
16 when?

17 A 5:00 to 7:00 p.m. So instead of a 9-hour day in order to
18 register to vote, it was extended to 11.

19 Q October 18th, same thing?

20 A Yes.

21 Q You were asked some questions regarding why didn't you,
22 uh, have more communication on the need with the County Clerk?

23 A Correct.

24 Q Do you recall that on the cross-examination?

25 A Yes, I recall being asked.

1 Q All right. Are you aware that there's a duty under NRS
2 293.3561 for the County Clerk to establish criteria, to
3 promulgate rules --

4 A Yes.

5 Q -- for selection of permanent and temporary polling
6 places for early polling by personal appearance?

7 A I'm aware of that.

8 MR. RYMAN: Objection. Foundation.

9 MR. SANDVEN: I'm citing -- I'm asking him if
10 he's aware of a statute.

11 THE COURT: And what's the objection, how he's
12 aware of the statute, is that the foundation objection?

13 MR. RYMAN: It is, Your Honor.

14 THE COURT: All right.

15 What -- how are you aware of the statute, Mr. Healy?

16 THE WITNESS: I actually read it in one of the
17 pleadings in this case.

18 THE COURT: All right. The objection is
19 overruled.

20 BY MR. SANDVEN:

21 Q All right. So the County, they're supposed to go ahead
22 and promulgate rules, aren't they?

23 A Yes.

24 MS. STORY: Objection. This isn't within the
25 scope of the direct or cross-examination.

1 THE COURT: The objection is sustained. It's
2 not. I don't recall any of the defense counsel asking that
3 question for that subject area.

4 MR. SANDVEN: All right.

5 BY MR. SANDVEN:

6 Q When you went ahead and had communication -- or it was
7 during the cross-examination you were asked questions have
8 you talked about early polling locations or early voting
9 locations, why didn't you bring that to the County.

10 Do you recall that?

11 A I recall those questions.

12 Q All right. Was there ever any communication from the
13 County to you that here's the rules on how you do it?

14 MR. LARGE: Objection, Your Honor. That -- same
15 objection.

16 THE WITNESS: No.

17 THE COURT: Hang on.

18 MR. LARGE: It's outside the scope of the
19 cross-examination.

20 THE COURT: Well, it's, arguably, within the
21 scope because it's discussions that he had with County
22 officials.

23 So, the objection is overruled.

24 What's the answer?

25 THE WITNESS: The answer is, no, there was no

1 discussion from County officials on what rules they had setup
2 or criteria. In fact, the conversation I had with Registrar
3 Cutler on the meeting on August 23rd, I asked her who decided
4 where early voting locations were placed. She responded that
5 she was, with some limited input, from County commissioners.

6 BY MR. SANDVEN:

7 Q Please go to exhibit 23 or the exhibit dated September
8 23rd. Let me get there.

9 Exhibit 56.

10 A Okay.

11 Q Second page.

12 A Okay.

13 Q There's a listing of eight rules. Had you heard about
14 those rules before?

15 A No.

16 Q Which of those eight rules did Ms. Cutler describe
17 to you?

18 MR. LARGE: Objection, Your Honor. Calls for
19 hearsay and it's outside the scope of the --

20 THE COURT: This is outside the scope of direct.

21 MR. SANDVEN: Okay. I'll wait for cross, Your
22 Honor.

23 THE COURT: For?

24 MR. SANDVEN: For their witnesses.

25 THE COURT: I'm sorry. This is outside the

1 scope of cross-examination, so the objection is sustained.

2 BY MR. SANDVEN:

3 Q You were asked some questions regarding the election
4 plan. Did you know about the election plan?

5 Do you recall that on cross-examination?

6 A The election plan --

7 THE COURT: There was a question about the
8 deadline to submit election plans, so this is within the scope
9 of the cross-examination -- hang on.

10 THE WITNESS: Okay.

11 THE COURT: This is within the scope of the
12 cross-examination before anyone objects.

13 BY MR. SANDVEN:

14 Q Are you familiar with the dates in the election plan that
15 the defendants raised?

16 A I'm aware of, I think, a document that Chris Nepper had
17 produced.

18 Q All right. Would that election plan still have been at
19 issue -- do you know the election plan date would still have
20 been an issue if they had granted your request instead of
21 stalled on being August 9th?

22 A There are couple different dates that have been noted in
23 some of the pleadings. The earliest is suggesting that the
24 security plan was due and locked in by August 10th; however,
25 not once was I ever made aware of that in any way, shape, or

1 form from any of the County or State officials.

2 MR. SANDVEN: Nothing further.

3 THE COURT: All right. Thank you.

4 Mr. Sandven, do you have any additional witnesses?

5 MR. SANDVEN: No, Your Honor.

6 THE COURT: Do the defendants plan to call
7 witnesses?

8 MR. RYMAN: Your Honor, for Mineral County's
9 perspective, we had intended to submit this on the briefing
10 and Declaration that was already submitted. Unless Your
11 Honor would rather hear from Mr. Nepper as to what's in his
12 declaration, we can go ahead and do that at this time.

13 THE COURT: What about the State?

14 MS. STORY: We don't have any witnesses.

15 THE COURT: County, Washoe County?

16 MR. LARGE: Your Honor, Washoe County is willing
17 to submit this on the briefing as well. Uh, I do have two
18 witnesses that are, potentially, here. One is the Registrar
19 of Voters for Washoe County. The other is an IT specialist
20 that would discuss the in-person registration requirements to
21 put an office in Nixon. But with what's been presented, we'll
22 submit on the briefing.

23 THE COURT: Then I'm going to take a lunch break
24 for an hour. When we return, counsel can make arguments and
25 then I'll ask my questions during argument.

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Thank you.
(Noon recess taken.)

1 Reno, Nevada, Tuesday, October 4, 2016, 2:30 p.m.

2 ---OoO---

3 THE COURT: Please be seated.

4 Mr. Sandven, are you ready to proceed?

5 Why don't you address the standing issue. The
6 Primary argument is that the plaintiffs here are all
7 registered voters. So with respect to the relief that you're
8 requesting as to in-person registration at the two locations,
9 do the plaintiffs really have standing? Because if I deny
10 that relief, what harm would it cause to the individual
11 plaintiffs?

12 MR. SANDVEN: Right. And, Your Honor, I -- in
13 the plaintiff's reply to Mineral County defendants' opposition
14 to plaintiff's Emergency Motion For Preliminary Injunction, we
15 go through an analysis of this issue on standing on page 3.

16 THE COURT: And you said that they may need to
17 update their registration, but there's no evidence that they
18 are -- they need to update their registration. There's no
19 allegation that that's the harm, that they may need to update
20 their registration.

21 MR. SANDVEN: Uh, yeah, to either update, Your
22 Honor, on page 3 --

23 THE COURT: I know what you said in the brief.
24 So, that's my question. There's no evidence that they need
25 to update their registration. You're just saying that they

1 may need to update their registration, which makes their harm
2 speculative, wouldn't it, if there's no evidence that they
3 need to update their registration and cannot do so?

4 MR. SANDVEN: I think that, Your Honor,
5 that vote denial in any government run election is not a
6 hypothetical injury. The ability to have the equal
7 opportunity, equal access to go ahead and go through that
8 particular process, whether it's the two tribal chairman or
9 the three, uh, veteran plaintiffs, whether it's Bobby Sanchez
10 or Johnny Williams, residing in Hawthorne, they should have
11 that opportunity to go ahead and do that.

12 I haven't spent a lot of time --

13 THE COURT: But there's no obligation here
14 that -- it's one thing if they're not registered, I think,
15 because the evidence here is they are registered to vote
16 already. There is no evidence that they need to update their
17 registration and, therefore, would have to do this in person.
18 So, I'm trying to see the connection of the harm with one of
19 the three reliefs they're requesting. I'm not addressing the
20 other relief yet.

21 One of the reliefs requested is that the Court
22 should order the Counties to have in-person voter registration
23 in Nixon and Schurz.

24 MR. SANDVEN: We're able to put on testimony
25 now. Is it too late?

1 THE COURT: Put on testimony as to what?

2 MR. SANDVEN: Uh, we have, uh -- we have the
3 three veterans here. I mean, you would just need testimony
4 regarding whether or not they would be -- they're eager to go
5 ahead, and if there's a need to update their registration.

6 THE COURT: You're saying they may need to
7 update their registration. Do they need to update their
8 registration?

9 MR. SANDVEN: Unknown, Your Honor.

10 THE COURT: I'm sorry. You don't know?

11 MR. SANDVEN: I don't know, Your Honor.

12 THE COURT: All right. Well, you don't want to
13 put them on the stand, do you, because if they say I don't
14 need to update my registration, that would not help --

15 MR. SANDVEN: Yes, Your Honor.

16 THE COURT: -- your argument.

17 MR. SANDVEN: Agreed, Your Honor.

18 THE COURT: All right. So tell me under the
19 Luhan analysis, how do I overcome the standing barrier, if I
20 can? You said you wanted to go through the analysis for
21 standing with respect to that particular relief.

22 MR. SANDVEN: Okay. On the first factor, Your
23 Honor, and I -- you've already read our arguments on page 3,
24 so I'm not going to restate those. But the vote denial in any
25 governmental run election, it's not a hypothetical injury.

1 All right. And we're not just asking for the registration
2 efforts, but for the, for Chairman Sanchez to be -- on the
3 driving the 60 miles roundtrip to cast an in-person ballot,
4 the same for the tribal member veterans seated behind me.

5 THE COURT: So you're saying, looking at
6 standing, I should not just focus on one relief, but look
7 at the other relief as well?

8 MR. SANDVEN: Yes, Your Honor.

9 THE COURT: And if so -- I think that's right --
10 if so, then do I have a basis to grant the one relief you're
11 asking under which I don't think you can demonstrate harm at
12 this stage? I guess the question is if you have standing,
13 then you have standing.

14 MR. SANDVEN: Yes, Your Honor.

15 THE COURT: Is that the question?

16 MR. SANDVEN: Right. I think -- in which factor
17 do you, do you think would fail to address? The second factor
18 or the third factor in the Luhan analysis? We're talking
19 about the first factor?

20 THE COURT: Yes

21 MR. SANDVEN: When I go ahead and read Lulac v.
22 Clements, 99 F.2d 831, Your Honor, uh, plaintiffs are
23 citizens. They're residents. They're voters in their
24 respective counties. They're enrolled members of the Tribe.
25 And just generally, it's individual voters that cannot be

1 denied that they have individual challenge to stand to
2 challenge a discriminatory election practice. Whether they're
3 registered or not, they can go ahead and challenge that
4 practice.

5 THE COURT: All right. Let's look at Mineral
6 County. My understanding based on the response from Mineral
7 County, is they do have Election Day polling in Schurz, but
8 that's one of the reliefs requested. Are you no longer
9 requesting that relief then, because that's not -- there's no
10 harm there, if they are going to have an election polling
11 place.

12 MR. SANDVEN: Yeah, I think our requested relief
13 was specific to Nixon.

14 THE COURT: Aren't you also asking for Schurz?

15 MR. SANDVEN: Yes, Your Honor.

16 THE COURT: And do you dispute that Mineral
17 County will have an Election Day polling?

18 MR. SANDVEN: No, Your Honor.

19 THE COURT: So, you are no longer asking for
20 that as a relief because that was -- I thought that was one of
21 the reliefs requested. There were three; voters registration,
22 early voting, and Election Day polling.

23 MR. SANDVEN: In document 6, Your Honor, of the
24 preliminary injunction requiring the defendants to open one
25 additional in-person voter registration site, one additional

1 early voting site in both Washoe and Mineral County, and one
2 additional Election Day polling location in Nixon, Nevada, on
3 the Pyramid Lake Paiute.

4 THE COURT: I got it.

5 MR. SANDVEN: Sorry for the delay, Your Honor.

6 THE COURT: Thank you for that clarification.

7 So, you're not asking for an Election Day polling
8 place in Schurz?

9 MR. SANDVEN: And that's, Your Honor, uh,
10 document 26, page 8 of 43.

11 THE COURT: One of the defendants argument is
12 the delay in filing the action, and that, really, led -- but
13 for the delay, there would not be a need to seek relief on
14 such an expedited basis. I know in your reply you indicated
15 that that's due, in part, to the County officials delaying in
16 their responses to the August letters. But, that's only a
17 delay of no more than a couple weeks.

18 I think it's clear that the parties here know that
19 the counties would have early voting at certain locations.
20 It's no secret that the location would not include Nixon and
21 Schurz. So, I'm still trying to understand the delay.

22 MR. SANDVEN: One of the key causes of the
23 delay, Your Honor, under the statutes, the Chief Election
24 Officer has an obligation to go ahead and promulgate the rules
25 for conducting elections. And one of -- under NRS 293.124,

1 "The Secretary of State shall serve as the chief election
2 officer of the State." And then it goes, in paragraph 2 of
3 the statute, "The Secretary of State shall adopt such
4 regulations as are necessary to carry out the provisions of
5 this section."

6 And then you go ahead, Your Honor, and look out
7 what the Counties' obligations are; to go ahead. They're
8 supposed to promulgate rules on how to select these early
9 voting, in-person voting locations. They failed on that.
10 The promulgation of rules that didn't go through the formal
11 process that the legislature defined in this State of going --
12 like, for instance, on mail-in precincts, the promulgation
13 process that you're supposed to go through. There was no
14 promulgation process. We don't -- how can, how can plaintiffs
15 expect -- you know, we are supposed to make this request.
16 We're supposed to do this in such a timely manner, when the
17 defendants have failed to promulgate rules on how those
18 locations are selected in the first place?

19 THE COURT: But the --

20 MR. SANDVEN: There's no criteria in the
21 criteria --

22 THE COURT: All right. So is there any claim
23 that you did not know the location until August?

24 MR. SANDVEN: No. The procedure for how those
25 locations were determined in the early conversations. Uh,

1 even, even in looking at the environment, there is no rules
2 promulgated on how locations are selected. You don't even
3 know the criteria for going ahead in the selection of the 22
4 locations.

5 THE COURT: So is the argument that the reason
6 for the delay is that the plaintiffs here did not know the
7 criteria for selecting the early voting locations --

8 MR. SANDVEN: That's, that's --

9 THE COURT: -- despite that the early voting
10 locations were known before August?

11 MR. SANDVEN: That's only part of the criteria.
12 And one of the things, when you heard the testimony from
13 Mr. Healy, that went ahead, and people just aren't familiar
14 with the election process locally. They don't, they
15 don't under -- there's just a lot of folks, a lot of tribal
16 members living at these nations on their ancestral lands, or
17 on their lands, that are going ahead and aren't familiar with
18 the election machinery for some of the State and federal
19 elections.

20 So part of the problem, because of the socioeconomic
21 factors that were described earlier, these tribal members
22 weren't even sure on all the different means of the election
23 process.

24 THE COURT: At some point they became aware,
25 though, which is why they filed this action.

1 MR. SANDVEN: Right. And my understanding of
2 when this awareness occurred was, first, you have a tribal
3 leaders group at ITNA -- that's a regional tribals chairman's
4 association, no substantial authorities to do anything
5 locally -- so they wanted to go ahead and bring in these
6 voting rights experts to go ahead and provide equal access
7 to the polls, equal access to the election process, all parts
8 of the election process. All right?

9 So that process of meeting with tribal leaders,
10 meeting with Tribal Councils, getting the lay of the land,
11 understanding the election machinery, it's a hard process.
12 But, Your Honor, these individual tribal members, it shouldn't
13 be incumbent upon them to figure all this out and bring an A
14 to Z plan to the defendants. It's defendants' obligations;
15 the Secretary of State, as the Chief Election Officer, and
16 the other folks.

17 It's kind of ironic that they would challenge, hey,
18 you didn't bring us this need. It's your obligation. It's in
19 your capacity of election official leadership positions to do
20 some outreach. You can spend \$100,000 on paying all these
21 early, early, uh, voting workers in Washoe County, but you
22 can't do a stitch of outreach to these particular nations and
23 explain here's how it works, here's, here's some -- here's
24 some opportunities for you to have more equal access? Why?

25 I don't think that obligation should be on these

1 individual tribal members that, where many of the folks from
2 this region are already struggling with a lot of the factors
3 discussed in this 1982 Senate Report.

4 THE COURT: Well, my question as to the delay
5 does not go to the -- I think it was Washoe County who raised
6 the laches argument because I don't think that applies -- what
7 you're asking for from the Court is equitable relief. You're
8 asking the Court to intervene early on, before I decide the
9 case on the merits, and provide preliminary injunctive relief
10 on an expedited basis. You filed this, I think, a couple
11 weeks ago. So I have to set this hearing on an emergency
12 basis, shorten the briefing schedule. And my point is that's
13 a pretty drastic remedy you're asking the Court to entertain;
14 and that is, grant preliminary injunctive relief on a very
15 short time frame. And if there's any -- so, I'm trying to
16 understand the reason for the delay in considering the
17 fairness factor.

18 To me, the argument as to whose obligation it is
19 to do the outreach doesn't go to my very narrow analysis of
20 this order. So, that's why -- that's the reason I'm asking.

21 MR. SANDVEN: The case that I did in South
22 Dakota, Brooks v. Gant, similar case, satellite voting
23 location on the Pine Ridge Indian Reservation. In that
24 particular case, there was a comparable time frame. You had
25 Wandering Medicine, and that went up to the Ninth Circuit and

1 came back down for those areas, the expedited time frame.
2 There's just so many needs for Tribal Councils. You have --
3 and you need the endorsement, I believe, of the Tribe, the
4 support of the Tribal Council because when you come to a
5 judge, you have to provide viable -- or you should provide
6 viable alternatives. And to get the permission for the Tribe,
7 here's a potential location, here's a liaison, here's the
8 folks that can work with the County and State officials to go
9 ahead and facilitate this process in a timely manner. It's,
10 it's a tough process.

11 THE COURT: I think what you've presented today,
12 and your arguments at least persuaded to me that this wasn't
13 done for any strategic advantage. In other words, sometimes
14 I get motions that I feel like I'm forced to rule on an
15 expedited basis and it's to the benefit of the party bringing
16 the motion. But, here, and what I'm hearing today, I can
17 tell the defense counsel that I don't think this was done for
18 strategic reasons. I can understand the complexities involved
19 in getting the support of the Tribal Council.

20 MR. SANDVEN: And Your Honor, I have represented
21 tribes, federally recognized Indian tribes. That's been the
22 bulk of my practice for 20 years. And to get in -- to go
23 ahead -- we don't have daily meetings among the tribal
24 councils. We -- you know, a lot of times you got to get on
25 the agenda a month or two down the road. And then when you

1 get on the agenda, meetings can get rescheduled.

2 So, what Mr. Healy did was go to the Regional Tribal
3 Association to gather that initial support and then go to
4 the governing body that has enumerated authorities for
5 these -- for their lands right there to go ahead and make a
6 decision, and then you're going through the process of
7 teaching people or, you know, the different available options
8 for this stuff. This wasn't done to go ahead and gain
9 strategic advantage. I'm putting together this data on my
10 expert -- he just, he just finished compiling and hasn't
11 completed all the compiling for -- of the boxes of information
12 that have been brought here today. You see from my expert
13 report, McCool, Dr. McCool, in that, it's a brief historic --
14 you know, it's a brief preliminary report. That was the
15 caption on his particular Complaint. We, Your Honor, tried to
16 move at light speed on this.

17 THE COURT: Let's move on. Let's move on to
18 the merits argument then. I want to focus on the disparity
19 element with respect to Washoe County.

20 So, the motion addresses the impact on tribal
21 members of Nixon, but there's evidence, though, that Pyramid
22 Lake Paiute tribal members reside in other locations
23 throughout Washoe County. So, how does that affect the
24 comparison analysis?

25 MR. SANDVEN: We're dealing with our -- the

1 plaintiff's are representative of federally -- of this --
2 tribal members living within the trust lands of their
3 particular nation. It truly is a community. All right?
4 Where it's a land, language, culture, religion specific to
5 that particular community. And those values, that specific
6 culture, it's a specific community of a specific group of
7 tribal members with here. And these folks shouldn't have to
8 make a decision as, as what's raised in the Secretary's brief.
9 You don't have to live there. Well, if --

10 THE COURT: But, no, I'm not considering that
11 argument. I understand your response to that argument.

12 My point is you have -- for example, you compare
13 Nixon with Incline, I think -- and the give me one moment.

14 Peggy --

15 (Brief interruption.)

16 THE COURT: In Washoe County's response, this
17 is docket number 38, at page 14, they argue that plaintiffs
18 failed to identify impact on tribal members throughout Washoe
19 County. And I think you're trying to respond to that
20 argument.

21 MR. SANDVEN: Yeah. Your Honor, because of the
22 expedited process here, we still have, out of the two thousand
23 plus pages of data, to go ahead and identify from the first
24 survey who exactly lived where, all those processes, we're
25 going to need a little bit more time through the formal

1 discovery process. All right?

2 The data that was just obtained, where we tried to
3 get the specific local information, the kind of information
4 that's cited in the government's Statement of Interest in the
5 brief filed yesterday --

6 THE COURT: So do you concede then, that in
7 the information, at least that's provided in support of this
8 motion, including the reply brief, there is no delineation
9 of -- that will give a comparison between Nixon and other
10 locations?

11 MR. SANDVEN: Uh, can I talk to my expert
12 briefly on that?

13 (Counsel confers with expert witness.)

14 THE COURT: Yes.

15 MR. SANDVEN: Can you ask the question again,
16 Your Honor.

17 THE COURT: Well, the question is, in the
18 motion, it addresses the impact on tribal members in Nixon,
19 but there are tribal members who live in other locations
20 throughout Washoe County. How should that affect the Court's
21 analysis?

22 MR. SANDVEN: Can I ask my expert to respond to
23 that question?

24 THE COURT: No. This is your chance to argue.

25 (Counsel confers with expert witness.)

1 MR. SANDVEN: Your Honor, the bulk of Native
2 Americans, of the Native American, the urban Indians, when
3 you look at the census information, they're from a wide array
4 of tribes. You check the box Alaska or Native American on the
5 box. It doesn't distinguish on the different types of tribes.
6 But, the communities on the Pyramid Lake Paiute Tribe are
7 almost exclusively members of that Tribe.

8 THE COURT: And what data are you referring to
9 with --

10 (Counsel confers with expert witness.)

11 MR. SANDVEN: American census, Your Honor. And
12 it's -- they don't distinguish the enrollment criteria at the
13 American census. They don't have the enrollment information
14 for each specific Tribe, don't identify each tribe. That's
15 why my expert went to the Tribal Council, identify your tribal
16 members from this particular area.

17 THE COURT: Let me ask you the question in a
18 different way.

19 All right. And I'm asking you, Mr. Sandven. Under
20 the two factors analysis, the first factor requires that the
21 Court examine whether or not it's a material burden on the
22 minority group versus the majority group. So, I'm looking at
23 how I do that comparison to determine disparity.

24 Shouldn't I compare -- I mean, as you argued in your
25 reply that the County compares Native Americans with others

1 throughout the County, and that's not a fair comparison
2 because you're focusing on the Pyramid Lake Paiute Tribe
3 members.

4 All right. So you criticize them for comparing --
5 for grouping all Native Americans together as one group, and
6 I agree with that. But my question is there are -- I don't
7 think there's a dispute that there are other Pyramid Lake
8 Paiute tribal members who reside throughout Washoe County
9 who would not be -- who would not have the same barriers as
10 those who reside in Nixon, correct, because they don't have
11 the same travel distance. They may not bear the same burden.

12 MR. SANDVEN: Yes, Your Honor.

13 THE COURT: All right. So shouldn't I consider
14 that as well in my analysis of determining disparity, or do I
15 just focus solely on Nixon? And, if I do, why?

16 MR. SANDVEN: But I mean, Your Honor, that's
17 just one of the Senate factors. And not one is dispositive --

18 THE COURT: I'm not looking at Senate factors.
19 I'm looking at the first factor. The Senate factors go into
20 the second of the two-factor analysis, right?

21 MR. SANDVEN: Yes, Your Honor.

22 THE COURT: So the first factor, if I -- and I'm
23 citing from the United States Statement of Interest -- and
24 it's supported by case law as well. Let me read what the
25 first factor says --

1 MR. SANDVEN: Yes, Your Honor.

2 THE COURT: -- and that is, "Do the practices
3 amount to material limitation that bear more heavily on
4 minority citizens than non-minority citizens?"

5 And I think all the parties argue that to determine
6 that first factor, I have to do a comparison to compare the
7 minority group versus majority group. And my question is how
8 does the fact that there are members of the minority group who
9 reside throughout Washoe County, and not just solely in Nixon,
10 affect that analysis, because they would not be affected in
11 the same way that those who reside in Nixon would be affected.

12 MR. SANDVEN: Because of the history of official
13 discrimination, the history that was discussed in Dr. McCool's
14 report that was attached to our Complaint where the, where
15 this specific group of people that's identifiable residing on
16 their own lands, uh, would fall within that minority group,
17 that you could focus on that minority group.

18 THE COURT: So, are you telling me that under
19 the first factor I don't consider the fact that there may be
20 other Pyramid Lake Paiute tribal members who reside outside
21 of the Reservation in Washoe County?

22 MR. SANDVEN: I think from -- Your Honor, from
23 the McCool Report, he went ahead and in his demographics on
24 his charts that were cited in the Complaint, in the Memo of
25 Understanding, he showed that the bulk of those Pyramid Lake

1 tribal members reside in these specific counties, reside
2 in these specific locations. And, Your Honor, what I'm
3 referencing is the tables cited in documents 26 on page 12
4 of 43 and 13 of 43.

5 THE COURT: All right. Thank you.

6 All right. Mr. Sandven, let me move on to the
7 next topic then. There's discussion -- there's comparison
8 data about driving on Election Day and I don't think that I've
9 heard evidence where you actually compare the burden with
10 respect to the driving distance on Election Day when there's
11 polling in Wadsworth. So, the roundtrip is only about 32
12 miles and not the 60 something miles that I remember reading
13 in the briefs.

14 MR. SANDVEN: Right. And just -- and along
15 with the additional cost, the additional testimony you heard
16 regarding reliable transportation, the time, uh, if you are
17 working, how you go ahead and do those things. We heard some
18 of that testimony from Mr. Healy.

19 THE COURT: No, but I think in the briefs, and
20 even the testimony from Mr. Healy, it only addresses the
21 distance between Nixon and other polling places in Washoe
22 County, but not Nixon and Wadsworth on Election Day.

23 Am I wrong?

24 MR. SANDVEN: No, you are not, Your Honor.

25 THE COURT: So how does that factor into the

1 analysis then? Doesn't that reduce the -- doesn't that
2 somehow -- somewhat lessen the burden or does it not?

3 MR. SANDVEN: It lessens the burden somewhat,
4 but you still have 22 voting centers within that County, uh,
5 you know, for convenience -- and it's not convenience, but for
6 accessibility, access for all the Anglos in a particular --
7 these particular communities in Sparks, Incline. So, even
8 that, even that burden still doesn't make it equal. Even that
9 lessening burden still doesn't make it equal with what most
10 Anglos are dealing with or have to do to go ahead and exercise
11 these same processes.

12 And, Your Honor, that's why I cited Brown v. Dean
13 that -- or I cited United States v. McKinley County, where
14 the County reconfigured polling locations and increased the
15 polling locations from 19 to 25 after rural Indians challenged
16 the number and location of the polling places that would have
17 required rural Indians to travel greater distances to vote.
18 The disparity might not be quite as extreme in that situation
19 that you just described, but it's still a greater distance.
20 The very same traveling demands are made of the plaintiff in
21 this case.

22 And then I also cited Black Bull v. Dupree School
23 District, where, because of the scarcity of polling locations,
24 Indian citizens had to travel many miles to vote in the School
25 District elections at polls that were generally convenient for

1 white voters.

2 THE COURT: Let me move on to Mineral County.

3 You provide -- the plaintiffs have provided some
4 comparison data in the motion and the reply, and Mr. Healy
5 testified to this, that the tribal members in Schurz, that
6 the burden of driving into Hawthorne is significant on tribal
7 members in Schurz. And my question is I don't see any data on
8 the same burden on other residence in Mineral County because
9 Mineral County's argument is, of course, driving 35 miles is a
10 part of daily life in Mineral County. But, I don't see any
11 comparison in terms of the relative burden between the Walker
12 River Paiute tribal members in Schurz, versus those in the
13 majority groups throughout Mineral County.

14 MR. SANDVEN: Uh --

15 THE COURT: So, I don't see that. But, the
16 second question is is that important in my analysis?

17 MR. SANDVEN: I don't, I don't believe so, Your
18 Honor, because of the data, the testimony that's provided, uh,
19 regarding accessing the Nevada driver's license, the trip to
20 DMV, the extra expenditures when you're challenged with all
21 these socioeconomic factors with the tribal members that
22 are affected there. It's not just the mileage, Your Honor.
23 It's, uh, it's, in surveying information, of having to go
24 off reservation or finding a reliable car, or during the hours
25 at which you do it, or the cost that goes along with that,

1 along with access to all these other -- uh, the computer,
2 the online, and all those things, and the testimony, the
3 testimony that you've heard regarding the official
4 discrimination, uh, that folks have felt not just in
5 business off reservation.

6 But in exhibits, in exhibits regarding, uh, even
7 in the voting process, there was a substantial number of --
8 there were references to that. People, Your Honor, to put
9 it simply, a lot of tribal members have a lot of socioeconomic
10 challenges and are far, far, in addition to the travel
11 distances, in addition to the discrimination, there's lot
12 of reasons for them to go to the tribal government center.
13 That's the hub of business. It's the Tribal Capitol. That's,
14 that is where they might go to meet their housing needs or
15 some of the other program needs that go along with these two
16 sovereign nations.

17 THE COURT: I think what I'm hearing from you
18 is that even if I'm assuming there are burdens equally placed
19 on others in the majority group in Mineral County; for
20 example, those who reside outside of Hawthorne that would
21 have to drive the 35 miles roundtrip -- and that could be off
22 on the distance a little bit, but the point is that there are
23 others who are not in the minority group, who reside
24 throughout Mineral County, who would have to drive to
25 Hawthorne, they would be potentially equally burdened.

1 Assuming that's the case, your argument is that
2 the relative ability of the members of the two groups to
3 overcome that burden has to be considered in the analysis.

4 MR. SANDVEN: Yes, Your Honor.

5 THE COURT: Do you have anything else you want
6 to add to the arguments before I hear from the defendants'
7 counsel?

8 MR. SANDVEN: I would just like the Court to
9 go ahead and Footnote 114 of the 1982 Senate Report, what
10 supports our last discussion on these extra factors, even
11 if there might be an equal distance, driving distance for a
12 few Anglos in this corner of the County, when I, when I read
13 Footnote Number 114, at 29 of the Senate Report, 97-417,
14 I would ask the Court to consider the disproportionate
15 educational, employment, income level, living conditions
16 arising from past discrimination, tend to depress minority
17 political participation. Where these conditions are shown,
18 and where the level of participation in politics is depressed,
19 plaintiffs need not prove any further causal nexus between
20 their disparate socioeconomic status and the depressed level
21 of political participation.

22 Additionally, Your Honor, the arguments that were
23 raised regarding, hey, you've got to access to mail voting, I
24 would ask the Court to review the leaks in the pipeline
25 article, if you haven't already, that was losing votes by

1 mail, Charles Stewart three.

2 Your Honor, I would also like your consideration.
3 We presented local, uh, local evidence regarding tribal
4 members of the Pyramid and Walker River tribal members
5 having a limited understanding of election processes in
6 Nevada, especially getting registered to vote. And I believe
7 that exhibit 28, that summarizes some of those findings,
8 satisfies or addresses Senate factors three, five and eight.

9 The second, the second conclusion from Mr. Healy's
10 testimony was that the potential for Pyramid Lake and Walker
11 River Paiute members to be charged with a Class E felony is
12 an effective deterrent to asking them for help from fellow
13 tribal members, or offering fellow tribal members to register
14 to vote with mail-in options. The exhibits that support that
15 conclusion are exhibits 28 and 32. And, Your Honor, those
16 address Senate factors five and nine.

17 The third conclusion, and there's nine, an
18 overwhelming majority of Pyramid Lake and Walker River
19 Paiute tribal members do not possess the economic
20 transportation and technology resources to utilize online
21 voter registration or to travel to Hawthorne and Reno to
22 register to vote in person. And I would ask you to look at
23 exhibit 30 because I believe that addresses Senate factors
24 three, five, and eight.

25 Your Honor, the fourth conclusion from Mr. Healy's

1 -- that I draw from Mr. Healy's testimony is that an
2 overwhelming majority of Pyramid Lake and Walker River tribal
3 members do not possess the economic and transportation
4 resources to mitigate the travel distance to cast an early
5 vote off reservation in person and register in person. And
6 that's based upon exhibit 31 and addresses Senate factors
7 five and eight.

8 A fifth conclusion from Mr. Healy's testimony
9 is that an overwhelming majority of Pyramid Lake, Walker
10 River tribal members do not trust County government and
11 feel discriminated against when conducting business off
12 reservation. 25 percent of tribal members from Pyramid Lake
13 and Walker River state that they have felt discriminated
14 against or intimidated as a Native American when attempting
15 to register to vote. And those exhibits that support that
16 conclusion are 32, 52, 53 and address Senate factors one
17 and five.

18 Your Honor, the sixth conclusion is that an
19 overwhelming majority of Pyramid Lake and Walker River tribal
20 members would prefer in-person voter registration sites and
21 early voting sites be established on their reservations.
22 Exhibit 32, addressing Senate Factor, uh, number one.

23 The seventh conclusion, an overwhelming majority of
24 Pyramid Lake and Walker River tribal members have no knowledge
25 of any inquiry, no outreach by either the Nevada Secretary of

1 State or local County officials regarding equal access to
2 the ballot box for tribal members living on those two
3 reservations. Exhibit 32. And that addresses Senate Factor
4 number eight.

5 The eighth conclusion, that an overwhelming majority
6 of Pyramid Lake and Walker River tribal members have either
7 zero or limited trust for their mail-in ballots that will
8 even be counted. That's exhibit 31-B. 31-B, Your Honor. And
9 that addresses Senate Factor three.

10 And then the voting turnout of Pyramid Lake and
11 Walker River is severely depressed compared to Anglo voter
12 turnout because of socioeconomic status, discrimination
13 faced by tribal members at Walker River and Pyramid Lake in
14 their daily life. And when interacting with Mineral and
15 Washoe County government, lack of trust in County and State
16 government, and a much greater burden placed on Walker River
17 and Pyramid Lake members to effectively register to vote and
18 to cast a ballot that they're sure will be counted.

19 Your Honor, I'd ask that you go ahead and take
20 judicial notice of exhibit number 40. And that's the
21 Declaration of Dr. Dan McCool filed in Brakebill versus
22 Jaeger, that was filed on June 20th, 2016. It was attached to
23 our original Complaint.

24 And the ability to obtain an I.D. to vote, the act
25 of voting itself are greatly affected by both education and

1 income. Indeed, it is well recognized in political science
2 that income and education correlate with voting turnout,
3 citing number -- paragraph 39 from exhibit 40.

4 And the second report we're asking you to take
5 judicial notice from, is exhibit 41 in Dr. Matthew Baretto's
6 (phonetic) report, and proffer that Native Americans are
7 much more likely to identify as Democrats than non-Native
8 Americans. The differences are statistically significant, and
9 greater than 99 percent confidence level in both G-Square
10 (phonetic) tests and regression analysis. And that's from
11 paragraph, uh -- from exhibit 41.

12 Finally, Your Honor, on the reading of the tests,
13 we're in agreement with the government Statement of Interest
14 that's filed here. And we've also went ahead and, in exhibit
15 49, which we would ask the Court to take judicial notice of,
16 whether it required -- is the transcript from the Medicine --
17 the oral argument that occurred on the Medicine case before
18 the Ninth Circuit Court of Appeals, where they talked about
19 the text. And, specifically, of that transcript of exhibit
20 49, that you would go ahead and consider pages 18:8 through
21 19:4, where the Department of Justice offers arguments, and
22 where the panel, on their interpretation of the tests under
23 Section 2, and Department of Justice's, uh, argument on
24 pages 19, line 7 through 25, and that the reading of the
25 U.S. government is supported by the panel of the Ninth Circuit

1 that went ahead and heard our case in Wandering Medicine.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Sandven.

4 We'll hear from whoever wants to go first for
5 defendant.

6 MR. LARGE: It looks like I drew the short
7 straw, Your Honor, to go first.

8 In regard to this case, and in regard to the
9 standing issue, there is some major issues that we need to
10 address. One is the in-person registration site. We have
11 to look at the requested relief, the actual harm that they
12 are doing under the Luhan test. The relief that they're
13 seeking in the in-person registration sites is inapplicable
14 to every plaintiff that has filed suit. They're all
15 registered to vote, so there's no actual harm. It's all
16 hypothetical: We may need to change our registration. We
17 may need to do this. But, Luhan says that you can't base
18 it on speculation and conjecture. Standing has to exist
19 from the beginning of this case until the end. There has to
20 be an actual injury.

21 THE COURT: What about the fact that there are,
22 -- they do have standing to assert the other two reliefs;
23 early voting and Election Day polling?

24 MR. LARGE: I want to -- at this point, I'll
25 just address that as this goes, Your Honor.

1 Plaintiffs Holly, James, and Burns have sued on
2 behalf of -- or sued Washoe County. They are all members
3 of the Pyramid Lake Tribe and registered voters. Nothing in
4 the Complaint, which we have to base this on, says where they
5 live, where they reside, whether or not they reside in Nixon
6 or Wadsworth. And it does make a difference, Your Honor,
7 because if, if a person is suing to put an in-person early
8 voting site in Nixon that lives in Wadsworth, I have a little
9 bit of a more difficult time with that.

10 The other thing is in terms of Election Day voting,
11 they have a polling place in Wadsworth. If the plaintiffs
12 live in Wadsworth, then there is no injury or there's no
13 redressability by putting an Election Day polling place
14 in Nixon.

15 And I know I'm splitting hairs, Your Honor, but
16 this is a standing issue and plaintiffs are asking for
17 extraordinary relief very early in this case. We're at a
18 preliminary injunction. They bear the burden to do this.
19 We haven't had an opportunity to answer the Complaint, to file
20 a motion to dismiss or, more importantly, file a motion for a
21 more specific statement of Rule 8. We need to know what they
22 are actually alleging, and there is a lot of this record that
23 has not been developed. And we are -- you know, we're facing
24 it today with boxes and boxes of new information that we've
25 never seen, and attempting to do the best we can to advocate

1 on behalf of our clients. Plaintiffs bear the burden to
2 address that in terms of the standing issue.

3 So in terms the in-person registration, there's no
4 harm that needs to be redressed with that.

5 In terms of the Election Day polling place, we
6 need to know where they live and whether or not that's
7 redressable. And the 15 miles, we'll get into that in
8 terms of the analysis.

9 Plaintiffs are really good at conflating the issues
10 in terms of the requested relief and all of the problems.
11 But, we have to look at three separate things: One is the
12 in-person registration. Under Section 2, under the VRA, under
13 that two-step analysis that Your Honor alluded to before --
14 and we completely agree. As we cited in our brief citing the
15 Feldman case out of the Arizona, the standard is there. The
16 first standard that they have to address is whether or not the
17 challenged voting practice must impose a disparate burden on
18 the electoral opportunities of minority as compared to white
19 voters or majority voters. And to do that, the Court does
20 need to do a disparate impact analysis necessary. It's a
21 comparative exercise.

22 The plaintiffs are tasked with, by bringing this
23 lawsuit, providing evidence that both in-person -- are all
24 in-person registration, early voting, and Election Day polling
25 are all -- there is -- we have to do a comparative analysis as

1 we did in our opposition to every single one of those.

2 THE COURT: But in your response brief, you
3 did a comparison between the majority of voters and Native
4 Americans in General. You didn't account for the fact that
5 the plaintiffs are members of the Pyramid Lake Paiute Tribe.

6 MR. LARGE: Your Honor -- I apologize, Your
7 Honor, for doing that. But, the way the Complaint reads in
8 several --

9 THE COURT: But, the plaintiff is clear it's
10 brought in arguing that the burden is on the Pyramid Lake
11 Paiute Tribe members. It's not brought on behalf of all
12 Native Americans in Washoe County.

13 MR. LARGE: Your Honor, they make requests in
14 terms of -- in terms of Election Day polling place, they make
15 for quote, unquote, satellite offices on Indian country.
16 That's in their Complaint, one of their many Complaint,
17 the requests that they, uh, they seek. And the way that --
18 initially, when they came in, we were interpreting it as
19 we aren't certain whether or not the satellite offices are
20 referring to Election Day polling places or they are referring
21 to early voting, or the, uh, registration sites. But with the
22 way they're confronting it, they want all three. Well, we
23 have one in Wadsworth on Election Day. So, that's one of the
24 -- in Wadsworth, no one disputes that Nash's Elementary School
25 in Wadsworth is on the Pyramid Lake Indian Reservation in

1 terms of the Election Day voting, Your Honor.

2 But, in terms of the in-person registration
3 requirement, the disparate impact analysis between minority
4 voters and white voters, what we've been presented today is a
5 great deal of evidence from the surveys and from plaintiffs in
6 regard to the impact on minority voters that live in Wadsworth
7 that have to -- or that live in Nixon that have to travel a
8 great distance to get to in-person registration, uh, polling
9 and Election Day sites. What we haven't heard is any
10 comparative statistics that say this is extraordinary.
11 The disparate impact is different between minority versus
12 majority voters. They -- I mean that first -- under that
13 first prong, they have to show that the challenged voting
14 practice must impose a disparate burden in the electoral
15 opportunities of minority as compared to white voters.

16 The Feldman court out of Arizona --

17 THE COURT: And they have offered evidence that,
18 for example, with respect to voters registration, the driving
19 distance from Nixon to the Washoe County Registrar's Office
20 imposes a barrier. The online registration imposed a barrier
21 because of other reasons, the requirement for a Nevada
22 driver's license or Nevada I.D. The distrust among tribal
23 members of the whole process for registration online, lack of
24 resources to computer, to WiFi access, to internet access.
25 They have offered evidence of disparity.

1 MR. LARGE: They've offered evidence of the
2 disparate analysis to the tribal members, but they haven't
3 said how that is different than to the majority voters.
4 They -- in terms of just -- in terms of in-person
5 registration, the Feldman court says how many voters were
6 to determine whether a voting practice disparately impacts
7 minorities. The Court must know, approximately, how many
8 voters are impacted, by the law. I asked the question: How
9 many people on the Pyramid Lake Indian Reservation aren't
10 registered to vote?

11 They don't know, so I, I can't --

12 THE COURT: You asked about percentage and they
13 didn't know.

14 MR. LARGE: I asked Mr. -- and the racial
15 and ethnic composition of those voters, that how many are not
16 registered? Who does this affect?

17 Because as that Court went on to say, we can't
18 determine whether or not the impact on the law is different on
19 different demographic populations. In-person registration is
20 only available at anytime in what they are asking, in terms of
21 what plaintiffs were asking for, in August and September, and
22 in their Complaint, is the only place in-person registration,
23 manned by a Washoe County Registrar of Voters employee, is
24 only ever offered at the County Complex at Ninth and Wells.
25 That's the only in-person registration site in the County at

1 any time of year, not just between October 9th and October
2 18th. That is an imposition on all voters. Regardless of
3 color, race, that is an imposition based on, simply on where
4 they are located. There is no analysis of any comparable,
5 in terms of -- they compare themselves to Incline Village,
6 which maybe is about the same distance, but there is still
7 no in-person registration site in Incline Village or Gerlach
8 or Empire, or all the other areas in Washoe County.

9 So there's, in terms of comparing geography, in
10 terms of the discriminatory impact, that is more to do in
11 terms of -- the Voting Rights Act, there's no racial basis for
12 this. This is purely geography. And we -- the imposition and
13 the disparate impact is based only on isolated communities in
14 rural settings in Washoe County. It applies equally to those
15 anywhere that is outside of the Reno/Sparks area.

16 In terms of the early voting -- I'm sorry. I want
17 to go back to one thing on the in-person registration, Your
18 Honor. NRS 293.5035 is the designation of axillary cites by
19 the Washoe County Registrar. It allows the Washoe County
20 Registrar to -- they may designate a certain site specific,
21 that it's got to be a Washoe County facility and it's got
22 to be either owned or leased by Washoe County that they
23 could put an axillary Registrar of Voters Office. We have
24 never opened one of those in Washoe County before. That is
25 how the, uh -- Ms. Cutler, as she said in her Declaration,

1 that's how they interpreted that. They wanted the full
2 equivalent of what the Registrar of Voters Office had in
3 Reno out in Nixon, and that was not -- she was not able to do
4 that because of financial considerations in terms --

5 THE COURT: But, the relief they're requesting
6 here is in-person registration in Nixon.

7 MR. LARGE: Yes, Your Honor. And when I asked
8 Mr. Healy, when he was meeting with Ms. Cutler in August,
9 when did -- what did you request? Because the letter says
10 we want a, we want in-person registration for Washoe County
11 Registrar. And we have -- now he says that, well, what we
12 really wanted was a temporary registrar out there. Well, the
13 reason there is that 10-day period from October 9th to October
14 18th, where there -- it's got to be voting -- as we say in our
15 brief, there has to be, uh -- excuse me, Your Honor.

16 The two ways to register to vote are online, through
17 the Secretary of State's website, and in person at the Washoe
18 County Registrar. The reason that is is because the Washoe
19 County Registrar has access to the Registrar of Voters
20 database. By the 19th or 20th, when -- after voting
21 officially closed, or voters registration officially closes,
22 they have to finalize the voting registration database. And
23 by bringing -- having in-person voter registration, we can
24 verify all of the issues that are accounted for by that, which
25 is are there duplicates? Is it correct? Is it the right

1 person? Is the identification correct? All those things are
2 taken care of by in-person and they can be immediately input
3 in the Registrar of Voters database.

4 Mr. Healy was saying we just want a temporary person
5 out in Nixon. That wasn't what they requested. What they --

6 THE COURT: So knowing what they are requesting
7 now, has the answer changed?

8 MR. LARGE: I can't -- Your Honor, I don't
9 believe it has. In terms of the -- what they're saying is
10 we want a temporary employee out there who's on the phone,
11 relaying the information to the Washoe County Registrar of
12 Voters Office. And that's -- it's just not a feasible
13 solution.

14 THE COURT: So it's not something that can be
15 done?

16 MR. LARGE: It's not something that can be done.
17 And in terms of the timeline, and this is why --

18 THE COURT: It's not something that can be done
19 because of budget constraints?

20 MR. LARGE: In terms of budget constraints and
21 in terms of, in terms of the timeline between now and October
22 the 9th, and that period. The issue that we have now is we
23 are -- we're up against -- and I'm not going to waste the
24 Court's time. Obviously, the laches argument wasn't -- but
25 in terms of equity, in terms of delay, one of the main

1 concerns is we have to turn this around -- October 9th is six
2 days away -- in terms of providing an office in Nixon, to
3 providing in-person registration. We have to provide the
4 access -- in order to have the functional equivalent of the
5 Registrar of Voters out there, we would have to make sure
6 that all of the security, legal protocols are in place to
7 allow -- take down the firewalls and all of these extensive
8 criteria are met to do this. And in just terms of just pure
9 estimate from our IT person, it was two or three or four weeks
10 with fully manned -- not the most busy time of the year for
11 the Registrar's Office -- just to get this up and running.

12 So even if we must do this, we couldn't functionally
13 do this in the shortened time period, in terms of the
14 in-person registration with the functional equivalent of
15 the Clerk's Office. It's just a practical impossibility.

16 In regard to the early voting --

17 THE COURT: That may go to the question of the
18 balancing of the hardship under the Winters factor.

19 MR. LARGE: Yes, Your Honor.

20 THE COURT: All right. Okay.

21 MR. LARGE: And I am arguing out of line here
22 and I apologize.

23 The second major issue here is the early voting
24 locations. And we have 22 sites spread throughout the
25 counties -- or spread throughout the County. The intent of

1 the early voting sites, as we cite in our brief, and as
2 everybody has cited, is to get the most voters in the most
3 areas during a presidential election year, as in this year.

4 Approximately 5,000 people come through an early
5 voting site every year. We have, we have limited resources
6 and limited budget. The early voting sites throughout the
7 County, the 22 are largely the same as they were in the
8 Primary. The only difference between the Primary election and
9 this election is -- one of the only differences in terms of
10 their numbers -- there was 21 during the Primary because there
11 wasn't one at UNR because there were no students up there
12 during the summer. Then they added the UNR one, but they've
13 used that one in the past. There are 22. They're trying to
14 encompass as many voters as they are.

15 What the request was was for an early voting site in
16 Nixon with registration of 169 voters, uh, was difficult. It
17 does not encompass all of the early voting intent. We want to
18 reduce -- we want to increase the number of voters. Even if
19 every member of a Pyramid Lake Reservation used the early
20 voting site, that's fifteen hundred voters.

21 THE COURT: How does that fall under the two
22 factors test?

23 MR. LARGE: In terms of the disparate burden --

24 THE COURT: Because there's no -- I mean, I
25 don't think the plaintiffs challenge that there may be very --

1 there are certainly cost benefits analysis that go into the
2 Counties' decision, but that doesn't factor into the Court's
3 analysis of whether there's a violation of the Voting Rights
4 Act, is be there?

5 MR. LARGE: Your Honor, we need to look at the
6 disparate burden in terms of the -- imposed on minority voters
7 to the majority voters under that first prong. And --

8 THE COURT: And how does that fit into that
9 first prong, your argument about constraints and cost benefits
10 analysis?

11 MR. LARGE: Well, in terms of that, there's
12 been no evidence provided that the distance between the early
13 voting site, the closest one to Nixon is at the Spanish
14 Springs Library; from Sutcliffe, it's also the Spanish Springs
15 Library; from Wadsworth, it's Legends at Scheels. They are
16 about 32 miles apart and 42 miles apart based on the Google
17 Map analysis, Your Honor. And there's been no evidence
18 offered by plaintiffs that that is any different than any
19 other rural voter in Washoe County. So, the disparity is
20 does it impose a hardship in terms of the disparate burden
21 analysis?

22 And then the second factor on that analysis under
23 Section 2, is whether or not there is -- it can be redressed
24 by early voting. What we're talking about is getting out the
25 vote, people's right to vote. There is no in-person right to

1 vote at an early polling place. There, there is -- that is a
2 one option to vote.

3 We also have the mailing option. If they can't
4 get to an early voting site, they can request an absentee
5 ballot. If they can't get either of those, they can vote
6 in-person on Election Day at their Election Day polling
7 place.

8 Their situation is exactly the same as every other
9 voter except for proximity. And what this Court has to
10 determine is whether or not the 15-mile difference between
11 Nixon and Wadsworth is a disparate burden in terms of the
12 election, the voting day -- the Election Day voting places.

13 THE COURT: So your argument is there is
14 certainly not much meaningful difference between early voting
15 and polling and Election Day voting, so I should ignore the
16 request about early voting and focus on the 15-mile distance
17 for Election Day voting?

18 MR. LARGE: And Your Honor, I think that's
19 appropriate.

20 THE COURT: Why is that appropriate?

21 MR. LARGE: Well, I think that what we --

22 THE COURT: Doesn't that send the message that
23 you're trying to disenfranchise certain voters by saying you
24 can't participate in early election voting?

25 MR. LARGE: No, Your Honor. I'm sorry. What

1 I was saying is that the 30 -- we're not -- what we are
2 suggesting is the 30 miles you look at in terms of the
3 driving distance. We're -- the early voting sites have been
4 published in and they have to be taken to the Board of County
5 Commissioners and to be -- essentially, the clerk's role is to
6 present here are the early voting sites that we have. There's
7 22 throughout the County. These meet the criteria that we
8 have come up with to determine where they go. They pull
9 in the maximum number of voters throughout the whole entire
10 County. And so we present this to the Board of County
11 Commissioners, and then we publish them on our website and
12 in the early -- in the precinct. And the 30-mile difference
13 between Nixon and the Election Day in Spanish Springs is the
14 exact same as -- I mean, as any other, um, rural voter. The
15 people in Gerlach and Empire and all of the outlining areas,
16 Washoe Valley -- Verdi does not have early voting -- all these
17 areas in the outlining counties are exactly the same.

18 And in terms of the disparate burden analysis,
19 whether or not there's any difference -- and the plaintiffs
20 bear the burden to show this, and what they haven't shown,
21 at least in Washoe County's opinion, is that there's any
22 difference between what -- in terms of the rural voters
23 elsewhere that are not Native American.

24 So, these are laws that apply equally across the
25 Board to all voters simply based on geography. There's a good

1 deal of discussion in the Gonzalez case and in the Feldman
2 versus Arizona Secretary of State case in regard to the causal
3 connection. There's been some discrepancy in terms of -- I
4 know that the United States cites to the Gonzalez decision,
5 but they don't put it in their analysis in terms of what the
6 two factors are. But in terms of what the Gonzalez court
7 found in the Ninth Circuit: "Although proving a violation of
8 Section 2 does not require a showing of discriminatory intent,
9 only discriminatory results, proof of a causal connection
10 between a challenged voting practice and a prohibited
11 discriminatory result is crucial. Said otherwise, a Section 2
12 challenge based purely on a showing of some relevant
13 statistical disparity between minorities and whites, without
14 any evidence, the challenged voting qualification caused that
15 disparity will be rejected."

16 What they -- what plaintiffs have not done at this
17 juncture and in this litigation is provide any causal, in
18 terms -- as we cite in our brief, they don't identify what
19 the harm was that they're seeking to address. Are they trying
20 to seek to address low voter turnout by the Pyramid Lake
21 Tribe? Are they -- low registration -- tribe -- in terms of
22 what is the discriminatory -- what is the discrimination --
23 the disproportionate impact on the racial minority that
24 they're trying to tie this to? Is it low voter turnout?

25 THE COURT: Are they required -- I know you

1 cited to a decision, but I'm not sure they're required to
2 offer evidence of a causal connection and identify what it
3 is they're trying to tie it to.

4 MR. LARGE: The courts -- the court in Gonzalez,
5 which is the Ninth Circuit, and also in the Feldman versus
6 Arizona decision, talks about --

7 THE COURT: That's the recent one that was
8 issued on September 23rd?

9 MR. LARGE: Yes.

10 THE COURT: Is that the one?

11 MR. LARGE: Yes, Your Honor.

12 They talk about the causal connection. And it's
13 that second factor of that test in terms of the totality of
14 the circumstances that how is -- let me check make sure I
15 state it correctly -- "that the burden must be in part be
16 caused by or linked to social or historical conditions that
17 have or currently produce discrimination against the members
18 of the protected class."

19 That's quoting the Feldman decision, who is quoting
20 The League of Women Voters of North Carolina versus North
21 Carolina, at 769 F.3d 224.

22 The United States, I noticed in their amicus,
23 doesn't really say the causal -- the causation aspect of it,
24 but that the burden must be in part caused by or linked to the
25 social -- to those totality of circumstances that plaintiffs

1 are so eager to jump to in terms of the past -- the Senate
2 factors under Gangels (phonetic). But they have to show --
3 they bear the burden of showing that there is that -- that
4 they meet that element; that there's a causal connection
5 between what is being done, or proposed to be done, and a
6 certain impact? Does the in-person registration cite in Nixon
7 address -- is it caused by -- or the failure to have a site
8 in Nixon, is it caused by the drive to in-person registration
9 in Reno? Because that's where -- I mean, that's -- is it
10 linked to that? Is registration low on the Pyramid Lake Tribe
11 because they don't have an in-person registration office from
12 October 9th to October 18th of this year? That, you know, is
13 there low voter turnout because the -- there is not in-person
14 voting in Nixon or in-person early voting in Nixon?

15 What they haven't done is they haven't shown the
16 numbers. How many people aren't registered on the Pyramid
17 Lake Paiute Tribe? How many people aren't voting on Election
18 Day? How many people would utilize early voting if it was
19 available? How many people were denied the right to vote
20 because there isn't a location out there? And that's where
21 the causal and the "link to" language, uh, that the Feldman
22 court and the Gonzalez court discuss.

23 Your Honor, this case is unique -- and I'll sum up
24 unless the Court has more questions -- but, this case is
25 unique. Plaintiff's made the request in August of 2016.

1 We declined to do that -- Washoe County declined to put an
2 Election Day polling place in Nixon, to put an early voting
3 place in Nixon, and an in-person registration thing. This
4 didn't have anything to do with racial animus or racial
5 discrimination. What this had to do with was the practical
6 realities of running a presidential election. And if this had
7 been brought sooner, we could have worked to try to work
8 through a workable solution. But asking for emergency relief,
9 where the Washoe County is going to have to expend money to
10 put an office out there, to take resources from somewhere else
11 in the County, uh, at this late date, is very difficult for
12 Washoe County to do.

13 And we make a -- I make the argument on laches,
14 but in terms of the balance of hardships, and in terms of
15 the analysis for a preliminary injunction, this, this is a
16 difficult situation. This is a big County. We have a lot
17 of communities that we have to serve. And we do our best.
18 We don't have infinite resources. And Miss Cutler and the
19 Registrar of Voters Office has six employees. We do the best
20 that we can with what we have. But in terms of the balance
21 of hardships, in terms of the proximity to the Election Day,
22 there wasn't anything we could do. And we don't believe
23 the plaintiffs have carried their burden to show a likelihood
24 of success on the merits, and, we, at least at this point, we
25 feel like this motion for preliminary injunction needs to be

1 denied.

2 Thank you.

3 THE COURT: All right. Thank you, Mr. Large.

4 MS. STORY: Good afternoon, Your Honor. I
5 represent the Secretary of State's Office. And I just
6 want to point out that there are very few facts that relate
7 to the Secretary and I believe that the evidence, uh --

8 THE COURT: What I don't understand is the
9 Secretary of State argues she's not a proper party, but
10 NRS 293.124 states that she is, and I quote: "Responsible
11 for the execution and enforcement of the provisions of Title
12 24 of the NRS, and all other provisions -- provisions of State
13 and federal law relating to elections in this State."

14 MS. STORY: That is accurate.

15 THE COURT: Doesn't she have the authority and
16 power to provide the relief requested here?

17 MS. STORY: Well, I don't know that she has
18 the authority. The statutes, the Nevada statutes are pretty
19 clear that the authority to designate polling places and
20 registration locales are with the County Clerks and with the
21 Registrar of Voters. She does --

22 THE COURT: But, she does have authority to
23 ensure compliance the federal law. And if I were to find
24 there's a likelihood of success on the Section 2 -- in other
25 words, likelihood of violation of federal law, she would have

1 the responsibility to ensure compliance, wouldn't she?

2 MS. STORY: Well, she would probably have the
3 responsibility, but I don't know that she has much, uh, real
4 authority, any teeth. I don't know.

5 THE COURT: You're telling me the Secretary of
6 State does not have authority to compel counties to comply
7 with election law?

8 MS. STORY: I believe she could issue that order
9 and she could take them to court if they failed to comply,
10 and that would be her recourse, and that is the extent of her
11 authority.

12 And, again, I certainly don't mean to diminish her
13 obligations, but the facts stated --

14 THE COURT: No, I'm sure you don't mean to.

15 MS. STORY: But the facts stated against her
16 were minimal in this regard.

17 THE COURT: You may be in here arguing the
18 opposite in another case.

19 MS. STORY: That may be true. That may be true.

20 THE COURT: My point is I don't think, at this
21 stage, that I can find that the Secretary of State is not a
22 proper party.

23 MS. STORY: And I appreciate that and just
24 thought I would put that argument in for your consideration.

25 As to the Counties' obligations and the Secretary's

1 obligations to provide the requested demands or requested
2 accommodations for the Native Americans in this action, I
3 believe than under the examination of the test -- and you've
4 heard the arguments of parties who are more on the forefront
5 of that -- I can simply say that the plaintiffs have not met
6 their burden to show that they, the minority, has been more
7 heavily burdened by the geographic limitations or the
8 population concentration that the Indian tribes have in
9 Nixon. The resources are limited, the schedule is set by
10 statute well before this request came in. Had the request
11 been brought in early March or in April, there probably could
12 have been more facilitating and more communication and more
13 consideration for the request. The fact that they brought it
14 on the eve of the election, after all the schedules had been
15 scheduled, after the ballots were submitted for printing, and
16 taking into consideration the Counties' very real security
17 concerns and monetary concerns, I believe that the Court
18 should deny this request for emergency relief. They haven't
19 shown a true comparison between the majority and minority
20 parties and how living in a rural area burdens the Pyramid
21 Lake Tribe or the Walker River Tribe any more heavily than it
22 burdens any other resident of those rural communities.

23 And, if I may answer any questions that you have.

24 THE COURT: Thank you, Miss Story. I don't have
25 any questions.

1 MS. STORY: Thank you.

2 MR. RYMAN: Good afternoon, Your Honor.

3 Brent Ryman for the Mineral County defendants.

4 Before I launch into the facts and the burden and
5 all of those other things, I would like to address what you
6 questioned earlier, which was the two-prong analysis in the
7 DOJ brief. And as I read the Department of Justice's position
8 on that, the first prong actually has two prongs in it, so
9 it's really a couple analyses. But, I'll quote it from page 3
10 of 3 in document 43, the Statement of Interests of the United
11 States of America, which, quite frankly, I haven't seen in one
12 of these cases before. Quote: "Courts have used the two-step
13 analysis to determine whether the location of the election
14 sites or limitations to early voting and voter registration
15 result in denial or abridgement of the right to vote under
16 Section 2.

17 "First, the reviewing court assesses whether the
18 practices amount to material limitations that bear more
19 heavily on minority citizens than non-minority citizens."

20 Now, that's the first prong of the analysis;
21 however, that's not the end of the first prong of the
22 analysis. Quote: "This assessment incorporates both the
23 likelihood that minority voters will face the burden and the
24 relative ability to overcome that burden."

25 The word "material", I think, is very important in

1 this. Here, plaintiffs, as in regard to the Mineral County
2 defendants, the plaintiffs are alleging a material burden in
3 being forced to drive to early voting in Hawthorne as opposed
4 to Schurz. However, they don't have standing to assert that
5 argument because they haven't shown that that's a material
6 burden to them. These plaintiffs are both registered to vote,
7 so I don't think --

8 THE COURT: So why do they not have standing to
9 say that's a material burden to them as registered voters to
10 participate in early voting?

11 MR. RYMAN: Because --

12 THE COURT: I think you're mixing up the factors
13 with the standing analysis. It seems to be collapsing the
14 two.

15 MR. RYMAN: Well, perhaps, Your Honor, but what
16 I think we need to focus here is "material." And what they
17 haven't shown is that that 34-mile drive is material.

18 So, pushing off standing so that I don't collapse
19 that, and we'll talk about it in a minute, the ways that
20 they've tried to do that it with general observations about
21 reports in other cases. And then, we get to the surveys.

22 Those surveys should not be admitted into evidence,
23 Your Honor. They were dropped on us this morning. They are
24 unscientific. And, they're inadmissible.

25 Anyway, although I got a little out of order in what

1 I wanted to present to the Court there, what I do want to
2 present is DOJ has the word "material" in the analysis of the
3 first prong and there are two portions of that first prong,
4 both the likelihood of minority voters will face the actual
5 burden, and their relative ability to overcome it.

6 These two plaintiffs, in regard to the Mineral
7 County defendants, have not shown anything about their own
8 inability to overcome the burden that faces them.

9 THE COURT: Well, they are -- their argument
10 is broader than that. It's a material burden on all tribal
11 members who reside in Schurz. And if you look at -- they
12 offer this in their motion, but if you look at their reply
13 brief on page 8, as well as it was there earlier, but page 8
14 certainly lays out the material burden on them, including, as
15 they said, they don't have the economic, the transportation,
16 the technological resources to utilize online voter
17 registration, or to travel to register to vote in person.
18 They discussed the, the roundtrip required to Hawthorne, and
19 that deals with voters registration. And then they address
20 the, the costs of transportation, the fact that you need a
21 reliable car. The average car, age of the cars owned by an
22 average member of the Walker River Paiute Tribe.

23 So my point is they layout some information to
24 support the argument that, if I just focus on early voting,
25 that the early voting in Hawthorne would impose a material

1 burden.

2 MR. RYMAN: Putting aside, again, as you did,
3 voter registration for a second, just focusing on the early
4 voting -- and part of the reason we're doing that is because
5 there is an Election Day polling in Schurz and there has been
6 for quite some time -- what plaintiffs have shown are just a
7 number of broad conclusions. They do not have actual evidence
8 to support the fact that these are material burdens. And they
9 certainly haven't done anything to show --

10 THE COURT: Well, those are materials for the
11 Court to decide here, so they say here are all the burdens we
12 think it's materials because it adds up to a lot.

13 MR. RYMAN: Certainly. And I'm here to argue to
14 the Court that it's not --

15 THE COURT: It's not material.

16 MR. RYMAN: -- not material. And that's why I
17 wanted to ensure that the Court took a look at DOJ's two-part
18 test. And there was a lot of talk about it a minute ago. And
19 I don't know -- it seemed like we were glossing over the idea
20 that it was material. And there was also a lot of discussion
21 about --

22 THE COURT: No, I know the test requires not
23 just there's a burden, but it has to be a material burden.

24 MR. RYMAN: And in addition --

25 THE COURT: And the second factor of the first

1 factor test, as you pointed out, is the ability of the
2 minority member to overcome those burdens.

3 MR. RYMAN: Which I would argue, Your Honor,
4 based on the things you were talking about with Mr. Large a
5 minute ago, that is, at the very least, a quasi-causation
6 test in accord with that Arizona case that you were
7 discussing.

8 Minority voters -- or plaintiffs needs to show that
9 minority voters will face the burden and do not have the
10 relative ability to overcome that burden. It's causation,
11 Your Honor. That's where the Gonzalez court gets that
12 causation test.

13 And the conclusions on, I guess it was page 8 of
14 plaintiff's reply --

15 THE COURT: I'm sorry. How is that causation?

16 So, one is there's a -- and I'm trying to
17 understand.

18 MR. RYMAN: I appreciate that.

19 THE COURT: There's a material burden. And
20 they don't have the ability, as the group in the majority, to
21 overcome that burden?

22 MR. RYMAN: A material --

23 THE COURT: Where is the causation?

24 MR. RYMAN: A material burden that actually will
25 cause a problem --

1 THE COURT: Right.

2 MR. RYMAN: -- that's causation.

3 THE COURT: But, that's not what you're arguing
4 as to causation though. You're arguing about -- well, at
5 least as Mr. Large argued, it may be that your argument is
6 different. You tell me why it's causation.

7 MR. RYMAN: What I was trying to do was kind of
8 flush out the second two parts of the first part of the test
9 there in accord with Mr. Large's argument. I will be arguing
10 causation, but I don't want to conflate them on standing
11 again.

12 In regard to these plaintiffs, they have not
13 demonstrated -- and I don't even need to use the term
14 causation, Your Honor, but they haven't fulfilled the first
15 part of the test based on what it states here, whether that's
16 causation, quasi-causation or however you want to interpret
17 it. They have not fulfilled that part of the test to show
18 likelihood on the merits under the standard that we're here
19 today to address because they don't have any evidence that
20 shows that this 34-mile drive affects them differently than
21 all of the other rural residents of Mineral County. And I'm
22 talking about the outlying, I want to say neighborhoods, but
23 they're actually unincorporated townships under Nevada law.
24 Those people also don't have early voting locations. Those
25 people also have to drive to early voting locations, many of

1 them at a much greater distance if they wish to early vote.

2 So, plaintiffs have not shown there that the
3 practice, in this case the practice of allowing early voting
4 in Hawthorne as opposed to anywhere else, at the courthouse,
5 amounts to a material limitation that bears more heavily on
6 minority citizens of Schurz than non-minority citizens.
7 There's a paucity of any evidence related to those numbers.

8 And that brings me back to the survey we're
9 looking at because that survey was never given to anyone
10 outside of Schurz. This survey, clearly, indicates, according
11 to Mr. Healy's testimony anyway, that the voters of Schurz,
12 when asked the questions in the survey, would prefer to have
13 early voting in Schurz and voter registration as well. But,
14 that does not equate to fulfilling the first part of this
15 two-part analysis. And because of that, we never get to the
16 NEECO (phonetic) factors. We never talk about this totality
17 of the circumstances.

18 And I'm certainly prepared to move on and address
19 standing, Your Honor. However, if you're interested in
20 something here, I don't want to leave this issue while
21 you're --

22 THE COURT: No. Please move on.

23 MR. RYMAN: Much of this suit focuses on
24 problems in voter registration. And as you've addressed with
25 Mr. Large, the plaintiffs in this case are already registered

1 to vote. They do not have standing to make claims regarding
2 voter registration and I don't agree with the idea that
3 because plaintiffs might be able to show standing on some
4 other area, that they'll be entitled to declaratory relief on
5 something that, obviously, does not affect them.

6 When that was argued in the opposition brief, the
7 plaintiffs reply moved to this idea of the potential that
8 they may some day have to change their voter registration. I
9 suspect that that's mere speculation as we've discussed
10 before, and that's not sufficient to equate to standing on
11 the idea of voter registration and especially declaratory
12 relief in the form of a preliminary injunction at this time,
13 when plaintiffs have not shown any of that injury in fact
14 regarded to that claim that they've proven.

15 Moving on to a broader idea of standing and whether
16 there's an actual voter registration problem in Schurz.
17 There's not. The numbers provided in Mr. Nepper's affidavit,
18 which is document number 40, I believe --

19 THE COURT: Exhibit 40, I think. That's the one
20 you showed Mr. Healy earlier?

21 MR. RYMAN: Document 40 on the court's docket.

22 THE COURT: Yes.

23 MR. RYMAN: Which I have somewhere.

24 Anyway, uh, the numbers that were run in
25 Mr. Nepper's affidavit show that the residents of Schurz, in

1 relation to the residents of Mineral County, overall, actually
2 have a bit of a higher voter registration percentage. Again
3 I'm not mathematician, but I think this is some fairly easy
4 arithmetic to take a look at here. Those documents show
5 that 420 registered voters in Schurz, which had a census
6 population, the number that we're getting from plaintiff's
7 brief of 658 total, for a percentage of registered voters at
8 63.8 percent.

9 In relation to Mineral County overall, there were a
10 total of 3,000 registered voters, in a census population of
11 4,772 total, for 62.8 percent overall.

12 So the residents of Schurz -- and this is looking at
13 Schurz directly and not the Native Americans, but that's not
14 the Native American residents of Schurz, but those are the
15 numbers we have and that's what we can look at here -- are
16 registered at about a percentage point above the overall
17 population of Mineral County, which, of course, also includes
18 Schurz in there.

19 Mr. Nepper also ran some documents for me last night
20 on the way here, and they're not in evidence, but they show
21 that the efforts to register voters in Schurz have been paying
22 off and there are eight additional registered voters in
23 Schurz, so that number has gone up even a little bit more in
24 comparison to the rest of the County.

25 There's not a voter registration problem in Schurz.

1 The plaintiffs have not shown any injury, in fact, that would
2 require the declaratory relief they're seeking regarding voter
3 registration.

4 Another problem with plaintiff's emergency motion
5 for injunctive -- or preliminary injunction, this document 26
6 that we're looking at, is that it's based on these surveys,
7 and these surveys are majorly problematic and should not be
8 considered by the Court. There's the issue of the disclosure
9 of the surveys to us this morning. For the first time, we've
10 finally seen them. For the first time last night -- or
11 yesterday afternoon, more appropriately -- we finally saw
12 the questions that were asked in the surveys. And perhaps
13 most importantly, the fact that the purveyors of the survey
14 were paying people money to participate in it. This causes
15 a huge sample selection problem and causes huge bias problems.
16 It's completely unscientific. And, it's certainly not enough
17 to show that plaintiffs have a probability or likelihood of
18 success on the merits of their claims. Those surveys are what
19 plaintiff is using in evidence to try to establish the first
20 prong and the first and second subprongs of what the DOJ calls
21 the two-part, the two-prong analysis in Section 2 of the
22 Voters Right Act. And without those surveys, the plaintiffs
23 can't do it. The mere idea -- which is what Mr. Healy
24 eventually came back to on cross -- the mere idea that there
25 is a drive to the early voting location is not sufficient

1 to show material limitations that bear more heavily on
2 minority citizen than non-minority citizens. And without
3 those surveys, that's all he's showing.

4 Your Honor, one miscellaneous point that occurred to
5 me that, honestly, bears on the Washoe County defendants as
6 opposed to the Mineral County defendants because we already
7 have an -- or an Election Day polling spot there --

8 THE COURT: And I'm sure Mr. Large would
9 appreciate this next point then.

10 MR. RYMAN: With his permission, NRS 293.463,
11 Nevada law requires employers to provide time off for voting
12 based on the distance to polls. I believe this statute
13 applies only to Election Day polling, but I'm not certain. I
14 haven't had much time to take look at it since Ms. Felts
15 pointed it out to me during oral argument a few minutes ago.
16 But, under that statute -- again, it's 293.463 -- the time
17 off has to be paid and the amount of time that's given to
18 vote is based on the distance to the polls. And, any
19 retribution by the employer against the employee is
20 specifically made illegal.

21 THE COURT: You're assuming the person is
22 employed.

23 MR. RYMAN: My understanding was that -- and,
24 again, this is really not my argument here -- but my
25 understanding was plaintiffs were alleging that employed

1 voters wouldn't be able to get the time off to drive to a
2 polling location on Election Day and that's how they were
3 equating the distance to a material burden.

4 One other point I would like to make is that, Your
5 Honor, my clients oppose this motion and they do not believe
6 that plaintiff has stated a claim under Section 2, under equal
7 protection, or under the Nevada Constitution. We're here,
8 vigorously, denying those things in part because we are afraid
9 that plaintiffs will be seeking a huge award of attorneys
10 fees if they establish even a tiny modicum of relief on these
11 things. That being said, my clients recognize the importance
12 of the right to vote and they want to do everything that they
13 can to make sure that they are able to allow the citizens of
14 Mineral County to vote for the candidate of their choice.
15 But, my clients also face some other burdens, or some other
16 factors in balancing the right to vote and the manner of
17 voting, that's just a fact of life. They are provided with a
18 minimal budget, as we've discussed. They need to stay within
19 that budget. In fact, if Mr. Nepper were to go outside of
20 his budget in order to do something, it could be considered a
21 misdemeanor under Nevada law. I doubt he would be prosecuted
22 for it, but it's out there.

23 Another important concern for Mr. Nepper and the
24 County is security. And having early voting at a single
25 place, where it's always been, at the courthouse, with a

1 secure vault for the voting equipment and the VPAT (phonetic)
2 rules and all of those things, with a staff that's already
3 there and is trusted and deputized for these things, achieves
4 those concerns.

5 In looking at the factors related to -- or attended
6 to whether a motion for preliminary injunction would be
7 granted, while I've heard a lot about the fact or the idea
8 that the burden on the County is never to be considered, it's
9 very important to a request for a preliminary injunction
10 indeed. And, here, that's something that the Court should
11 take a look at. It's set forth in the brief. I've just
12 preached on it and I won't harp on it again --

13 THE COURT: No, it's part of the Winters factors
14 that the Court has to consider, the relative hardship on the
15 parties.

16 MR. RYMAN: Especially in light of the very
17 minimal relative hardship on the plaintiffs who are actually
18 parties here, who have never shown that they'll be unable to
19 vote. They haven't shown that they don't drive, for instance,
20 to Hawthorne all the time and could just vote while they're
21 there. They haven't shown that they'll be unable to vote on
22 Election Day at the polling place that's established in
23 Schurz, which I think is Precinct 12. And, they certainly
24 haven't shown that they're unable to register to vote because
25 they've alleged in their Complaint, which is verified, that

1 they are already registered to vote.

2 So, quite frankly, had there been more time for
3 Mr. Nepper to consider these things, and had they been
4 presented in the form of a discussion instead of a letter
5 that, when it was eventually rejected based on concerns we've
6 talked about, amounted or resulted in a landslide of legal
7 filings, which apparently continue today and have, obviously,
8 been in the works for quite some time, then we would still
9 be having a discussion about whether these things could be
10 achieved.

11 And while Mr. Healy thinks that it wasn't important
12 to tell Mr. Nepper all of the information that he had that
13 he's now trying to establish a case with, I heartedly
14 disagree. The idea that someone is being discriminated
15 against is something that Mr. Nepper does not take lightly.
16 And if there was really this information that's out there,
17 that supposedly showed those things, it should have been
18 provided to him for consideration. I don't see why it
19 wouldn't be, except if the real purpose of this matter was
20 to forge ahead with this litigation for whatever reason.

21 THE COURT: Thank you.

22 MR. RYMAN: Thank you, Your Honor. Thank you
23 for your time and attention to this important matter.

24 THE COURT: Mr. Sandven. Do you have any
25 response?

1 MR. SANDVEN: In the Statement of Interest,
2 Your Honor, Section 2 does apply to the local location of
3 Election Day, late registration, early voting sites that
4 this standard enumerated by Department of Justice is nothing
5 knew. They cite to Wandering Medicine in here, the Wandering
6 Medicine case. We have the transcript. They cite to Brooks
7 v. Gant case discussed earlier. In doing these cases, there
8 was no -- we hear this excuse frequently, Your Honor, that we
9 don't have time. We can't make this happen. Right now, we've
10 got tribal chairmen as plaintiffs. We've got folks on the
11 ground willing to act as liaisons that are going to cooperate
12 fully --

13 THE COURT: Let me focus --

14 MR. SANDVEN: -- with the County in getting
15 things done.

16 THE COURT: All right. Let me focus on what I
17 see is the main argument from both Counties; and that is, when
18 I look at the first factor analysis, I have to look at the
19 relative burdens on minority voters versus majority voters,
20 and have to find that the limitations are material. Their
21 argument is that there's no comparison data for me to find the
22 burden -- the relative burden on, for example, for Mineral
23 County, the relative burden on majority voters, who live about
24 equal distance if not further from Hawthorne. How do I -- how
25 do you respond to that argument?

1 MR. SANDVEN: Similarly to what the Statement of
2 Interest did, is that you got to consider the discriminatory
3 history and all these socioeconomic factors, that it's more
4 than travel distance. It's the treatment of this group of
5 folks, the impact of that disparate treatment over all these
6 years that --

7 THE COURT: But if I compartmentalize it, right?
8 You refer to the Statement of Interest, so let's look at the
9 Statement of Interest.

10 So this analysis, right, I think -- I have to think
11 about this more -- but the first factor under the two-factor
12 analysis asks the Court to assess whether the practices amount
13 to material limitations that bear more heavily on the minority
14 citizen than the non-minority citizen. To me, that tells me I
15 have to compare the burden on -- between the two groups.

16 The second -- the first subfactor then is the
17 ability of the minority voters -- or the likelihood the
18 minority voters face a burden and their relative ability to
19 overcome that burden. The second part, I have to look at the
20 history of the socioeconomic disparity, the history of
21 discrimination and so on. But, I'm going back to the first
22 part of that test; and that is, the relative burden or the
23 relative limitations. It seems to me when you talk about
24 relativity, I have to have comparison data.

25 So, have you provided that?

1 MR. SANDVEN: No, Your Honor. But on page 4
2 of 17, after all the citations, on line 9, Your Honor, second
3 of the disparities establish the reviewing court engages in
4 intensely local appraisal of the totality of the circumstances
5 in the jurisdiction at issue --

6 THE COURT: But, that's the second factor. You
7 have to have established disparity first. I mean, tell me if
8 I'm misunderstanding the analysis here, because to establish
9 disparity -- so I don't get to the second factor until you
10 establish disparity. And to me, the second factor is easier
11 based on the evidence that I have here. But, you have to
12 establish disparity. And how do you establish disparity when
13 you only tell me data about one group, but not about the group
14 that you're comparing it to?

15 MR. SANDVEN: I think in the McCool Report, and
16 I won't spend a lot of time in it, but I would ask the Court
17 to refer to that. That was an exhibit to our Complaint.
18 Much of that comparison that you're describing is in that in
19 his preliminary report, specific to the voters at these two
20 nations.

21 THE COURT: The other arguments that may be
22 simply addressed here is that I think Washoe County argues
23 that the plaintiffs -- there's no allegation that the named
24 plaintiffs reside on the reservation in Nixon. I looked at
25 the Complaint and the Complaint alleges that they are, of

1 course, enrolled members of the Tribe and they are residents
2 of Washoe County. I'm not sure where they reside. And if
3 you ask leave to offer that testimony, I'll grant it.

4 Are they here to tell me where they reside?

5 MR. SANDVEN: Yes.

6 (Counsel confers with clients.)

7 MR. SANDVEN: Can I call Ralph Burns, Your
8 Honor?

9 THE COURT: I'm sorry.

10 MR. SANDVEN: May I call Mr. Burns?

11 THE COURT: Yes.

12

13 **RALPH E. BURNS,**
14 called as a witness on behalf of the Plaintiff,
15 was sworn and testified as follows:

16

17 THE CLERK: Please be seated.

18 Please state your full name for the record and spell
19 your last name.

20 THE WITNESS: Ralph E. Burns; R-a-l-p-h, E,
21 B-u-r-n-s.

22

DIRECT EXAMINATION

23 BY MR. SANDVEN:

24 Q Mr. Burns, are you a veteran?

25 A Yes, I am.

Q From what period?

A I was in the Vietnam era War.

1 Q Can you tell the Court where you you live, please.

2 A I live in Nixon, Nevada.

3 Q Thank you.

4 MR. SANDVEN: No further questions.

5 THE COURT: Thank you, Mr. Burns.

6 MR. SANDVEN: Do you want --

7 THE COURT: It's up to you.

8

9 **ROBERT L. JAMES,**
called as a witness on behalf of the Plaintiff,
was sworn and testified as follows:

10

11 THE CLERK: Please be seated.

12 Please state your full name, spelling your first and
13 last name for the record?

14 THE WITNESS: Robert L. James.

15 **DIRECT EXAMINATION**

16 BY MR. SANDVEN:

17 Q Are you a veteran, sir?

18 A Yes, sir.

19 Q From what period?

20 A Vietnam.

21 Q Where did you live, sir? Where do you reside?

22 A I was a Korean veteran.

23 I have a hard time hearing.

24 Q I'm sorry. Where do you live, sir?

25 A I live in the rural district of Wadsworth, Wadsworth,

1 Nevada.

2 Q What direction from Wadsworth?

3 A About eight miles from Wadsworth.

4 Q What direction?

5 A North.

6 Q Thank you, sir.

7 THE COURT: Thank you, Mr. James.

8

9 **JOHNNY WILLIAMS, JR.,**
called as a witness on behalf of the Plaintiff,
was sworn and testified as follows:

10

11 THE CLERK: Please be seated. Please state your
12 full name, spelling your first and last names for the record.

13 THE WITNESS: (No response.)

14

DIRECT EXAMINATION

15 BY MR. SANDVEN:

16 Q Can you state your full name and spell your last name,
17 sir?

18 A Johnny Williams, Junior, W-i-l-l-i-a-m-s.

19 Q Are you a veteran, sir?

20 A Yes.

21 Q Can you tell the Court from what period.

22 A Uh, Vietnam.

23 Q Where do you live, sir?

24 A Schurz.

25 Q Thank you, sir.

1 THE COURT: Thank you.

2 MR. SANDVEN: Your Honor, this is the Tribal
3 Secretary, who is appearing for the Chairman.

4 THE COURT: Well, I, I don't know that she can
5 appear for the Chairman. What I'm going to permit you, for
6 the two remaining plaintiffs, if you want to supplement, file
7 an affidavit for them stating where they reside.

8 MR. SANDVEN: Thank you, Your Honor.

9 THE COURT: Anything else you want me to
10 consider, Mr. Sandven?

11 MR. SANDVEN: Nothing further, Your Honor.

12 THE COURT: Thank you, counsel. As I said, I
13 plan to have a written order issued by this Friday. I want to
14 thank everyone for their arguments and for cooperating today.

15 Thank you.

16 (Court adjourned.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

\s\ Kathryn M. French

October 22, 2016

KATHRYN M. FRENCH, RPR, CCR
Official Reporter

DATE

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