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official capacity as Montana Secretary of State*

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

Montana Democratic Party and Mitch Bohn,

Plaintiffs,

Western Native Voice, *et al.*,

Plaintiffs,

Montana Youth Action, *et al.*,

Plaintiffs,

vs.

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

Defendant.

Consolidated Case No. DV 21-0451

Hon. Michael Moses

**DEFENDANT'S BRIEF IN
SUPPORT OF MOTION TO
STRIKE TESTIMONY OF
KENDRA MILLER**

Defendant Christi Jacobsen, in her official capacity as Secretary of State for the State of Montana ("Secretary Jacobson"), files the following brief in support of her Motion to Strike Testimony of Kenda Miller.

The Secretary preserved her objection to Ms. Miller's trial testimony and was granted a continuing objection to her testimony on this issue. Trial Tr. 750:20-756:18. During trial, and following that objection, this Court determined that Ms. Miller's testimony was admissible lay witness testimony. Trial Tr. 808:2-5.

Montana Rule of Evidence 103(a)(1) permits a "motion to strike" evidence admitted by the Court during trial pursuant to an "erroneous ruling." The Montana Supreme Court has held that the "striking of erroneously admitted evidence . . . serves to cure error." *State v. Smith*, 220 Mont. 364, 375-76, 715 P.2d 1301, 1307-08 (Mont. 1986).

The Secretary brings this issue in front of the Court again due to the subsequent trial testimony by Bradley Seaman, the Missoula County Election Administrator, that established:

- (1) Ms. Miller's testimony as to the source of the information she relied on was incorrect; and,
- (2) that her conclusions could not accurately be reached without resort to sources she did not have access to.

The contradiction between Mr. Seaman's testimony and Ms. Miller's testimony—both Plaintiffs' witnesses—renders this Court's conclusion that Ms. Miller's testimony was lay witness testimony erroneous. Trial Tr. 808:2-5. Therefore, the Secretary respectfully requests that this Court strike Ms. Miller's testimony. The Secretary includes additional analysis related to why Ms. Miller's testimony is not admissible expert testimony to preserve that objection if this Court reaches that issue following this motion.

ARGUMENT

- I. The error in Ms. Miller’s trial testimony—that the data she relied on is kept by election administrators in the ordinary course of business and that her conclusions were simply a matter of math—renders this Court’s conclusion that Ms. Miller was offering admissible lay witness testimony erroneous.**

Plaintiffs identified Ms. Miller as a lay witness in their Pretrial Disclosure submitted July 26, 2022. Ex. 3, Plaintiffs’ Consolidated Pretrial Disclosure at 3. The Final Pretrial Order identifies Ms. Miller as a lay witness. Dkt. 207 at 67. At her July 22, 2022, deposition, just weeks before trial, when defense counsel questioned Ms. Miller about the basis for her assertion that 58 people could not vote due to HB-176, counsel for Montana Federation of Public Employees (“MFPE”) objected based on speculation and then affirmatively stated: “Ms. Miller hasn’t been offered as an expert here. She’s a fact witness. So you can ask about things that she personally knows.” Ex. 1, Deposition of Kendra Miller, Vol. II, at 15:5-8. At trial, this Court found Ms. Miller’s testimony to be lay witness testimony. Trial Tr. 808:2-5.

In response to voir dire by this Court, Ms. Miller testified that the records she reviewed from county election administrators are records kept in the usual course of business by election administrators in Montana. Trial Tr. 804:2-11.

- Q. First of all, with respect to the records that came from the counties, those records are records that are kept in the usual course of business by the elections administrators in each and every county; is that correct?
- A. That’s correct, on the voter registration applications. Some counties also had, like, a log of people who were impacted by House Bill 176. And so, that would have been new. They weren’t doing that prior. But, yes, this is normal information that they keep and we requested.

Trial Tr. 804:2-11. Ms. Miller knew she did not have the ability to make such an assertion: during her deposition, Ms. Miller testified: “I don’t know what county election administrators keep records of.” Ex. 2, Miller Dep. Vol. 1, at 48:6-14.

Bradley Seaman's trial testimony confirms Ms. Miller's statement was incorrect. He testified that counties do not keep the information Ms. Miller relied upon in the ordinary course of business. Trial Tr. 1047:16-1048:19.

Q: In your tenure at Missoula County elections office, your office has not kept such a tally; right?

A. No. We don't track voters who appeared after the deadline.

Trial Tr. 1048:16-19.

Instead, Mr. Seaman testified that the counties received a public records request before the election and gathered the information in response to the public records request. Trial Tr. 1048:20-1049:4.

Q. But your office did track information about that in the fall 2021 municipal elections; correct?

A. We did have a records request submitted ahead of the election of a list of people. So we were asked to track that and provided that in accordance with the request.

Trial Tr. 1048:20-25.

Finally, Ms. Miller represented that any person with access to this information could reach the same conclusion that she did.

Q. And what you looked at was specific numbers, ultimately people, the identification number, voter identification number that they were given, and you compared those to see who actually registered on – from noon on the day before the election through the date of election when the elections office opened until 8:00 o'clock at night; is that correct?

A. Yes, that's correct.

Q. And so, even I could compare that data to make a determination as to who registered on that day and a half and who didn't?

A. Yes. You could obtain all of the same information.

Q. Anybody who could access that information would have been able to make the same compilation of who registered on that day and a half?

A. Yes. You can follow all of my analysis.

Trial Tr. 805:23-806:15.

But Mr. Seaman's testimony demonstrates that this, too, was incorrect. He testified that voter registration applications are not necessarily reliable in all cases, and that election officials must use an additional source of information—the voter database—to determine their accuracy. Trial Tr. 1055:20-1057:120. This directly contradicts Ms. Miller's statement that her analysis was just a matter of math. Trial Tr. 806:23-25.

Mr. Seaman's testimony illustrates two fundamental problems with Ms. Miller's conclusions: first, he established that the ultimate conclusion she reached—that a voter was impacted by HB 176—requires review of the voter database, which she did not have access to; second, the records relied upon by Ms. Miller are not kept in the ordinary course of business by county election officials.

These two issues demonstrate the error in this Court's conclusion that Ms. Miller was not offering expert testimony. Trial Tr. 807:20-808:5. Most importantly, this testimony demonstrates that, in order to be accurate, Ms. Miller's conclusions could not be “simply a compilation of the data.” Trial Tr. 807:24.

Pursuant to Rule 103, Mont. R. Evid., this Court should strike and refuse to consider testimony offered by Ms. Miller during trial on August 17, 2022, regarding individuals that she alleges were unable to vote in the 2021 municipal elections due to HB 176.

II. Ms. Miller's conclusion that certain voters were impacted by HB 176 is not admissible lay witness testimony.

Rule 701, Mont. R. Evid., allows opinion testimony by lay witnesses if those opinions are “(a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.”

The Montana Supreme Court has held that lay witnesses may offer their opinions as long as those opinions are based on the witnesses' own observations and perceptions. *See State v. Smith*, 1998 MT 257, ¶ 17, 291 Mont. 236, 967 P.2d 424; *State v. Clark*, 209 Mont. 473, 485, 682 P.2d 1339, 1346 (Mont. 1984). A lay witnesses' testimony that merely summarizes evidence or information gathered from other individuals is not based on that witnesses' own perceptions and is improper lay testimony. *See Clark*, 209 Mont. at 485, 682 P.2d at 1346.

Under *Clark*, admitting Ms. Miller's testimony as lay witness testimony is error. Ms. Miller's testimony was not rationally based on her own perception. She did not speak with any of the individuals she identified regarding their voter registration. Trial Tr. 800:6-12. She did not speak with any of the county election administrators that provided responses to the records request she relied on. Trial Tr. 799:14-21. Further, Ms. Miller did not limit her testimony to her personal knowledge. She drew inferences from the data she reviewed to reach her conclusion. Trial Tr. 793:4-11. She interpreted HB 176 to conduct her analysis. Trial Tr. 809:18-20. She described her testimony as follows: “It's a conclusion based on data. But I determined that at least 59 Montanans were prevented from voting due to House Bill 176 in the 2021 municipal elections.” Trial Tr. 791:9-15.

Additionally, Ms. Miller's testimony is not helpful to a determination of a fact in issue. Rule 701, Mont. R. Evid., requires Ms. Miller's testimony to be “helpful to a clear understanding

of [her] testimony or the determination of a fact in issue.” Here, courts are uniform in interpreting Rule 701(b) to prevent a lay witness from opining on ultimate issues to be decided by the fact finder. *See U.S. v. Cabrera*, 13 F.4th 140, 150 (2d Cir. 2021); *United States v. Noel*, 581 F.3d 490, 496 (7th Cir.2009); *United States v. Grinage*, 390 F.3d 746, 750 (2d Cir. 2004). In other words, the purpose of a lay witness is to inform the trier of fact of the evidence, not to tell it what inferences to draw from that evidence.

Ms. Miller’s opinions do not tell the trier of fact what the evidence is but rather impermissibly inform the trier of fact what inferences to draw from evidence. Further, Ms. Miller’s testimony is not helpful to a determination of a fact in issue because, as demonstrated by the testimony of Mr. Seaman, an accurate conclusion as to that issue would require use of the voter database, which she did not have access to.

For these reasons, Ms. Miller’s testimony on this issue is not proper lay opinion testimony.

III. If this Court determines Ms. Miller’s testimony is expert testimony, it must be excluded because it constitutes an undisclosed expert opinion.

Ms. Miller’s testimony about the number of voters who were prevented from voting due to HB 176 is not based on her personal knowledge, but rather is based on hearsay and speculation, and such testimony relates to events that “would have occurred,” i.e., voters would have voted but for HB 176. As a result, her testimony is expert testimony. Ms. Miller, however, was not disclosed as an expert. She was not identified in the Final Pretrial Order as an expert witness, was not designated as an expert in Plaintiffs’ Consolidated Pretrial Disclosure, and her counsel affirmatively represented that Ms. Miller was not an expert witness but a “fact witness.”

Failing to disclose expert witnesses pursuant to the deadlines set forth in a scheduling order constitutes grounds to exclude the expert testimony. *Seal v. Woodrows Pharmacy*, 1999 MT 247, ¶ 26, 296 Mont. 197, 988 P.2d 1230; *Rocky Mountain Enterprises, Inc. v. Pierce Flooring*, 286 Mont. 282, 951 P.2d 1326 (Mont. 1997); *Sunburst Sch. Dist. v. Texaco*, 2007 MT 183, ¶¶ 68-73, 338 Mont. 259, 165 P.3d 1079. In fact, in situations like this where a party attempts to elicit expert testimony from a lay witness that was not disclosed as an expert witness, the Montana Supreme Court has held that “[f]ailure to disclose an expert witness constitutes reversible error.” *Superior Enterprises, LLC v. Montana Power Co.*, 2002 MT 139, ¶ 18, 310 Mont. 198, 49 P.3d 565 (trial court abused its discretion in failing to exclude expert testimony from a witness that was not disclosed as an expert witness); *see also Miranti v. Orms*, 253 Mont. 231, 235, 833 P.2d 164, 166 (1992) (district court abused its discretion when it allowed two witnesses to testify as experts, when they had only been listed as lay witnesses, because it severely limited the objecting party's ability to effectively cross-examine the witnesses); *Vestre v. Lambert*, 249 Mont. 455, 462, 817 P.2d 219, 223 (1991) (district court committed reversible error when it allowed the defendant to solicit undisclosed expert testimony from a witness previously called to discuss factual issues, when neither party had listed the witness as an expert).

The Montana Supreme Court has “on a number of occasions, affirmed the authority of a district court to exclude expert testimony as a result of failure to properly disclose the expert witness.” *First Citizens Bank v. Sullivan*, 2008 MT 428, ¶ 29, 347 Mont. 452, 200 P.3d 39; *Nelson v. Nelson*, 2005 MT 263, ¶ 32, 329 Mont. 85, 122 P.3d 1196. For example, in *Seal*, the Montana Supreme Court upheld the district court’s exclusion of the plaintiff’s expert witness based on the plaintiff’s failure to timely and adequately comply with Rule 26(b)(4)(A)(i). *Seal*, ¶

17. The Court reasoned that “[t]he purpose of these sanctions is to deter parties from being unresponsive to the judicial process regardless of the intent, or lack thereof, behind such unresponsiveness.” *Seal*, ¶ 22. Similarly, in *Rocky Mountain Enterprises*, the Montana Supreme Court excluded the plaintiff’s proposed expert witness testimony on the grounds that it was not timely disclosed pursuant to the deadlines set forth in the scheduling order. *Rocky Mountain Enters.*, 951 P.2d at 1336. The scheduling order provided that all expert witnesses were to be disclosed by October 30, 1994. *Id.* On December 28, 1994, the plaintiff attempted to file supplemental designations for its expert witnesses. *Id.* The Montana Supreme Court agreed with the district court “that the Plaintiff’s disclosures under Rule 26, M.R.Civ.P., were inadequate and untimely” and therefore certain expert witnesses would be prohibited from testifying at trial. *Id.* at 1336-1337.

“Failure to disclose an expert witness will usually prejudice the opposing party.” *First Citizens Bank*, ¶ 29; *see also Superior Enterprises*, ¶ 18. Here, in discovery, all Plaintiffs were asked to state the name and address of all expert witnesses at trial and with respect to each expert, state the subject matter on which that expert is expected to testify, the substance of the facts and opinions to which that expert is expected to testify, and summarize the grounds for each opinion. In response, none of the Plaintiffs disclosed Ms. Miller or the basis of her opinions. Even though Secretary Jacobsen deposed Ms. Miller, Secretary Jacobsen is still prejudiced by Ms. Miller’s undisclosed expert opinions provided during trial. *Sunburst School District No. 2*, ¶ 72.

In *Sunburst School District*, the Montana Supreme Court found that the plaintiff suffered prejudice even though it had deposed the defendant’s expert witnesses because the expert witnesses were deposed before the defendant disclosed them as expert witnesses. *See id.*

“Without such notice, the opportunity to depose does not remove the prejudice.” *Id.* The same is true here.

Further, it was only through an *inadvertent* disclosure that Secretary Jacobsen received any information about the basis for Ms. Miller’s opinions. Prior to her first deposition, Plaintiffs inadvertently sent Defendant’s counsel a spreadsheet containing information on individual voters. *See* Ex. 2, Deposition of Kendra Miller, Vol. 1, at 60:2-62:7. At her deposition, Ms. Miller acknowledged that she used the spreadsheet to formulate her opinions. *See id.* at 57:9-61:13. When Defendant’s counsel attempted to ask Ms. Miller about that document during her deposition, however, Plaintiffs’ counsel, including counsel for the Montana Democratic Party, objected on the grounds of privilege and work product and clawed it back. *See id.* Ms. Miller’s counsel also revealed that this document had been jointly shared among all Plaintiffs under a common interest agreement that included non-party MFPE. *See id.* It was at least two months later before the parties reached a compromise concerning the scope of Plaintiffs’ privilege and work product objections. And even then, Defendant never received the document as it was originally disclosed; rather, Defendant received a redacted version. So, not only did Plaintiffs not list Ms. Miller as an expert witness *and* disclaim that she was an expert during her July 22nd deposition, throughout the litigation they actively prevented the Secretary from understanding the basis for Ms. Miller’s opinions.

Secretary Jacobsen is prejudiced by Plaintiffs’ failure to disclose expert testimony because she had “(1) no time to prepare for the witness, (2) no time to effectively plan for cross-examination of the witness, and (3) no time to obtain an expert to refute or question the testimony of the witness.” *Superior Enterprises*, ¶ 18. “For purposes of trial preparation, there is a

big difference between knowing about a factual witness and understanding that he will be called as an expert witness by your opponent.” *Id.*, ¶ 19. Just so here. The Secretary was entitled to rely on Plaintiffs’ representations in their pretrial witness disclosure and the Final Pretrial Order that Ms. Miller would be offered as a lay witness. Ms. Miller had previously served as a Rule 30(b)(6) witness for the Montana Democratic Party and, in that role, clearly had a wealth of personal knowledge related to the Montana Democratic Party’s operations. It was reasonable for the Secretary to presume that Ms. Miller’s testimony would be constrained to her personal knowledge. Further, Ms. Miller’s deposition does not change this because at the time Secretary Jacobsen deposed Ms. Miller, she was not aware that Ms. Miller would be offering expert testimony and had no reason to believe that Ms. Miller would be offering expert testimony based on MFPE’s counsel’s representations at the deposition.

If this Court finds Ms. Miller’s testimony to be expert testimony, her opinions constitute undisclosed expert opinions and, therefore, must be excluded.

IV. Even if Ms. Miller’s opinion had been disclosed, her conclusions should be excluded as they are not proper expert opinion testimony.

Rules 702, 704, and 705 of the Montana Rules of evidence govern the admissibility of expert testimony. Rule 704 allows a qualified expert to testify as to an ultimate issue of fact. But, Rule 705 excludes any expert opinion that applies the law to the facts. *Wicklund v. Sundheim*, 2016 MT 62, ¶ 15, 383 Mont. 1, 367 P.3d 403 (citations omitted).

Ms. Miller testified that she interpreted HB 176 to conduct her analysis. Trial Tr. 809:18–20. She applied HB 176 to the data and other information she had gathered in order to reach her conclusions. This is impermissible under Rule 705, Mont. R. Evid., and her testimony should be excluded.

Further, even if her testimony goes to an issue of fact, Ms. Miller is not qualified to offer any such opinion. She had never before analyzed data from county election administrators relating to people that were unable to register to vote on election day. Trial Tr. 799:2-6. She had never gathered information relating to unsuccessful registration attempts before. Trial Tr. 798:14-16. She had never analyzed whether a specific voter was impacted by a specific law before. Trial Tr. 797:1-9. Further, she did not have access to the voter database which Mr. Seaman testified was required to accurately reach the conclusions she was offering.

Ms. Miller's opinions are also unreliable, by her own admissions. For instance, Ms. Miller did no analysis concerning whether the voters she claims were prevented from voting as a result of HB 176 were actually otherwise eligible to vote in the election. During her deposition Ms. Miller identified several voters from Libby, Montana, that moved into the Libby city limits immediately prior to the November 2021 municipal election. Ex. 1, Deposition of Kendra Miller, Vol. II, at 14:1-9. Miller opined that HB 176 prevented these voters from casting a ballot. *Id.* at 14:2-9. Ms. Miller identified one of these voters as having lived outside the municipality on October 14, 2021. *Id.* at 17:12-21:14. Libby, however, imposes a 6-month residency requirement on individuals before they are eligible to vote in municipal elections. *Id.* at 21:15-22:1.

The voter registration application that Ms. Miller relied on for her opinions merely states that the voter will be a *Montana* resident for at least *thirty days* before the *next* election. *Id.* at 23:4-12. When confronted with the Libby municipal code during her deposition, Ms. Miller admitted that she did not know whether this voter met the residency requirements imposed by Libby as to municipal elections. *Id.* at 25:3-23. Ms. Miller nonetheless continued to assert at trial her unreliable opinion that all of the voters identified were prevented from voting as a result of HB

176. Not only is such testimony inadmissible expert opinion, it is unreliable, and thus inadmissible, expert opinion.

For these reasons, if this Court finds that Ms. Miller's testimony constitutes expert opinion testimony and that her opinions were properly disclosed, her testimony is still inadmissible because it is unqualified and should therefore be stricken.

CONCLUSION

For the foregoing reasons, the Court should strike Ms. Miller's testimony.

Dated this 1st day of September, 2022.

/s/ Leonard H. Smith

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EXHIBIT 1

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

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

DEPOSITION OF KENDRA MILLER - VOLUME II (Via Zoom)

BE IT REMEMBERED, that Volume II of the
deposition upon oral examination of KENDRA MILLER,
appearing at the instance of Defendant, was heard
via Zoom on the 22nd day of July, 2022, beginning
at the hour of 9:00 a.m., before Laurie Crutcher,
Registered Professional Reporter, Notary Public.

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WHEREUPON, the following proceedings were
had and testimony taken, to-wit:

KENDRA MILLER,
Having been first duly sworn, was examined and
testified as follows: (Via Zoom)

E X A M I N A T I O N

BY MR. PHILLIPS:

Q. Good morning, Ms. Miller. Would you
please state your name for the record.
A. Kendra Miller.
Q. This is a continuation of the deposition
originally scheduled for May 11th, which was
suspended due to the assertion of privilege over a
document.
The same ground rules apply now as
applied then. Laurie the Court Reporter is going
to be transcribing everything we say. That means
we need to make sure not to talk over each other.
Any answer to a question needs to be made
verbally.
Your attorney or Mr. Gordon may object
to some of my questions, and so it's helpful to
them if you leave a little bit of space between my

1 A. Yes, things like the actual voter file
2 from October and December; the correspondence from
3 clerks. So there was more information that I
4 relied on, yes.

5 **Q. Anything else besides those two things?**

6 A. Information from county clerks,
7 information from the Secretary of State, and this
8 spreadsheet. I believe that would be exhaustive.

9 **Q. So let's just take a look at one of**
10 **these so I can understand better this method.**

11 Line 34 identifies Beth Byrnes, voter ID
12 No. 1291045; do you see that?

13 A. Yes.

14 **Q. And this identifies Ms. Byrnes, Beth**
15 **Byrnes, as being unable to vote due to HB-176,**
16 **correct?**

17 A. Yes.

18 **Q. And if we click on this Column F,**
19 **"Details," it says, "Could not vote due to HB-176**
20 **precinct to precinct new address and**
21 **municipality." So what was your conclusion? Why**
22 **did HB-176 prevent Beth Byrnes from voting?**

23 A. Can you scroll over to the right a
24 little?

25 **Q. Yes, ma'am. (Complies) Does that -- so**

1 conclusion. So I want to know whether it was just
2 a registration issue that in her opinion, Ms.
3 Miller's opinion, prevented Beth Byrnes from
4 voting.

5 MR. GRAYBILL: Ms. Miller hasn't been
6 offered as an expert here. She's a fact witness.
7 So you can ask about things that she personally
8 knows.

9 MR. PHILLIPS: I am going to try to do
10 that, and the first thing is: Does she know
11 whether it was just a registration issue that
12 prevented Beth Byrnes from voting?

13 **Q. (BY MR. PHILLIPS) Would you like me to**
14 **ask the question again, Ms. Miller?**

15 A. Yes, please.

16 **Q. Is it just a registration issue that**
17 **prevented Beth Byrnes from voting in the 2021**
18 **general municipal election in Libby?**

19 A. I will speak to what I know. Beth
20 Byrnes' registration could not be processed when
21 she attempted to register because of House Bill
22 176.

23 **Q. Okay. And that's the only thing that**
24 **prevented her from voting, to your knowledge,**
25 **correct?**

1 **she's this 34 line here.**

2 A. Beth Byrnes moved precinct to precinct
3 within Lincoln County. Her previous place of
4 residence was outside of the Libby municipality.
5 She moved into the Libby municipality, where prior
6 to House Bill 176 she would have been to able to
7 register that day and cast a ballot, but she was
8 prevented from doing so because her registration
9 wasn't processed.

10 **Q. And it's your contention that it wasn't**
11 **processed because HB-176 ended the late**
12 **registration period at noon on the day before**
13 **election, correct?**

14 A. Yes. I believe in any previous election
15 she would have been able to cast a ballot that
16 day, but the House Bill 176 prevents registration
17 from happening on election day or the afternoon
18 prior to election day.

19 **Q. So it was just a registration issue that**
20 **prevented Beth Byrnes from voting, in your**
21 **opinion?**

22 MR. GRAYBILL: Objection, calls for
23 speculation.

24 MR. PHILLIPS: Raph, this is her
25 conclusion. I need to understand the basis of her

1 A. I know that House Bill 176 prevented her
2 from voting. I don't know if there are other
3 things that could have also prevented her from
4 voting, but I do know that House Bill 176 did.

5 **Q. And if there were other things that**
6 **prevented her from voting, it would sort of call**
7 **into question your conclusion that she could not**
8 **vote due to HB-176, correct?**

9 A. What sort of things would prevent her
10 from voting?

11 **Q. That's what we're going to investigate,**
12 **but I want to know the answer to my question,**
13 **which is: If there were other things that**
14 **prevented Beth Byrnes from voting, it could call**
15 **into question your conclusion that HB-176 was the**
16 **cause that prevented her from voting, correct?**

17 A. No. It could not call into question
18 what I put in my affidavit, which is that House
19 Bill 176 prevented her from voting. It did.

20 **Q. Did you speak to Beth Byrnes?**

21 A. No.

22 **Q. Did anyone that you know of that worked**
23 **on this spreadsheet speak to Beth Byrnes?**

24 A. I don't know.

25 **Q. Did anyone do any investigation into why**

1 **Ms. Byrnes was prevented from voting?**
 2 A. I did. I looked at her status on the
 3 voter files, and the fact that she moved into a
 4 municipality, and her registration was not
 5 processed because of House Bill 176.

6 **Q. And so from your perspective, as a**
 7 **factual matter, because her registration could not**
 8 **be processed, she was not able to vote, and**
 9 **therefore you concluded HB-176 prevented her from**
 10 **voting; is that accurate?**

11 A. Can you repeat that, please?

12 **Q. Yes. So based on your investigation,**
 13 **you found that Beth Byrnes was unable to register**
 14 **due to HB-176, and therefore HB-176 prevented her**
 15 **from voting, based on that, her inability to**
 16 **register, correct?**

17 A. Yes.

18 **Q. And if we go over here to Columns K and**
 19 **N, did you use the comparison of these two columns**
 20 **to support that conclusion?**

21 A. Yes. That is not all I used, but yes, I
 22 did use those two columns in this analysis.

23 **Q. And that's because presumably 10/14,**
 24 **Column M, you could tell Ms. Byrnes lived outside**
 25 **of the city limits of Libby, and 12/15 Column K,**

1 **you could tell she moved, she lived inside the**
 2 **city limits of Libby; is that correct?**

3 A. That's correct.

4 **Q. Did you determine when Beth Byrnes moved**
 5 **into the city of Libby?**

6 A. I did not.

7 **Q. Why not?**

8 A. That is not information that Beth Byrnes
 9 needs to provide to the county or the Secretary of
 10 State, so that was not publicly available
 11 information like this other information is.

12 **Q. So how do you know that Beth Byrnes met**
 13 **the residency requirement in order to vote in the**
 14 **general municipal election in Libby in 2021?**

15 A. She submitted a registration card on
 16 either election day or the afternoon prior to
 17 election day attempting to register.

18 **Q. So in your mind, that proves that she**
 19 **was entitled to vote, or that she met the**
 20 **residency requirements to vote in the Libby**
 21 **municipal election?**

22 A. A registration card in Montana requires
 23 you to meet residency requirements when you
 24 attempt to register to vote. And Beth filled out
 25 that card, went down to the elections office, and

1 turned it in.

2 **Q. Did you look at Beth's card?**

3 A. I don't know for sure. Some county
 4 clerks provided the actual registration forms, and
 5 others provided the information from the
 6 registration forms to us without the card itself.
 7 But the county clerk provided that as a person who
 8 attempted to register that day.

9 **Q. So if you didn't look at that card, how**
 10 **do you know what representations Beth Byrnes made**
 11 **on that card?**

12 A. The county clerk has the card.

13 **Q. That's not my question. My question is:**
 14 **How do you know what representations Beth Byrnes**
 15 **made on that card if you haven't seen it?**

16 A. The county clerks provided information,
 17 based on a request from us, on the people who had
 18 submitted registration forms on election day or
 19 the afternoon prior to election day. Beth Byrnes
 20 was one of those individuals they identified.

21 **Q. Right, but how do you know what**
 22 **representations she made on that registration card**
 23 **if you haven't seen it?**

24 A. I know that the county clerk provided
 25 her as an individual who had submitted a

1 registration card on election day or the afternoon
 2 prior to election day. Her registration was then
 3 processed after election day, and she appears on
 4 the December voter file.

5 **Q. But MFPE's records request that you're**
 6 **referencing didn't talk about residency**
 7 **requirements, did it?**

8 A. MFPE's record requests asked for people
 9 who had attempted, who had submitted registration
 10 cards, attempted to register with registration
 11 forms on election day or the afternoon prior. And
 12 so part of the registration card is related to
 13 residency requirements.

14 **Q. How do you know that if you haven't seen**
 15 **Beth Byrnes' card?**

16 A. I've seen a registration form before.

17 **Q. Have you seen Beth Byrnes' registration**
 18 **form before?**

19 A. I don't know. I would have to look at
 20 what the Lincoln County office provided. They may
 21 have provided Beth Byrnes' form itself, or they
 22 may have provided the information indicating that
 23 Beth Byrnes had completed a registration form and
 24 turned it in.

25 **Q. Did you do any investigation into the**

1 **residency requirements for voting in the Libby**
2 **municipal general election in 2021?**

3 A. The residency requirements for voting,
4 for registering to vote in Montana are the same
5 everywhere.

6 MR. PHILLIPS: I'm going to introduce
7 now what will be marked as Exhibit Miller 7.

8 (Whereupon, Deposition Exhibit No. 7
9 Libby Municipal Code
10 was marked for identification)

11 **Q. (BY MR. PHILLIPS) I'll represent to**
12 **you this is the Libby, Montana municipal code.**
13 **Can you see that okay?**

14 A. Yes.

15 **Q. So Section 2.60.030 is entitled**
16 **"Residency Requirements for Electors." It states,**
17 **"All qualified electors of the state who have**
18 **resided in this city or an area which has been**
19 **annexed thereto for six months, and placed in a**
20 **ward for thirty days next preceding the election,**
21 **are entitled to vote in the municipal election."**

22 Do you understand the residency
23 requirements of Montana to require you to live in
24 the state for six months before being able to
25 vote?

1 this in a little bit here. Is that visible to
2 you, Ms. Miller?

3 A. Yes.

4 **Q. So there's a No. 2 at the top left of**
5 **the screen on this page, and it says, the third**
6 **question down, "Will you be a Montana resident for**
7 **at least thirty days before the next election?"**

8 Is that what you believe to be the residency
9 requirement for the State of Montana as far as
10 elections are concerned?

11 A. That appears to be a residency
12 requirement.

13 **Q. Would you agree with me then that the**
14 **six months residency requirement imposed by the**
15 **Libby municipal code is different than this?**

16 MR. GORDON: Objection, legal
17 conclusion.

18 A. I don't know if Libby has a different
19 requirement.

20 **Q. (BY MR. PHILLIPS) Okay. I'm going to**
21 **refer us back to Exhibit 7, which is the Libby**
22 **Montana Code of Ordinances, Section 2.60.030,**
23 **"Residency Requirements For Electors." "All**
24 **qualified electors of the state who have resided**
25 **in the city or an area which has been annexed**

1 A. Yes.

2 **Q. Let me be clear. The residency**
3 **requirements of the state of Montana, do you**
4 **believe that to be six months?**

5 MR. GORDON: Objection, calls for a
6 legal conclusion.

7 A. I'm not sure I understand this wording.
8 Are they -- Does this mean that an area that has
9 been annexed thereto for six months? I'm not an
10 attorney, so I'm not sure I understand this
11 language.

12 **Q. (BY MR. PHILLIPS) My question is**
13 **whether you believe that the residency requirement**
14 **in the state of Montana to be six months in order**
15 **to vote?**

16 MR. GORDON: Same objection.

17 A. I do not have the residency requirements
18 memorized. They are on the voter registration
19 form for registering to vote in Montana.

20 MR. PHILLIPS: I'm going to introduce
21 what will be marked as Exhibit 8, Miller 8.

22 (Whereupon, Deposition Exhibit No. 8
23 Montana Voter Registration Application
24 was marked for identification)

25 **Q. (BY MR. PHILLIPS) I'm going to zoom**

1 **thereto for six months, and placed in a ward for**
2 **thirty days next preceding the election, are**
3 **entitled to vote in any municipal election."**

4 Do you, having read that, or having
5 listened to me read that, do you believe that is
6 the same residency requirement as that found in
7 the Montana Voter Registration Application we just
8 looked at?

9 MR. GORDON: Same objection, legal
10 conclusion.

11 A. As I said before, I don't actually
12 understand this language. I don't know what it
13 means to say "placed in a ward for thirty days."
14 I also can't tell if they're saying that the
15 portion of the city has to be annexed for six
16 months, or if the person, if the qualified elector
17 has to reside there for six months. That's not
18 clear to me.

19 **Q. (BY MR. PHILLIPS) So you're unable to**
20 **interpret this language; is that fair?**

21 A. Yes.

22 **Q. And so you never looked at this language**
23 **before reaching your conclusion that Beth Byrnes**
24 **wasn't able to vote in the 2021 municipal general**
25 **election in Libby, correct?**

1 A. I did not look at this language prior,
2 no.

3 **Q. And you don't know when Beth Byrnes**
4 **moved to Libby, do you?**

5 A. No.

6 **Q. And you don't know if Beth Byrnes met**
7 **the residency requirements for the November 2021**
8 **general municipal election in Libby, do you?**

9 A. I know that Beth Byrnes' registration
10 could not be processed when she attempted to
11 register because of House Bill 176.

12 **Q. That's not my question. My question is:**
13 **You don't know if Beth Byrnes met these residency**
14 **requirements for the November 2021 general**
15 **municipal election, do you?**

16 A. Since I do not understand this language,
17 I can't speak to whether or not someone has met
18 these unclear requirements that you're showing me.

19 **Q. If you can't speak to these**
20 **requirements, then you can't say she met them, can**
21 **you?**

22 A. Yes. I said I don't know anything about
23 this language.

24 **Q. So you don't know whether or not**
25 **registration issues prevented Beth Byrnes from**

1 **nine individuals who were prevented from voting by**
2 **HB-176; am I interpreting that data correctly?**

3 A. Yes.

4 **Q. And Beth Byrnes is one of those nine**
5 **individuals, correct?**

6 A. Yes.

7 **Q. But we've just discussed how you don't**
8 **know whether Beth Byrnes met the residency**
9 **requirements in order to vote, correct?**

10 A. Beth Byrnes attempted to register either
11 on election day or the afternoon prior to election
12 day. Her registration could not be processed
13 because of House Bill 176, so she was prevented
14 from voting, because of that law.

15 **Q. But you don't know that, right? Because**
16 **you don't know whether she met the residency**
17 **requirements to vote?**

18 A. (No response)

19 **Q. I understand your position that she**
20 **didn't meet the registration requirements -- I**
21 **understand that -- but that's a separate and**
22 **distinct inquiry from whether she was entitled to**
23 **vote. Do you know whether Beth Byrnes met the**
24 **residency requirements in order to vote in the**
25 **2021 general municipal election in Libby, Montana?**

1 **voting, or residency issues prevented Beth Byrnes**
2 **from voting, correct?**

3 MR. GORDON: Objection, calls for
4 speculation.

5 A. I know that a registration issue
6 prevented her from voting. If other things also
7 prevented her from voting, I wouldn't know about
8 those.

9 **Q. (BY MR. PHILLIPS) Okay. So the people**
10 **that we've seen in this excel sheet that we've**
11 **been discussing, they could, just like Beth**
12 **Byrnes, have had other issues that also prevented**
13 **them from voting, correct?**

14 MR. GORDON: Objection, foundation,
15 calls for speculation.

16 A. Can you repeat the question, please?

17 **Q. (BY MR. PHILLIPS) Sure. I'm going to**
18 **refer us back now to Exhibit Miller 6, and we're**
19 **going to go now to the second tab at the bottom,**
20 **which is entitled "County Totals." And Line 8**
21 **lists Lincoln County as having nine individuals**
22 **that were prevented from voting by HB-176; am I**
23 **interpreting that data correctly?**

24 A. Can you repeat that, please?

25 **Q. Sure. Line 8 lists Lincoln as having**

1 A. Can I see the correspondence from the
2 Lincoln County clerk?

3 **Q. No. Let's first go to this question.**

4 A. What's the question?

5 **Q. Do you know whether Beth Byrnes met the**
6 **residency requirement in order to vote in the 2021**
7 **municipal general election in Libby, Montana?**

8 MR. GORDON: I'll just note for the
9 record that the witness asked to see a document
10 that apparently she would like to see to help her
11 answer this question, and Counsel refused to show
12 it to her.

13 MR. PHILLIPS: Mr. Gordon, it's her own
14 document.

15 MR. GORDON: I object to the questioning
16 about this without the document. I don't know
17 what document she's referring to.

18 MR. PHILLIPS: Let's go off the record
19 for a minute.

20 (Discussion off the record)

21 MR. PHILLIPS: Let's reconvene at about
22 ten.

23 (Recess taken)

24 **Q. (BY MR. PHILLIPS) So before the break,**
25 **we had discussed Ms. Miller's request to review**

EXHIBIT 2

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Page 1	Page 3
<p>IN THE MONTANA THIRTEENTH JUDICIAL DISTRICT COURT YELLOWSTONE COUNTY Montana Democratic Party) and Mitch Bohn,) Plaintiffs,) Western Native Voice, et al.,) Plaintiffs,) Case No. DV 21-0451 Montana Youth Action, et al.,) Plaintiffs,) vs.) Christi Jacobsen, in her official) capacity as Montana Secretary of State,) Defendant.</p> <p>DEPOSITION OF KENDRA MILLER TAKEN VIA ZOOM</p> <p>On the 18th day of May, 2022, beginning at 9:00 a.m., the deposition of KENDRA MILLER, appearing at the instance of Defendant, was heard via Zoom, before Lisa R. Lesofski, Registered Professional Reporter, Notary Public.</p>	<p>I N D E X</p> <p>EXAMINATION: Page: By Mr. Phillips 4</p> <p>EXHIBITS: Marked:</p> <p>1 Subpoena Duces Tecum to Kendra Miller 23</p> <p>2 Excel Spreadsheet, MFPE-000335 25</p> <p>3 Memo, Curtis Montana Clerks and Election Administrators, 11 19 2021, Re: Record Request for Election Day Registration Forms 28</p> <p>4 Affidavit of Kendra Miller 34</p> <p>5 Excel Spreadsheet, Individual-Level Registrant (RETAINED BY COUNSEL) 60</p> <p>WORD INDEX AT END OF TRANSCRIPT</p>
<p>Page 2</p> <p>A P P E A R A N C E S: APPEARING ON BEHALF OF THE PLAINTIFFS, MONTANA DEMOCRATIC PARTY AND MITCH BOHN:</p> <p>MATTHEW GORDON (Via Zoom) Attorney at Law Perkins Coie 1201 Third Avenue, Suite 4900 Seattle, Washington 98101-3099 mgordon@perkinscoie.com</p> <p>APPEARING ON BEHALF OF PLAINTIFFS WESTERN NATIVE VOICE, ET AL.:</p> <p>JACQUELINE DE LEON (Via Zoom) Attorney at Law Native American Rights Fund 1506 Broadway Boulder, Colorado 80302-6296 jdeleon@narf.org</p> <p>APPEARING ON BEHALF OF THE DEFENDANT:</p> <p>E. LARS PHILLIPS (Via Zoom) Attorney at Law Crowley Fleck 1915 South 19th Avenue Bozeman, Montana 59718 lphillips@crowleyfleck.com</p> <p>APPEARING ON BEHALF OF THE MONTANA FEDERATION OF PUBLIC EMPLOYEES:</p> <p>RAPH GRAYBILL (Via Zoom) Attorney at Law Graybill Law Firm 7 West Sixth Avenue, Suite 4F Helena, Montana 59601 rgraybill@silverstatelaw.com</p>	<p>Page 4</p> <p>The following proceedings were had and testimony taken: ***** (Witness sworn)</p> <p>KENDRA MILLER, called as a witness herein, having been first duly sworn, was examined and testified as follows:</p> <p>EXAMINATION BY MR. PHILLIPS:</p> <p>Q. Good morning. As I mentioned, my name is Lars Phillips and I'm here on behalf of the Secretary of State. Would you please state your name for the record? A. Kendra Miller. Q. And where do you live, Kendra? A. Bozeman, Montana. Q. Have you been deposed before? A. Yes. Q. In what capacity? A. I was a 30(b)(6) witness for the Montana Democratic Party.</p>

1 A. In the current election happening right
2 now, MFPE endorsed candidates who are running as
3 Republican and candidates who are running as
4 Democrats, both major parties.

5 **Q. In a statewide election, to your knowledge**
6 **has MFPE ever endorsed a Republican candidate since**
7 **2016?**

8 MR. GORDON: Objection, foundation.

9 A. Not to my knowledge.

10 **Q. (By Mr. Phillips) Ms. Miller, I'm going**
11 **to move down now to paragraph 3 of this affidavit,**
12 **and it says you served as data director for the**
13 **Montana Democratic Party, and I think we talked a**
14 **little bit about this this morning. But would you**
15 **describe for me your role as data manager for the**
16 **Western Organization of Resource Councils?**

17 A. I worked part time for the Western
18 Organization of Resource Councils while I had a baby
19 at home with me and I managed their database of
20 registered voters, I analyzed data for them, I
21 provided advice and recommendations on how to use
22 data.

23 **Q. And was that after your work as data**
24 **director for the Montana Democratic Party was**
25 **concluded? Is that the right time frame?**

1 A. Yes, that's correct. There was no
2 overlap.

3 **Q. Okay. I would like to move now to**
4 **paragraph 4.**

5 MR. GRAYBILL: Hey, Lars, it's already
6 been an hour. Would you like to do a quick
7 break for Kendra?

8 MR. PHILLIPS: That's fine.

9 (Break taken from 10:00 a.m. to
10 10:05 a.m.)

11 **Q. (By Mr. Phillips) So, Ms. Miller, I'd**
12 **like to talk now a little bit about paragraph 4 of**
13 **this affidavit that we've been discussing. And I**
14 **will share my screen again and can you see that all**
15 **right?**

16 A. Yes.

17 **Q. So are the documents that were produced to**
18 **us yesterday, are those the documents that were**
19 **gathered through this public information request**
20 **referenced in paragraph 4?**

21 A. Yes.

22 **Q. That's all the documents to your**
23 **knowledge?**

24 A. To my knowledge.

25 **Q. Have you in your various capacities**

1 **gathered information from county election officials**
2 **related to elections before?**

3 A. Can you repeat that question?

4 **Q. Sure. Have you gathered information from**
5 **county election officials related to data projects**
6 **that you've done in the past?**

7 A. Yes.

8 **Q. How do you typically gather that**
9 **information?**

10 A. I would email or call the county elections
11 office.

12 **Q. Okay. Can you recall any examples of what**
13 **information you might have gathered in the past from**
14 **county election officials?**

15 A. Ballot reports are a pretty common one.

16 **Q. And what's a ballot report?**

17 A. A ballot report is an export from the
18 Montana Vote system, which is a statewide database
19 housed by the Secretary of State. A ballot report
20 from a county would show information on registered
21 voters who were mailed a ballot, the date it was
22 mailed, whether or not it had been returned, whether
23 or not it had been accepted, information like that.

24 **Q. In your experience is it common for county**
25 **election administrators to keep records of the**

1 **number of people who unsuccessfully attempt to**
2 **register to vote on election day?**

3 MR. GORDON: Objection, foundation,
4 speculation.

5 A. Can you please repeat the question?

6 **Q. (By Mr. Phillips) Sure. In your**
7 **experience is it common for county election**
8 **administrators to keep records of the number of**
9 **people who unsuccessfully attempt to register to**
10 **vote on election day?**

11 MR. GORDON: Same objection, foundation,
12 speculation.

13 A. I don't know what county election
14 administrators keep records of.

15 **Q. (By Mr. Phillips) Sure. But you've**
16 **gathered information from county election**
17 **administrators previously, correct?**

18 A. Yes.

19 **Q. And have you ever gathered information**
20 **relating to unsuccessful registration attempts**
21 **previously?**

22 A. No. Montanans could register and vote on
23 election day prior to House Bill 176. So in terms
24 of this project, that wouldn't have been a need
25 before.

1 prior to election day, I checked those attempted
2 registrants provided to me by the county elections
3 offices on a voter file from the Montana Secretary
4 of State after the election. It was a voter file
5 extract from December. I identified them on the
6 December voter file when they were registered to
7 vote and then I also checked them on a voter file
8 prior to election day, which was an October extract
9 from the Montana Secretary of State's database.

10 So from there I could see if they were or
11 weren't registered prior to election day, if they
12 were already registered, where they were registered
13 in Montana. I could then determine if their attempt
14 on election day or the Monday prior to election day
15 was a precinct-to-precinct move or county-to-county
16 move or a new registration.

17 I then used vote history information from
18 the Montana Secretary of State to determine whether
19 or not they cast a ballot. And, lastly, I looked at
20 whether or not they were in a municipality before
21 and after election day when they were registered for
22 those that were registered both times in Montana and
23 whether or not those election, those municipalities
24 held an election or if it was a county-wide election
25 where anyone in the county, you know, had an

1 election to vote in.

2 **Q. Is it fair to say that one step in your**
3 **analysis was determining whether that voter had**
4 **actually cast a ballot?**

5 A. Yes.

6 **Q. Okay. Is it possible for a voter to**
7 **decide to register to vote and also decide not to**
8 **cast a ballot?**

9 MR. GRAYBILL: Objection, foundation.

10 MR. GORDON: Objection, foundation,
11 speculation.

12 **Q. (By Mr. Phillips) Let me rephrase. When**
13 **conducting your analysis, did you consider the**
14 **possibility that a voter may simply decide not to**
15 **cast a ballot after registering or attempting to**
16 **register in this time period?**

17 A. You're asking me if a voter might have
18 traveled to the elections office on election day,
19 registered, and then chosen not to vote?

20 **Q. Yes.**

21 A. I don't know why a voter would do that.

22 **Q. My question is whether you considered that**
23 **in your analysis.**

24 A. I did not consider that.

25 **Q. Okay. In paragraph 13 it says that, "I**

1 **determined that at least 58 individuals identified**
2 **by ten county election offices is attempting to**
3 **register between noon November 1, 2021 and election**
4 **day, November 2, 2021, did not cast a ballot in 2021**
5 **municipal election despite living in a municipality**
6 **that held a 2021 election or a county that held a**
7 **county-wide 2021 election." Do you see that**
8 **paragraph?**

9 A. Yes.

10 **Q. It spans these two pages so I'm going to**
11 **scroll up here a little bit.**

12 As you sit here today, can you tell me
13 which ten counties you were referring to in that
14 paragraph?

15 A. Yellowstone, Gallatin, Missoula, Lewis and
16 Clark, Lincoln, Park, Sweet Grass, Blaine, Big Horn.
17 Did I already say Park?

18 **Q. Yes, ma'am.**

19 A. I'm not sure I can remember the tenth one
20 off the top of my head.

21 **Q. Any voters in Dawson County?**

22 A. Yes.

23 **Q. What about Lake County?**

24 A. I don't remember.

25 **Q. And this isn't a memory test and --**

1 A. It seems like one.

2 **Q. Well, I apologize for that then.**

3 And I think we can get into a document
4 that might help us look through this, but -- I'm
5 going to introduce what will be marked as Miller 5.
6 (Deposition Exhibit 5 marked for
7 identification.)

8 MR. PHILLIPS: And, Counsel, this is the
9 Excel sheet individual-level registrant.

10 **Q. (By Mr. Phillips) Ms. Miller, can you see**
11 **this Excel sheet that I've shared on my screen here?**

12 A. Yes.

13 **Q. Obviously you can't see the whole thing**
14 **because it's expansive. I'll represent to you that**
15 **it was produced to us, or at least sent to us by the**
16 **plaintiffs on this case. I'm not aware of a Bates**
17 **stamp.**

18 This first tab --

19 MR. GRAYBILL: Lars, can we go off the
20 record for one second?

21 MR. PHILLIPS: Of course.

22 (Discussion off the record.

23 (Break taken from 10:39 a.m. to
24 10:59 a.m.)

25 MR. GRAYBILL: So I'd like to state my

1 objection to the document that Mr. Phillips
2 just showed. We'd like to request that the
3 document being clawed back and destroyed. This
4 is a document identified as Item 2 on our
5 privilege log yesterday. It appears to have
6 been inadvertently produced by someone else in
7 this litigation. It is a document that
8 contains attorney-client privileged material,
9 attorney work product, and mental impressions
10 in connection with the other MFPE case. It is
11 covered by the common interest agreement and
12 privileges afforded thereunder and it is
13 covered by MFPE's First Amendment associational
14 privilege. And so, again, we request that the
15 document be destroyed, clawed back, and that we
16 not have any questions about it here at today's
17 deposition.

18 MR. PHILLIPS: Understood. Pursuant to
19 the rules, we will comply with that request,
20 Counsel. However, for the record, we object to
21 the assertion of privilege over this document.
22 We believe any privilege that may have existed
23 has been waived. We also agree, or disagree
24 with the assertion of privilege over factual
25 information contained in this document.

1 But with that being said, we will proceed
2 with the limited, in a limited fashion here.

3 MR. GRAYBILL: And I would issue a
4 standing objection to the extent any questions
5 calling for information that is privileged or
6 derived from privileged aspects of that
7 document that our objection be lodged.

8 **Q. (By Mr. Phillips) Ms. Miller, we've been**
9 **discussing your affidavit here this morning. What**
10 **information did you review when creating this**
11 **affidavit?**

12 A. I reviewed all of the correspondence and
13 information provided to us by county elections
14 offices in conjunction with the public information
15 request. I reviewed two statewide voter files, one
16 from prior to election day 2021 and one after. I
17 reviewed vote history information from the Montana
18 Secretary of State pertaining to whether or not
19 individuals had cast a ballot in the 2021 municipal
20 election, and I reviewed four ballot reports from
21 large counties that were, that had responded to the
22 public information request indicating that there
23 were some individuals from that county who had
24 attempted to register on election day or the Monday
25 prior to election day.

1 **Q. Did you review any other documentation in**
2 **connection with preparing this affidavit?**

3 A. Not that I can recall.

4 **Q. Okay. Did you prepare any documents in**
5 **connection with your drafting of this affidavit?**

6 A. Did I prepare any documents?

7 **Q. Any additional documents with the**
8 **exception of this affidavit?**

9 A. I think that's an issue that Raph has
10 raised an objection to, that I don't know if I
11 should answer that.

12 MR. GRAYBILL: You can answer whether you
13 prepared something. Just don't speak as to its
14 contents.

15 A. Yes.

16 **Q. (By Mr. Phillips) Did you -- what did you**
17 **prepare?**

18 MR. GRAYBILL: Object to the extent it
19 calls for privileged information. If you can
20 answer that without revealing privileged
21 information, please do so.

22 A. I prepared a document that compiled
23 information on these individuals.

24 **Q. (By Mr. Phillips) What form was that**
25 **document in?**

1 A. A spreadsheet.

2 **Q. Was it an Excel file?**

3 A. Yes.

4 **Q. Did you use that Excel file in connection**
5 **with preparing your affidavit?**

6 A. Yes.

7 **Q. Did you rely on it?**

8 A. Yes.

9 **Q. Did anyone assist you in the preparation**
10 **of that document?**

11 A. Yes.

12 **Q. And who was that?**

13 A. MFPE staff.

14 **Q. Do you recall which staff in particular?**

15 A. Lauren Caldwell.

16 **Q. Any others?**

17 A. Raph.

18 **Q. Okay. And for the record, you mean your**
19 **counsel?**

20 A. Correct.

21 **Q. Did anyone provide you any other data that**
22 **you relied on in creating this affidavit?**

23 MR. GORDON: Counsel, are you asking
24 beyond the documents that she testified to that
25 she relied on?

EXHIBIT 3

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

Montana Democratic Party, Mitch Bohn,

Plaintiffs,

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

Plaintiffs,

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

Plaintiffs,

v.

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

Defendant.

Consolidated Case No. DV 21-0451

**PLAINTIFFS' CONSOLIDATED
PRETRIAL DISCLOSURES**

Pursuant to the Court's May 16, 2022, Scheduling Order, Plaintiffs Montana Democratic Party, Mitch Bohn, Western Native Voice, Montana Native Vote, Blackfeet Nation, Confederated Salish and Kootenai Tribes, Fort Belknap Indian Community, Northern Cheyenne Tribe, Montana Youth Action, Forward Montana Foundation, and Montana Public Interest Research Group make the following pretrial disclosures. Listed below are the witnesses Plaintiffs may present at trial in this matter. And attached as Exhibit A is Plaintiffs' preliminary exhibit list.

PLAINTIFFS' WITNESS LIST

Pursuant to Rule of Civil Procedure 32, Plaintiffs propose presenting some testimony through deposition designations. Plaintiffs reserve the right to present live testimony from any or all of these witnesses. Plaintiffs further reserve the right to call foundation witnesses, impeachment witnesses, and additional rebuttal witnesses, as necessary, as well as any witnesses identified or disclosed by Defendant.

No.	Name	May/Will Call	Witness Type	Proposed Form of Presentation
1	Thomas Bogle	Will call	Lay	In-person testimony
2	Mitch Bohn	Will call	Lay	In-person testimony
3	Yael Bromberg	Will call	Expert	In-person testimony
4	Ali Caudle	May call	Lay	In-person testimony
5	Dana Corson	May call	Lay	In-person testimony and/or designation of prior trial and deposition testimony ¹
6	Geraldine Custer	Will call	Lay	In-person testimony
7	Delina Cuts the Rope	Will call	Lay	Designation of deposition testimony
8	Sarah Denson	Will call	Lay	In-person testimony
9	Audrey Dozier	Will call	Lay	Designation of deposition testimony
10	Monica Eisenzimer	Will call	Lay	Designation of deposition testimony
11	Doug Ellis	Will call	Lay	Designation of deposition testimony
12	Steve Fitzpatrick	Will call	Lay	Designation of deposition testimony

¹ Plaintiffs reserve the right to designate Dana Corson's trial and deposition testimony from *Western Native Voice v. Stapleton*, No. DV-2020-377 and *Driscoll v. Stapleton*, No. DV 20 0408.

13	Bernadette Franks-Ongoy	Will call	Lay	In-person testimony
14	Dawn Gray	Will call	Lay	Designation of deposition testimony
15	Michael Herron	May call	Expert	In-person testimony
16	Greg Hertz	Will call	Lay	Designation of deposition testimony
17	Jacob Hopkins	Will call	Lay	In-person testimony
18	Ronnie Jo Horse	May call	Lay	In-person testimony
19	Kiersten Iwai	Will call	Lay	In-person testimony
20	Christi Jacobsen	May call	Lay	In-person testimony
21	Austin James	May call	Lay	In-person testimony and/or designation of deposition testimony
22	Hunter Losing	Will call	Lay	Designation of deposition testimony
23	Kenneth Mayer	Will call	Expert	Live testimony via remote appearance
24	Daniel McCool	Will call	Expert	In-person testimony
25	Robert McDonald	Will call	Lay	Designation of deposition testimony
26	Kendra Miller	Will call	Lay	In-person testimony
27	Isaac Nehring	May call	Lay	In-person testimony
28	Angela Nunn	May call	Lay	In-person testimony
29	Ta'jin Perez	Will call	Lay	In-person testimony
30	Shawn Reagor	Will call	Lay	In-person testimony
31	Amara Reese-Hansell	Will call	Lay	Designation of deposition testimony
32	Bradley Seaman	Will call	Lay	In-person testimony

33	Lane Spotted Elk	Will call	Lay	In-person testimony
34	Stewart Fuller	May call	Lay	In-person testimony
35	Alexander Street	Will call	Expert	Live testimony via remote appearance
36	Keaton Sunchild	May call	Lay	In-person testimony
37	Janel Tucek	Will call	Lay	Designation of deposition testimony
38	Ryan Weichelt	Will call	Expert	In-person testimony
39	Secretary of State	Will call	Lay	In-person testimony and/or designation of deposition testimony

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Dated: July 26, 2022

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Respectfully submitted,

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*** Motion for admission pro hac vice
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2022, I served a true and correct copy of the foregoing Response via electronic mail to the following:

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By: /s/ Matthew P. Gordon
Attorney for MDP Plaintiffs

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EXHIBIT A

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PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P001		undated	Montana House Bill No. 176 (<i>Dkt. 69 - Gordon Declaration Ex. 6</i>)				
P002		undated	Montana Senate Bill No. 190.04 (<i>Dkt. 69 - Gordon Declaration Ex. 19</i>)				
P003		undated	Montana House Bill No. 406.2 (<i>Dkt. 69 - Gordon Declaration Ex. 33</i>)				
P004		undated	Montana House Bill No. 506 (<i>Dkt. 70 - Sommers-Flanagan Declaration Ex. A-9</i>)				
P005		undated	Montana House Bill No. 506.1				
P006		undated	Montana House Bill No. 506.2 (<i>Dkt. 117 - Sommers-Flanagan Declaration Ex. A</i>)				
P007		undated	Montana House Bill No. 506.3 (<i>Dkt. 117 - Sommers-Flanagan Declaration Ex. C</i>)				
P008		undated	Montana House Bill No. 506.4				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P009		undated	Montana House Bill No. 530 (<i>James DX 17</i>)				
P010		undated	Montana House Bill No. 530.2 (<i>Hertz DX 20</i>)				
P011		undated	Montana Senate Bill No. 169 (<i>McDonald - 30(b)(6) CSKT DX 62 and Reese-Hansell DX 43</i>)				
P012		undated	Montana Senate Bill No. 280 (<i>Dkt. 69 - Gordon Declaration Ex. 23</i>)				
P013		undated	Montana Senate Bill No. 302 (<i>Dkt. 69 - Gordon Declaration Ex. 3</i>)				
P014		undated	Montana Senate Bill No. 352.02 (<i>Hertz DX 14</i>)				
P015		4/19/2021	Bill Actions for Montana House Bill No. 176 (<i>Dkt. 69 - Gordon Declaration Ex. 7</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P016		4/29/2021	Bill Actions for Montana House Bill 406 (<i>Dkt. 69 - Gordon Declaration Ex. 34</i>)				
P017		5/14/2021	Detailed Bill Information page for House Bill 506, available on the Montana Legislature's webpage (<i>Dkt. 178 - Gordon Declaration Ex. M</i>)				
P018		5/14/2021	Bill Actions for Montana House Bill No. 530 (<i>Dkt. 69 - Gordon Declaration Ex. 10</i>)				
P019		4/19/2021	Bill Actions for Montana Senate Bill No. 169 (<i>Dkt. 69 - Gordon Declaration Ex. 8</i>)				
P020		4/19/2005	Bill Actions for Montana Senate Bill No. 302 (<i>Dkt. 69 - Gordon Declaration Ex. 12</i>)				
P021	SOS-MT004438	undated	Lobbying Bill List (<i>James - 30(b)(6) MT SOS DX 5</i>)				
P022		4/1/2021	Montana Voter Registration Application dated April 2021 (<i>James - 30(b)(6) MT SOS DX 13</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P023	SOS-MT003031	undated	Montana Polling Place Identification Form (<i>Dkt. 165 - Gordon Declaration Ex. 29</i>)				
P024	SOS-MT003040	4/23/2021	Declaration of Impediment for an Elector updated April 23, 2021				
P025	SOS-MT004358	6/21/2021	Polling-Place-Elector ID (draft - updated June 21, 2021)				
P026		undated	Voter Registration Application - Thomas Bogle (<i>Bogle DX 164</i>) <i>Note: Privacy redactions applied to trial exhibit version.</i>				
P027		9/30/2021	Voter Registration Form - Thomas Bogle dated 9/30/2021 (<i>Bogle DX 161</i>) <i>Note: Privacy redactions applied to trial exhibit version.</i>				
P028		10/31/2021	Application for Absentee Ballot - Thomas Bogle dated 10/31/2021 (<i>Bogle DX 162</i>) <i>Note: Privacy redactions applied to trial exhibit version.</i>				
P029		5/4/2018	Application for Absentee Ballot - Sarah Denson dated 5/4/2018 (<i>Denson DX 145</i>) <i>Note: Privacy redactions applied to trial exhibit version.</i>				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P030		5/7/2019	Voter Registration Form - Sarah Denson dated 5/7/2019 (Denson DX 146) Note: Privacy redactions applied to trial exhibit version.				
P031		11/2/2021	Montana Voter Registration Application - Sarah Denson dated 11/2/2021 (Denson DX 152) Note: Privacy redactions applied to trial exhibit version.				
P032		4/12/2022	Montana Voter Registration Application - Mitchell Bohn dated 4/12/2022 (Bohn DX 58) Note: Privacy redactions applied to trial exhibit version.				
P033		4/3/2013	Senate Bill 405 Audio Transcription Senate State Administration Hearing April 3, 2013				
P034		4/15/2013	Senate Bill 405 Audio Transcription Senate State Administration Hearing April 15, 2013				
P035	MTSOS-MYA000057 - MTSOS- MYA000058	10/15/2014	Email from A. Dufrechou Re: registration policies and procedures - sent by email and fax dated 10/15/2014 (Herron DX 23)				
P036	SOS-MT001265 - SOS-MT001303	8/9/2016	Election 2016 Preparing for a Presidential Election - #BeReady16 - Montana Association of Clerks and Records and Election Administrators - August 9, 2016				
P037		10/1/2017	Montana Tribal IDs - It's the Law! (McDonald - 30(b)(6) CSKT DX 60)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P038		3/22/2017	Montana Ballot Collection Audio Transcription Senate State Administration March 22, 2017				
P039		3/30/2017	Montana Ballot Collection 4005-0129 Audio Transcription Senate Floor Session March 30, 2017				
P040		4/6/2017	Montana Ballot Collection 4005-0129 Audio Transcription House Judiciary Committee April 6, 2017				
P041		4/12/2017	Montana Ballot Collection 4005-0129 Audio Transcription House Floor Session April 12, 2017				
P042	MDP010432 - MDP010434	5/27/2017	Email from T. Bolger re same day registration doc with attachment dated 5/25/2017				
P043		3/13/2019	AP.com article titled: "Flathead, Montana see big Increase in Young Voters" (<i>Dkt. 70 - Sommers-Flanagan Declaration Ex. A-2</i>)				
P044	SOS-MT017382 - SOS-MT017488	2020	2020 Montana Election Judge Handbook (<i>Dkt. 139 - Gordon Declaration Ex. 1</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P045		2/27/2020	Montana Ballot Collection 4005-0129 Audio Transcription State Administration and Veteran Affairs Committee February 27, 2020				
P046	SOS-MT002962-SOS-MT002963	6/3/2020	Email from N. Scribner [EXTERNAL] Re: Ballot dated 6/3/2020 (James - 30(b)(6) MT SOS DX 25)				
P047		6/5/2020	Platform of the Montana Democratic Party Adopted June 5, 2020				
P048	MDP010756 - MDP010758	undated	MTCC Ballot Collection Plan				
P049	Tribal Pls. HB_000562 - Tribal Pls. HB_000568	9/15/2020	Letters between Fort Belknap Indian Community and Blaine County Commissioners re alternative election office sites/times (Sept 8-15, 2020) (Cuts The Rope DX 3)				
P050	MDP010785 ; MDP010801; MDP010811; MDP010818; MDP010837; MDP010848; MDP010859; MDP010977	10/8/2020	Letters sent from Montana Democrats re Native Vote Program Ballot Collectors dated 10/8/2020				
P051	MDP10868; MDP010964-MDP010965	10/18/2020	Email from M. Willey re Thanks for attending our training dated 10/18/2020 with attachment				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P052	Tribal Pls. HB_000441 - Tribal Pls. HB_000449	10/19/2020	Email from Delina Cuts The Rope re Alternate election site clarification during shutdown dated 10/19/2020 (<i>Cuts The Rope DX 5</i>)				
P053	Tribal Pls. HB_000509 - Tribal Pls. HB_000513	undated	Fort Belknap Indian Community Testimony in Opposition of HB 406 to Revise Absentee and Mail Ballot Laws - President Andrew Werk, Jr. (<i>note: select pages of this exhibit were marked as Cuts The Rope DX 2</i>)				
P054	MDP010981; MDP010988- MDP010989; MDP010995- MDP010997; MDP011005; MDP011007-MDP011008; MDP011010; MDP011015- MDP011016	10/30/2020 - 11/3/2020	Emails sent from Ali Amadon re Ballot Collection Chase dated 10/30/2020-11/3/2020				
P055	MDP010991 - MDP010994	11/1/2020	Email from A. Snow re Final Four Ballot Collectors HOW TO dated 11/1/2020 with attachment				
P056		11/3/2020	Montana Secretary of State, Absentee Voting Instructions – 2020 General Election Polling Place				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P057	SOS MT 001174 - SOS MT 001175	11/3/2020	Email from D. Corson re Long lines being reported in counties dated 11/3/2020				
P058		11/1/2020	University of Montana, Department of Public Administration & Policy Report titled: Missoula County November 2020 General Election Experience				
P059	SOS-MT04857 - SOS-MT04862	12/21/2020	Email from S. Scurr re Sec. of State Bill Requests dated 12/21/2020 (Dkt. 177 - Gordon Declaration Ex. J)				
P060	MTSOS-MYA000054	1/8/2021	Screenshot re Voter Registration: Registering Juvenile turning 18 prior to or on Election Day with notes (1/8/2021)				
P061	MTSOS-MYA000055	undated	Screenshot re Voter Registration: Registering Juvenile turning 18 prior to or on Election Day				
P062	SOS-MT004886-SOS-MT004887	1/13/2021	Christi Jacobsen Montana Secretary of State - Election Bills as of January 13, 2021				
P063	SOS-MT004906 - SOS-MT004907	1/18/2021	Email from S. Scurr RE: [EXTERNAL] Re: LC 1329 - voter ID dated 1/18/2021 (James DX 11)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P064	SOS-MT000694 - SOS-MT000697	1/19/2021	Email from A. Nunn RE: Election Bills from A. Nunn dated 1/19/2021 with attachment (<i>Dkt. 177 - Gordon Declaration Ex.D</i>)				
P065		1/19/2021	Election Bills as of January 19, 2021, from Secretary of State Christi Jacobsen (<i>Fitzpatrick DX 119</i>)				
P066	SOS MT 000499	1/19/2021	Email from D. Corson re Rep Greef talking points DRAFT dated 1/19/2021 (<i>James - 30(b)(6) MT SOS DX 8</i>)				
P067	SOS-MT004894	1/19/2021	Email from D. Corson FW: LC 868 and LC 1329 dated 1/19/2021 (<i>Dkt. 178 - Gordon Declaration Ex. W</i>)				
P068	SOS-MT000521 - SOS-MT000522	1/20/2021	Email from S. Greef [EXTERNAL] RE: Zoom Speakers Jan 21, 2021 dated 1/20/2021 (<i>James - 30(b)(6) MT SOS DX 6</i>)				
P069	unnumbered (printed with database tracking number: Disco ID 21410)	1/21/2021	Spreadsheet filename: 1-21-21 Zoom Speakers.xlsx				
P070		1/21/2021	HB 176 Hearing Transcript from the Montana House State Administrative Hearing on January 21, 2021				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P071	SOS-MT000759 - SOS-MT000760	1/22/2021	Email from A. Nunn re Task List dated 1/22/2021 (<i>Dkt. 178 - Gordon Declaration Ex.AA</i>)				
P072	SOS-MT004882 - SOS-MT004883	1/22/2021	Email from A. Belke [EXTERNAL] Voter ID Bil dated 1/22/2021 (<i>James DX 13</i>)				
P073	SOS-MT005017 - SOS-MT005022	1/26/2021	Email from A. Nunn re Voter ID Draft dated 1/26/2021 with attachment				
P074	SOS-MT004874	1/26/2021	Email from A. Belke re [EXTERNAL] Re: Final Bill Draft Voter ID dated 1/26/2021 (<i>Dkt. 178 - Gordon Declaration Ex. X</i>)				
P075	SOS MT 000981	1/26/2021	Email from A. Nunn re Election Security Bill dated 1/26/2021				
P076	SOS MT 001109 - SOS MT 001112	1/28/2021	Email from A. Nunn re Priority #5 Bill Draft dated 1/28/2021				
P077	SOS 039361 - SOS 039362	1/28/2021	Email from S. Greef [EXTERNAL] RE: HB 176 information dated 1/28/2021 (<i>James - 30(b)(6) MT SOS DX 9</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P078	SOS-MT004013-SOS-MT004017	1/29/2021	Email from R. Melby Fw: 176 Notes dated 1/29/2021				
P079	SOS-MT003854 - SOS-MT003856	1/31/2021	Email from A. Nunn re Priority Bill List dated 1/31/2021 (<i>James - 30(b)(6) MT SOS DX 3</i>)				
P080	SOS 039555 - SOS 039556	2/1/2021	Email from A. Nunn FW: [EXTERNAL] General Inquiries & MT Constitution Requests dated 2/1/2021 (<i>James - 30(b)(6) MT SOS DX 7</i>)				
P081	SOS-MT000679 - SOS-MT000680	2/2/2021	Email from A. Nunn RE: General Inquiries & MT Constitution Requests dated 2/2/2021				
P082		2/3/2021	Senate Bill 169 Audio Transcription Senate State Administration Hearing February 3, 2021				
P083	MTSOS-MYA000031 - MTSOS-MYA000032	2/3/2021	Email from A. James re FW: LC 1037-Generally Revise Draft (Dkt. 178 - Gordon Declaration Ex. N)				
P084	SOS-MT00985 - SOS-MT00988	2/4/2021	Email from A. Nunn re FW: LC 0316 dated 2/4/2021 with attachment (<i>Dkt. 178 - Gordon Declaration Ex. S</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P085	SOS MT 001140 - SOS MT 001143	2/5/2021	Email from A. Nunn RE: SB 316 dated 2/5/2021				
P086	MTSOS-MYA000039 - MTSOS-MYA000041	2/9/2021	Email from S. Nowakowski dated 2/9/2021 with attachment				
P087	MTSOS-MYA000027	2/9/2021	Email from P. Fielder [EXTERNAL] RE: Election Bill dated 2/9/2021				
P088	MTSOS-MYA000035 - MTSOS-MYA000036	2/10/2021	Email from C. Jacobsen RE: dated 2/10/2021 (<i>Dkt. 178 - Gordon Declaration Ex. T</i>)				
P089	MTSOS-MYA000029-MTSOS-MYA000030	2/11/2021	Email from PCF (P. Fielder) to A. Nunn re [EXTERNAL] RE: RE: Election Bill dated 2/22/2021 (<i>Dkt. 153 - Sommers-Flanagan Declaration Ex. A</i>)				
P090	SOS MT 00979 - SOS MT 00980	2/12/2021	Email from W. McKamey [EXTERNAL] Re: FW: LC 316 dated 2/12/2021				
P091		2/15/2021	Montana Senate Committee on State Administration Hearing on February 15, 2021				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P092	MTSOS-MYA000044-MTSOS-MYA000045	2/16/2021	Email from D. Corson RE: LC 317 dated 2/16/2021				
P093	SOS-MT000820 - SOS-MT000826 (also bates stamped SOS 039391 - SOS039397)	2/17/2021	Email from A. Nunn RE: FN for HB 406 SOS 2-12-21 dated 2/17/2021 with attachment				
P094		2/22/2021	Senate Bill 169 Audio Transcription House Administration Hearing February 22, 2021				
P095	SOS-MT000838 - SOS-MT000841 (also bates stamped SOS 039409 - SOS039412)	2/22/2021	Email from A. Nunn RE: Question on Assumptions for HB 406 dated 2/22/2021				
P096		2/23/2021	Audio Transcription of House Judiciary Hearing on February 23, 2021 considering House Bill 406				
P097		2/23/2021	Messaging Bills For/Against Report dated 2/23/2021 (Hertz DX 6)				
P098		2/24/2021	Audio File: House State Administration Hearing on HB 506				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P099		2/25/2021	House Bill 530 Audio Transcription House State Administration Hearing February 25, 2021				
P100	MTSOS-MYA000008	2/25/2021	Email from A. Nunn re HB 506 Amendment? dated 2/25/2021				
P101	MTSOS-MYA000024 - MTSOS- MYA000025	2/25/2021	Email from A. Nunn RE: [EXTERNAL] Re: HB 506 Amendment? dated 2/25/2021				
P102	MTSOS-MYA000050	2/26/2021	Email from L. Schlosser re 16255 Update on bill dated 2/26/2021				
P103		3/1/2021	House Bill 406 Audio Transcription House Appropriations Hearing March 1, 2021				
P104		3/1/2021	Audio File: House Floor Session on HB 506 Audio File				
P105	SOS081350-SOS081358	3/1/2021	Polling Place Situations: A Quick Guide by Montana Secretary of State updated March 2021				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P106		3/19/2021	Audio File: Senate State Administration Hearing on HB 506				
P107		3/22/2021	House Bill 406 Audio Transcription Senate State Administration Hearing March 22, 2021				
P108	SOS-MT004269 - SOS-MT004272	3/23/2021	Email from R. Melby re NA voting notes dated 3/23/2021				
P109		3/31/2021	House Bill 530 Audio Transcription Senate State Administration Hearing March 31, 2021				
P110	SOS MT000255 - SOS MT000256	4/1/2021	Email from D. Corson re Notes on HB 530 dated 4/1/2021				
P111	SOS-MT000451 - SOS-MT000454	4/9/2021	Email from A. Nunn re Leg Update 4/9/21 dated 4/9/2021 with attachment (<i>Dkt. 178 - Gordon Declaration Ex. BB</i>)				
P112	SOS-MT003992 - SOS-MT003994	4/14/2021	Email from M. Richie Re: Scripts dated 4/14/2021 with attachment (<i>James - 30(b)(6) MT SOS DX 31</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P113		4/14/2021	Audio File: Senate Floor Session on HB 506				
P114		4/14/2021	Montana Senate Vote Tabulation re HB 406 dated 4/14/2021 (Hertz DX 17)				
P115		4/14/2021	Montana Senate Vote Tabulation re HB 406 dated 4/14/2021 (Hertz DX 18)				
P116		4/15/2021	Open letter from C. Jacobsen to Montana re voting irregularities across the country and in Montana				
P117	SOS-MT004809-SOS-MT004810	4/15/2021	Email from V. Agtarap Re: Infographic dated 4/15/2021				
P118	SOS-MT013897	4/19/2021	Montana Secretary of State Press Release re Election Integrity Bills Signed to Montana Law dated 4/19/2021 (James - 30(b)(6) MT SOS DX 16)				
P119	SOS 039379 - SOS 039381	4/19/2021	Email / Press release re Governor Gianforte Signs Election Security Bills dated 4/19/2021 (Hertz DX 2)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P120		4/22/2021	Montana Secretary of State Initial Implementation Guidance #01-21 issued 4/22/2021 (<i>James DX 3</i>)				
P121		4/22/2021	Email from M. Taylor re Redistricting Language.pdf dated 4/22/2021 (<i>Fitzpatrick DX 113</i>)				
P122	SOS-MT000966 (and also stamped SOS 039537)	4/22/2021	Email from A. Nunn FW: Amendment Finding - HB 406 dated 4/22/2021 (<i>Dkt. 177 - Gordon Declaration Ex. A</i>)				
P123	SOS-MT000967 - SOS-MT000975 (and also stamped SOS 039538 - SOS 039546)	4/23/2021	Email from A. Nunn re Election bills dated 4/23/2021 with attachment (<i>Dkt. 177 - Gordon Declaration Ex. B</i>)				
P124		4/23/2021	Email from G. Hertz Fwd: language dated 4/23/2021 attaching Montana Code § 13-35-201 (<i>Hertz DX 9</i>)				
P125		4/23/2021	Audio File: House Floor Session on HB 506				
P126		4/25/2021	Greg Hertz text messages re HB 530 (<i>Hertz DX 21</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P127	SOS-MT000481 - SOS-MT000483	4/26/2021	Email from D. Corson RE: Inactive People on Election Day dated 4/26/2021				
P128	SOS-MT001126-SOS-MT001127	4/26/2021	Email from A. Nunn RE: Quick notes on HB 530 dated 4/26/2021				
P129		4/26/2021	Montana Senate Floor Session as the Committee of the Whole re Second Readings, Amending HB 530 (Apr. 26, 2021)				
P129-A		4/26/2021	Audio File: Montana Senate Floor Session as the Committee of the Whole re Second Readings, Amending HB 530 (Apr. 26, 2021)				
P130		4/27/2021	Audio File: Senate Free Conference Committee on HB 506				
P131		4/27/2021	Audio File: House Floor Session on HB 506				
P132		4/27/2021	Audio File: Senate Floor Session on HB 506				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P133		4/27/2021	Transcript of Montana House Floor Session, on Senate Amendments to HB 530 (Apr. 27, 2021)				
P133-A		4/27/2021	Audio File: Montana House Floor Session, on Senate Amendments to HB 530 (Apr. 27, 2021)				
P134		4/27/2022	Daily Montanan article by Keila Szpaller titled: "Senate greenlights election security bill with controversial amendment" dated 4/27/2021 (<i>Hertz DX 13</i>)				
P135	SOS-MT003285-SOS-MT003289	undated	Advisory on Voter Identification Changes with handwritten notes				
P136		1/27/2021 - 4/27/2021	Log of voter phone messages/comments regarding bill (<i>Hertz DX 8</i>) <i>Note: Privacy redactions applied to trial exhibit version.</i>				
P137	SOS-MT014134-SOS-MT014141	4/30/2021	Email from D. Corson Re: Update to election forms and SB169 dated 4/30/2021				
P138	SOS-MT000234	5/7/2021	Email from A. Nunn re FAQ update dated 5/7/2021				
P139	SOS 039645	5/10/2021	Email from A. Nunn re Election Appropriation ? Dated 5/10/2021				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P140	SOS MT 000096	5/17/2021	Email from A. Nunn re Discuss Late Registration Report dated 5/17/2021 (James - 30(b)(6) MT SOS DX 10)				
P141	SOS-MT004475 - SOS-MT004487	5/17/2021	Email from S. Fuller re SB 169 draft rule changes dated 5/17/2021 with attachment				
P142	SOS-MT004989-SOS-MT005000	5/17/2021 (metadata date)	SB 169 Rules Update				
P143	SOS-MT004357	6/21/2021 (metadata date)	Notes on 44-2-244pro draft.docx				
P144	SOS-MT004291	6/23/2021	Email from D. Corson RE: Provisionally Registered ID Form dated 6/23/2021				
P145	SOS-MT004204	6/24/2021	Email from D. Corson FW: [EXTERNAL] Media Statement Request: Senate Bill 169, Student ID for Voter Registration dated 6/24/2021				
P146	SOS-MT003499	7/13/2021	Email from C. Gagnon re SOS Website Update dated 7/13/2021 (James - 30(b)(6) MT SOS DX 22)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P147	SOS-MT004000-SOS-MT004001	7/23/2021	Email from A. Nunn Re: Audit our votes dated 7/23/2021				
P148	unnumbered (printed with database tracking number: Disco ID 21398)	8/12/2021	2021 MACR - SOS Elections Agenda				
P149	SOS-MT003523 - SOS-MT003541	8/30/2021	Email from A. Nunn FW: First Draft SB 167 & HB 176 dated 8/30/2021 with attachment				
P150	SOS-MT003731-SOS-MT003734	9/2/2021 (metadata date)	SB 93 351 HB 506- with notes-DC.docx				
P151	SOS-MT014025	9/13/2021	Email from A. Nunn RE: Updated 2021 Municipal Calendar dated 9/13/2021 (James - 30(b)(6) MT SOS DX 23)				
P152	SOS-MT004966-SOS-MT004975	8/29/2021 (metadata date)	Draft Notice of Public Hearing on Proposed Amendment (8/29/2021 version)				
P153	MTSOS-MYA000003-MTSOS- MYA000004	9/14/2021	Notice of Public Hearing on Proposed Amendment dated September 14, 2021				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P154	SOS MT 000362 - SOS MT 000366	9/17/2021	Email from A. Lindsay re Draft AMR Security Rules dated 9/17/2021 with attachment				
P155	MTSOS-MYA000011 - MTSOS-MYA000013	9/23/2021	Email from R. Dagnall re House Bill 506-eligibility of applicants to issued and cast a ballot-Notice 44-2-247 dated 9/23/2021 with attachment				
P156	SOS-MT004309 - SOS-MT004318	9/24/2021	Email from A. McCue [EXTERNAL] RE: Comments invited for proposed draft rules SB169 and HB176 dated 9/24/2021 with attachment				
P157		9/28/2021	Notice of Public Hearing on Proposed Amendment dated 9/28/2021 (James DX 4)				
P158	SOS-MT000163 - SOS-MT000164	9/30/2021	List of Secretary of State office web page links re HB 176 with updates/corrections				
P160	SOS 039566 - SOS 039567	10/6/2021	Email from A. Nunn FW: SB 169 / HB 176 rules dated 10/6/2021 (James - 30(b)(6) MT SOS DX 15)				
P161	SOS-MT004531	10/25/2021	Email from R. Melby Re: Vote ready postcard dated 10/25/2021				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P162	SOS-MT004528	10/25/2021	Email from R. Melby Re: [EXTERNAL] voter postcard from sos dated 10/25/2021 (<i>James DX 18</i>)				
P163	SOS-MT000199 - SOS-MT000200	undated	Draft Letter/memo from Montana Secretary of State Office (<i>Dkt. 177 - Gordon Declaration Ex. E</i>)				
P164		undated	Resolution No. 22-044 of the Governing Body of the Confederated Salish and Kootenai Tribes of Flathead Reservation (<i>Dkt. 49 - Affidavit of McDonald Ex. A</i>)				
P165		1/18/2022	Notice of Amendment dated 1/18/2022 (<i>James DX 5</i>)				
P167		5/23/2022	Montana Administrative Register 37-1001: Notice of Adoption of Temporary Emergency Rule dated May 23, 2022				
P168		5/31/2022	Montana Administrative Register 37-1002: Notice of Public Hearing on Proposed Amendment dated May 31, 2022				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P169	SOS-MT004248	4/8/2022	Email from D. Corson re Preliminary Injunction dated 4/8/2022 (James - 30(b)(6) MT SOS DX 27; James DX 20)				
P170	Tribal Pls. HB_000553	5/2/2022	Fort Belknap Indian Community CAO phone interview with Ramona Horn (Cuts The Rope DX 6)				
P171		5/3/2022	Email from Delina Cuts The Rope re Polling place and Judges dated 5/3/2022 (Cuts The Rope DX 7-A)				
P172	SOS-MT003928 - SOS-MT003930	5/3/2022	Email from D. Buffington [EXTERNAL] Clarification on Judge Moses' April 22 ruling dated 5/3/2022 (James - 30(b)(6) MT SOS DX 28)				
P173		5/3/2022	Missoula County Registered Voters Report (re School Board Election on 5/3/2022)				
P174	SOS-MT004000-SOS-MT004006	5/12/2022	Email from A. Nunn re FW: [EXTERNAL] Clarification on Judge Moses' April 22 ruling dated 5/12/2022				
P175	SOS-MT003906 - SOS-MT003909	5/18/2022	Email from D. Corson RE: Clarification on Judge Moses' April 22 ruling / MT Supreme Court Order dated 5/18/2022 (James - 30(b)(6) MT SOS DX 29)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P176		undated	Montana State University, Get Your Catcard, available at https://www.montana.edu/catcard/students.html#get (Dkt. 69 - Gordon Declaration Ex. 22)				
P177		undated	University of Montana, Griz Card Center, available at https://www.umt.edu/griz-card/get-your-grizcard/pick_up_griz_card.php . (Dkt. 69 - Gordon Declaration Ex. 26)				
P178		7/22/2022	Secretary of State web page, Montana Fair Elections Center web page, available at: https://sosmt.gov/elections/fairelections/				
P179	SOS077983	10/15/2013	Spreadsheet filename: Exhibit ss - Late-Registration-2006-Present-10-15-2013.xls				
P180		2014	Montana Secretary of State Linda McCulloch's 2014 Statewide General Election Canvass (Dkt. 69 - Gordon Declaration Ex. 16)				
P181		12/2/2014	Secretary of State Election Results for 2014 General last updated 12/2/2014 (Fitzpatrick DX 104)				
P182		2018	Spreadsheet file name: Late-Registration-2006-Present.xlsx				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P183		3/12/2019	Montana Secretary of State, 2018 Federal Election: Number of Absentee Ballots Sent, Accepted, Percentage of Votes Cast, Percentage of Registered Voters (<i>Dkt. 69 - Gordon Declaration Ex. 27</i>)				
P184	SOS078383	2/28/2019	Spreadsheet filename: 2018 General Satellite Activity Survey MASTER.xlsx				
P185	SOS078880 - SOS078885	2020	Spreadsheet filename: 2020 General Satellite Activity Survey MASTER.xlsx				
P186		5/4/2020	2020 Federal Election Polling Places - spreadsheet last updated 5/4/2020 (<i>Fitzpatrick DX 108</i>)				
P187		2000 - 2020	Spreadsheet from Montana Secretary of State's website titled: "Absentee Turnout 2000 - Present" (<i>Dkt. 43 - Rate Declaration Ex. B</i>)				
P188		1992 - 2020	Spreadsheet: Official-Voter-Turnout-Primary-General-Elections-1992-Present				
P189		11/30/2020	Montana Absentee Ballot Counts by County compiled 11/30/2020 (<i>Dkt. 43 - Rate Declaration Ex. A</i>)				
P190		7/24/2022	Montana Registered Voters by County compiled 7/24/2022				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P191		1/10/2022	Montana Secretary of State's table of historical voter turnout in Montana, available at https://sosmt.gov/elections/voteturnout/ . (Dkt. 69 - Gordon Declaration Ex. 4)				
P192		undated	Precincts Results re Legislative Referendum No. 126 - Ending Late Voter Registration on the Friday Before Election Day (Hertz DX 4)				
P193		undated	Late Registration Activities Before Election Day and On Election Day (Eisenzimer DX 52)				
P194		2020	Late Registration Activities Before Election Day and On Election Day				
P195		2020	Late Registration Activities Before Election Day and On Election Day (Fitzpatrick DX 110)				
P196		2022	American Community Survey 2016-2020 5-Year Estimates for Blackfeet Indian Reservation and Off Reservation Trust Land, MT				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P197		2022	American Community Survey 2016-2020 5-Year Estimates for Fort Belknap Reservation and Off Reservation Trust Land, MT				
P198		2022	American Community Survey 2016-2020 5-Year Estimates for Flathead Reservation, MT				
P199		2022	American Community Survey 2016-2020: 5 Year Estimates for Northern Cheyenne Reservation and Off-Reservation Trust Land, MT				
P200		1/14/2022	Yael Bromberg Esq. Expert CV				
P201		1/14/2022	Declaration of Yael Bromberg Esq. dated January 12, 2022 (Dkt.74)				
P202		1/12/2022	Michael C. Herron Ph.D., Exerpt CV				
P203		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 (Dkt. 54)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P204		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 1				
P205		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 2				
P206		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 3				
P207		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 4				
P208		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 5				
P209		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 6				
P210		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 7				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P211		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 8				
P212		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 9				
P213		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 10				
P214		1/12/2022	Expert Report of Michael C. Herron Ph.D. dated January 12, 2022 - Table 11				
P215		1/12/2022	Kenneth R. Mayer, Ph.D. Expert CV				
P216		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 (with Dkt. 145 Notice of Errata attached dated May 5, 2022)				
P217		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Appendix A				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P218		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Appendix B				
P219		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Table 1				
P220		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Table 2 (corrected version)				
P221		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Table 3				
P222		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Table 4				
P223		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Table 5				
P224		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Table 6				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P225		1/12/2022	Expert Report of Kenneth R. Mayer Ph.D. dated January 12, 2022 - Figure 1				
P226		3/25/2022	Rebuttal Expert Report of Kenneth R. Mayer Ph.D. dated March 25, 2022				
P227		3/25/2022	Rebuttal Expert Report of Kenneth R. Mayer Ph.D. dated March 25, 2022 - Table 1				
P228		1/6/2022	Expert Report of Daniel Craig McCool, Ph.D., dated January 6, 2022				
P229		2/21/2022	Notice of Errata re Expert Report of Daniel Craig McCool, Ph.D., in Support of Plaintiffs' Motion for Preliminary Injunction dated February 21, 2022				
P230		12/1/2021	Daniel Craig McCool, Ph.D., Expert CV dated December 2021				
P231		1/1/2022	Alex Street, Ph.D., Exerpt CV (last updated January 2022)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P232		1/11/2022	Expert Report of Alexander Street, Ph.D. dated January 11, 2022				
P233		3/25/2022	Rebuttal Expert Report of Alexander Street, Ph.D. dated March 25, 2022				
P234		1/11/2022	Ryan D. Weichelt, Ph.D. Exerprt CV				
P235		1/11/2022	Expert Report of Ryan D. Weichelt, Ph.D. dated January 11, 2022 (with Notices of Erratas attached dated February 18, 2022 and March 10, 2022)				
P236		2020	Declaration of Lonna Atkeson filed in <u>Driscoll v. Stapleton</u> , No. DV 20-0508 (Mont. Dist. Ct. 2020) (note also used in pending litigation: Fitzpatrick DX 106 and Dkt. 101 Gordon Declaration Ex. 37)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P239		6/1/2016	GAO Report, Issues Related to Registering Voters and Administering Elections (June 2016) (<i>Gessler DX 141</i>)				
P240		5/1/2019	U.S. Commission on Civil Rights' report: Bordertown Discrimination in Montana, downloaded January 10, 2022 (<i>Dkt. 43 - Rate Declaration Ex. H</i>)				
P241		6/1/2021	U.S. Commission on Civil Rights' Report: Voting Access for Native Americans in Montana (June 2021)				
P242		6/1/2018	Institute for Democracy & Higher Education, Out-of-State College Students and Voting, Jun., 2018 (<i>Dkt. 69 - Gordon Declaration Ex. 21</i>)				
P243		12/22/2021	Tufts Center for Information & Research on Civic Learning and Engagement article titled "Broadening Youth Voting" (<i>Dkt. 70 - Sommers-Flanagan Declaration Ex. A-7</i>)				
P244		4/2/2021	MIT Election Data + Science Lab, Voter Confidence (April 2021) (<i>Dkt. 121 - Gordon Declaration Ex. 1</i>)				
P245		5/22/2021	Enrico Cantoni & Vincent Pons, Strict ID Laws Don't Stop Voters: Evidence from a U.S. Nationwide Panel: 2008-2018, Q.J. Econ. 2615, 2653-54 (2021) (<i>Dkt. 121 - Gordon Declaration Ex. 7</i>)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P246		2022	NCSL Report re Voter ID Laws (2022) (Trende DX 135)				
P247		1/20/1972	Constitutional Convention Qualifications of Executive Offices original proposal				
P248		1/20/1972	Constitutional Convention Qualifications of Executive Offices original proposal				
P249		1/20/1972	Constitutional Convention Section 13 Right To Suffrage proposal				
P250		1/20/1972	Constitutional Convention Section 14 Adult Rights and Section 15 Rights of Persons Under the Age of Majority original proposals				
P251		2/24/1972	Constitutional Convention Volume 4 pages 882-904				
P252		3/8/1972	Constitutional Convention Transcript volume 5 pages 1691- 1697				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P253		3/8/1972	Constitutional Convention transcript volume 5, pages 1744-1749				
P254		3/8/1972	Constitutional Convention transcript volume 5, pages 1749-1753				
P255		3/18/1972	Constitutional Convention Transcript volume 7, pages 2641-2643				
P256		6/4/2020	Texas Democratic Party v. Abbott, 961 F.3d 389 (2020) (Bromberg DX 24)				
P257	WNV 001973 - WNV 001977	8/4/2011	ByLaws of Western Native Voice dated August 4, 2011				
P258	WNV 000042	12/31/2021	Western Native Voice Income and Expense Summary January 2013 through December 2021				
P259	WNV 000001	2016	WNV 2016 Employees				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P260	WNV 002040 - WNV 002044	2017	WNV 2017 Employees				
P261	WNV 000008 - WNV 000011	2020	WNV 2020 Employees				
P262	WNV 001172 - WNV 001201	undated	Western Native Voice Introduction - Inspiring Native Leadership So Our Communities Flourish				
P263	WNV 001251 - WNV 001295	undated	Western Native Voice Presentation: Civic Engagement - One Person One Vote				
P264	WNV 001296 - WNV 001341	undated	Western Native Voice Presentation: Making a Difference for Future Generations				
P265	WNV 001980 - WNV 001992	2018	Western Native Voice 2018 Community Organizer Employee Handbook (<i>Perez - 30(b)(6) Western Native Voices DX 9</i>)				
P266		2018	Montana Native Vote 2018 Employee Training Memo				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P267	WNV 004240 - WNV 004256	2022	Western Native Voice 2022 Community Organizer Employee Handbook				
P268	WNV 001978 - WNV 001979	undated	Western Native Voice Community Organizers Standards of Operating Procedures				
P269	WNV 001993 - WNV 001995	undated	Western Native Voice Voter Registration Rules and Voter FAQ				
P270	WNV 002309 - WNV 002310	undated	Western Native Voice - Ballot Collection Best Practices (<i>Perez - 30(b)(6) Western Native Voice DX 10</i>)				
P271	WNV 002000	undated	Western Native Voice Reminders to Community Organizers re Primary Election Same Day Voter Registrations				
P272	WNV 000085	undated	Satellite Elections Schedule				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P273	WNV 004257 - WNV 004268	2020	2020 General Election GOTV Plan Western Native Voice				
P274	WNV002308	2020	Montana Native Vote 2020 GOTV Ballot Chase Program Agreement Form (Perez - 30(b)(6) Western Native Voice DX 11)				
P275	WNV 004239	2020	2020 GOTV VR Script				
P276	WNV 002312	2020	2020 Summary of Voting Assistance Given				
P277		undated	Western Native Voice List of Voters in Need of Assistance re Ballots (Perez - 30(b)(6) Western Native Voice DX 13)				
P278	WNV 000080	undated	Map of County Elections Offices Serving Tribal Nations				
P279		undated	Spreadsheet re Ballot Pickup Data (Perez - 30(b)(6) Western Native Voice DX 8)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P280		undated	Spreadsheet re MNV data entry form (<i>Perez - 30(b)(6)</i> <i>Western Native Voice DX 15</i>)				
P281	WNV 000118	10/27/2020	Ta'jin Perez text message dated October 27, 2020				
P282	WNV 000119	10/30/2020	Ta'jin Perez text message dated October 30, 2020				
P283	WNV 000120	11/2/2020	Ta'jin Perez text message dated November 2, 2020				
P284	WNV 000122	11/3/2020	Ta'jin Perez text message dated November 3, 2020				
P285	WNV 000123	11/3/2020	Ta'jin Perez text message dated November 3, 2020				
P286	WNV 000124	11/3/2020	Ta'jin Perez text message dated November 3, 2020				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P287	WNV 000125	11/3/2020	Ta'jin Perez text message dated November 3, 2020				
P288	WNV 002297	undated	Photo - WNV Facebook screenshot				
P289	WNV 002298	undated	Photo - WNV Facebook screenshot				
P290	WNV 002301	undated	Photo - WNV Facebook screenshot				
P291	Tribal Pls. HB_000054 - Tribal Pls. HB_000060	2018-2023	2018-2023 Blackfeet Reservation Comprehensive Economic Development Strategy				
P292	Tribal Pls. HB_001009	2020	Voting information handout for Blackfeet Nation Ballot Dropoff locations for 2020 Election				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P293	Tribal Pls. HB_000854 - Tribal Pls. HB_000859	10/26/2020	October 26, 2020 email correspondence re: Elections Discussion, topics including ballot dropboxes				
P294	Tribal Pls. HB_001053 - Tribal Pls. HB_001055	10/28/2020	October 28, 2020 Letter to Mandi Kennerly Glacier County Clerk from Blackfeet Nation				
P295	Tribal Pls. HB_000404 - Tribal Pls. HB_000405	11/4/2020	Blackfeet Tribe Expanded General Ledger regarding COVID funds and community service				
P296	Tribal Pls. HB_000881	5/10/2022	May 10, 2022 email outlining number of people a month use public transit				
P297	Tribal Pls. HB_001301 - Tribal Pls. HB_001306	5/10/2022	May 10, 2022 email outlining number of people waiting on the Blackfeet Housing waiting list				
P298	Tribal Pls. HB_0000183	2016-2020	Student Homeless Count years 2016 - 2020 for Fort Belknap Reservation				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P299	Tribal Pls. HB_0000490 - Tribal Pls. HB_0000497	2019	Fort Belknap CCD Census data from 2019				
P300	Tribal Pls. HB_0000532 - Tribal Pls. HB_0000533	5/1/2020	May 1, 2020 Letter to Blaine County Clerk and Recorder regarding Fort Belknap Indian Reservation Alternative Voting Schedule				
P301	Tribal Pls. HB_0000527	5/4/2020	May 4, 2020 Letter to Andrew Werk, President of FBIC, regarding Blaine County and COVID-19 restrictions during election				
P302	Tribal Pls. HB_0000535	5/6/2020	May 6, 2020 Snake Butte Voter Coalition memo regarding June 2, 2020 Primary Election and Projected Budget				
P303	Tribal Pls. HB_0000534	10/20/2020	October 20, 2020 agreement signed by President Werk regarding FBIC not holding Blaine County Clerk accountable for personal injuries				
P304	Tribal Pls. HB_0000518 - Tribal Pls. HB_0000522	2/19/2021	February 19, 2021 Article titled: "Rep. Noland's HB406 Poised to Protect Montanans from Voter Fraud"				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P305	Tribal Pls. HB_0000498 - Tribal Pls. HB_0000500	4/28/2022	Documents outlining tribal membership and members living on the Reservation dated April 28, 2022				
P306	Tribal Pls. HB_0000501	4/28/2022	April 28, 2022 Letter to Fort Belknap Tribal Housing Authority showing number of families on the low rent waiting list				
P307	Tribal Pls. HB_000463 - Tribal Pls. HB_000489	4/28/2022	Fort Belknap Agency CDP, Montana - Census Bureau Profile				
P308	Tribal Pls. HB_0000134 - Tribal Pls. HB_0000136	9/14/2020- 9/16/2020	CSKT Correspondence with Lake County Elections Administrator Katie Harding (dated September 14, 2020 and September 16, 2020)				
P309	Tribal Pls. HB_0000389	10/12/2020- 10/13/2020	October 12-13, 2020 email correspondence with Japhanna Burs regarding CSKT Get Out the Vote page				
P310	Tribal Pls. HB_0000363	11/2/2020	November 2, 2020 email exchange with Erica regarding draft memo to voters				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P311	Tribal Pls. HB_0000314	11/3/2020	CSKT Get Out the Vote member Mariah Camel email re: Election Day Efforts and ballot pickup				
P312	Tribal Pls. HB_0000323	11/3/2020	CSKT Get Out the Vote member Mariah Camel email re: Election Day Efforts and voter turnout				
P313	Tribal Pls. HB_0000303 - Tribal Pls. HB_0000304	11/4/2020	CSKT Get Out the Vote member Mariah Camel email re: Election Day Efforts and voter pickup [Includes table with PII redacted during Discovery Production]				
P314	Tribal Pls. HB_0000194 - Tribal Pls. HB_0000197	2019	Northern Cheyenne Reservation Census data from 2019				
P315	Tribal Pls. HB_000084 - Tribal Pls. HB_000085	5/15/2020	Fort Belknap Expenditure (May 15, 2020)				
P316	Tribal Pls. HB_000086 - Tribal Pls. HB_000087	11/4/2016	Fort Belknap Expenditure (November 4, 2020)				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P317		2016	CSKT GOTV Coordinator 2016 Final Report for Rob McDonald, Communications Director (note: first page also used Perez - 30(b)(6) Western Native Voice DX 7)				
P318	Tribal Pls. HB_000088 - Tribal Pls. HB_000100	2018	2018 Free and Reduced Lunch Numbers and Rates Tribal				
P319	Tribal Pls. HB_000101 - Tribal Pls. HB_000133	2/1/2020	Community Health Annual Report February 2019 - February 2020				
P320		8/1/2020	HJ 10: Barrier to Voting For American Indians in Montana				
P321		7/14/2020	Western Native Voice v. Stapleton, No. DV 56-377 (Mont. Dist. Ct. 2020) Defendants' Answer to Plaintiffs' First Set of Interrogatories to Defendant Mangan dated July 14, 2020				
P322		9/8/2020	Western Native Voice v. Stapleton, No. DV 20-0377 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 1) - rough draft dated September 8, 2020				
P323		9/9/2020	Western Native Voice v. Stapleton, No. DV 20-0377 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 2) - rough draft dated September 9, 2020				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
P324		9/10/2020	<u>Western Native Voice v. Stapleton</u> , No. DV 20-0377 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 3) - rough draft dated September 10, 2020				
P325		9/14/2020	<u>Driscoll v. Stapleton</u> , No. DV 20-0508 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 1) dated September 14, 2020				
P326		9/15/2020	<u>Driscoll v. Stapleton</u> , No. DV 20-0508 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 2) dated September 15, 2020				
P327		9/16/2020	<u>Driscoll v. Stapleton</u> , No. DV 20-0508 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 3) dated September 16, 2020				
P328		9/21/2020	<u>Driscoll v. Stapleton</u> , No. DV 20-0508 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 4) dated September 21, 2020				
P329		9/22/2020	<u>Driscoll v. Stapleton</u> , No. DV 20-0508 (Mont. Dist. Ct. 2020) Trial Transcript (Vol. 5) dated September 22, 2020				
Reserve	MFPE000001 - MFPE000469; MPFE000474 - MFPE000483		Correspondence with elections officials pursuant to MFPE public records request				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
Reserve		8/21/2020 8/25/2020	Exhibits accompanying designations of Dana Corson's deposition testimony from <u>Western Native Voice v. Stapleton</u> , No. DV-2020-377 and <u>Driscoll v. Stapleton</u> , No. DV 20 0408				
Reserve		9/9/2020- 9/10/2022	Exhibits accompanying designations of Dana Corson's trial testimony from <u>Western Native Voice v. Stapleton</u> , No. DV-2020-377				
Reserve		9/15/2020- 9/16/2020	Exhibits accompanying designations of Dana Corson's trial testimony from <u>Driscoll v. Stapleton</u> , No. DV 20 0408				
Reserve		5/3/2022	Exhibits accompanying designations of Delina Cuts the Rope's deposition testimony in this matter.				
Reserve		5/19/2022	Exhibits accompanying designations of Audrey Dozier's deposition testimony in this matter.				
Reserve		4/13/2022	Exhibits accompanying designations of Monica Eisenzimer's deposition testimony in this matter.				
Reserve		4/20/2022	Exhibits accompanying designations of Doug Ellis's deposition testimony in this matter.				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
Reserve		4/21/2022	Exhibits accompanying designations of Steve Fitzpatrick's deposition testimony in this matter.				
Reserve		5/3/2022	Exhibits accompanying designations of Dawn Gray's deposition testimony in this matter.				
Reserve		5/27/2022	Exhibits accompanying designations of Greg Hertz's deposition testimony in this matter.				
Reserve		5/5/2022	Exhibits accompanying designations of Hunter Loring's deposition testimony in this matter.				
Reserve		4/19/2022	Exhibits accompanying designations of Robert McDonald's deposition testimony in this matter.				
Reserve		4/6/2022	Exhibits accompanying designations of Amara Reese-Hansell's deposition testimony in this matter.				
Reserve		4/13/2022	Exhibits accompanying designations of Janel Tuckek's deposition testimony in this matter.				

PLAINTIFFS' PRELIMINARY TRIAL EXHIBITS

TX No.	Bates Number Range	Date	Description	Authenticity Stipulated (Y/N)	Admissibility Stipulated (Y/N)	Objection (Basis)	Admitted (Y/N)
Reserve		5/23/2022- 5/24/2022-	Exhibits accompanying designations of Austin James's individual deposition testimony in this matter.				
Reserve		5/26/2022- 7/19/2022	Exhibits accompanying designations of the Secretary of State's 30(b)(6) witness deposition testimony in this matter.				

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CERTIFICATE OF SERVICE

I, Leonard Hudson Smith, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 09-01-2022:

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Dated: 09-01-2022

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