

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ISABEL LONGORIA and CATHY MORGAN,

Plaintiffs,

v.

WARREN K. PAXTON, in his official
capacity as the Attorney General of
Texas, *et al.*,

Defendants.

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Case No. 5:21-cv-1223-XR

DEFENDANT SHAWN DICK’S RESPONSE IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION

Defendant Shawn Dick, sued in his official capacity as the District Attorney of Williamson County, Texas, files this response in opposition to plaintiffs’ motion for preliminary injunction (ECF No. 7), respectfully showing:

INTRODUCTION

Plaintiffs’ motion for issuance of a preliminary injunction against Williamson County District Attorney Shawn Dick should be denied for the very same reasons that Mr. Dick’s pending motion to dismiss (ECF No. 31) should be granted:

- (1) Plaintiffs’ claims against Mr. Dick are barred by sovereign immunity, and subject matter jurisdiction thus does not exist;
- (2) Plaintiffs lack standing and there is no subject matter jurisdiction for this additional reason; and
- (3) this Court should abstain from intervening in matters concerning state laws

and a state district attorney's prosecutorial discretion to enforce those laws under the *Younger* abstention doctrine.

Mr. Dick has already briefed these issues in his pending motion to dismiss and will not replicate those arguments in detail in this response; instead, he incorporates his motion to dismiss for all purposes herein.

However, since the motion to dismiss was filed the plaintiffs have both been deposed in connection with the upcoming hearing on their preliminary injunction motion. The testimony given by the plaintiffs – and, more specifically, the testimony given by plaintiff Cathy Morgan, who is the only plaintiff asserting a putative cause of action against Mr. Dick in this matter – makes absolutely clear that there is no evidence to support any justiciable claims against Mr. Dick in addition to the absence of any plausible allegations giving rise to any such claims. Indeed, in her deposition Ms. Morgan unequivocally testified (among other things) that: she is not and has never been prosecuted, charged, or investigated by Mr. Dick in connection with Section 276.016(a)(1) or any other law; she has never been threatened with any such prosecution, charge or investigation; she doesn't know of anyone who has been prosecuted or threatened with prosecution under that law; she has never even spoken with Mr. Dick or his office about Section 276.016(a)(1) or its contents or enforcement, and in fact has never heard, seen or read anything by Mr. Dick or attributable to him about the statute or its enforcement.

The motion for preliminary injunction should be denied as to Mr. Dick because (i) subject matter jurisdiction simply does not exist and no injunctive relief can be granted, (ii) there is no plausible claim upon which final relief (much less preliminary injunctive relief) can be granted, and (iii) the *Younger* abstention doctrine mandates against federal court intervention in state prosecutorial matters under the facts and circumstances presented here.

PROCEDURAL BACKGROUND, ALLEGATIONS, AND DEPOSITION TESTIMONY

Procedural Background

Plaintiffs Isabel Longoria and Cathy Morgan filed their original complaint on December 10, 2021, naming Texas Attorney General Ken Paxton as the sole defendant. (ECF No. 1) They filed their first amended complaint (their live complaint) on December 27, 2021, adding three district attorneys¹ – including Mr. Dick of Williamson County – as defendants. (ECF No. 5) Longoria, who serves as the Harris County Elections Administrator, is asserting claims against the Attorney General and the Harris County District Attorney in their official capacities. (ECF No. 5 at ¶¶37-46) (Longoria is asserting no claims against Mr. Dick, and has so acknowledged in her recent deposition.) Morgan serves as a “Volunteer Deputy Registrar” (VDR) in Central Texas and is asserting her claims against the Travis and Williamson County District Attorneys in their official capacities. (ECF No. 5 at ¶¶37-43) On December 28th, Plaintiffs filed their motion for entry of a preliminary injunction, attaching declarations of Longoria and Morgan to that motion. (ECF Nos. 7, 7-1 & 7-2)

On January 27, 2022, Mr. Dick filed a motion to dismiss pursuant Federal Rules 12(b)(1) and 12(b)(6) as his first responsive pleading. (ECF No. 31) In that motion, which remains pending, he seeks dismissal on the grounds that (i) sovereign immunity bars these claims, the plaintiffs lack standing, and thus there is no subject matter jurisdiction, (ii) the plaintiffs have failed to assert a claim upon which relief can be granted, and (iii) the longstanding “national policy

¹ While the other named state district attorney defendants have entered into non-participation stipulations with the Plaintiffs, District Attorney Dick, as an elected public official, continues to pursue dismissal of claims that (i) are barred by sovereign immunity and contrary to the *Younger* abstention doctrine, (ii) the plaintiffs lack standing to bring, and (iii) improperly and improvidently attempt to rope state district attorneys in as named defendants to individually defend the constitutionality of laws that are passed on a state-wide level. Mr. Dick notes that there are 254 counties in Texas and almost as many state district attorneys who are potentially subject to such suits.

forbidding federal courts from staying or enjoining state court proceedings” except under “very special circumstances,” as discussed by the U.S. Supreme Court in *Younger v. Harris*, 401 U.S. 37 (1971), militates strongly against federal court intervention in this matter. (*See id.* at pp. 6-15)

Plaintiffs’ motion for preliminary injunction has been set for hearing on Friday, February 11th. (ECF. No. 37). In preparation for that hearing, Ms. Longoria and Ms. Morgan were both deposed on February 4th. Excerpts of Ms. Morgan’s deposition are attached as Exhibit “A” to this response and incorporated herein.

Plaintiffs’ Allegations

In the complaint, Ms. Morgan does not allege that Mr. Dick, as Williamson County District Attorney, has ever said or done anything *whatsoever* – whether explicitly or implicitly – to threaten or even suggest that he or his office had any intention of prosecuting or investigating Morgan (or anybody else) in connection with the so-called “anti-solicitation provisions” of Section 276.016(a)(1). (*See* ECF No. 5 at ¶¶1-43). Indeed, there are *zero* allegations that Mr. Dick has taken any steps whatsoever or made any statements at all pertaining to possible enforcement of Section 276.016(a)(1) – whether as to Morgan specifically or anybody else. (*See id.*) The declaration of Morgan that is attached to plaintiffs’ preliminary injunction motion is similarly bereft of any such averments. (*See* ECF No. 7-2) Instead, Morgan alleges some general and speculative concerns about “her fear of criminal prosecution for encouraging eligible voters to request an application to vote by mail” and that “[t]he possibility of criminal prosecution by the Defendants under Section 276.016(a)(1) therefore chills [her] from encouraging voters to request mail-in applications.” (ECF No. 5 at ¶35)

Plaintiffs’ Depositions

The plaintiffs’ February 4th depositions confirm that dismissal of Mr. Dick as a defendant

is warranted and that no preliminary injunction should be issued as to him.

As a threshold matter, the deposition testimony establishes that Ms. Morgan serves as an unpaid VDR in Travis and Williamson Counties but holds no other offices, appointments, or employment with the State of Texas or with any political subdivision of the state – including Williamson County. Among other things, Ms. Morgan testified that:

- She’s been appointed to serve as a voluntary deputy registrar (VDR) in both Williamson and Travis Counties since 2014. (MORGAN DEPO TR., Exh. A, at 89:19-25)
- She is not paid in her role as a VDR. (*Id.* at 90:1-3)
- She is not currently appointed to serve as an alternate election judge in either Williamson or Travis County. (*Id.* at 90:4-10)
- She is not a full-time or part-time employee of the State of Texas or any state agency. (*Id.* at 90:15-18)
- She is not a full-time or part-time employee of any political subdivision of the state, including Williamson and Travis Counties. (*Id.* at 90:19-22)
- She doesn’t hold any elected public office in the state of Texas. (*Id.* at 90:23-91:22)
- She is not the appointed member of any board or commission of the State of Texas or of Williamson or Travis Counties. (*Id.* at 91:23-92:1)

Further, Ms. Morgan specifically agreed that she does not presently serve in any of the roles listed in the definition of “election official” that are contained in Subsection 1.005 of the Texas Election Code. (*Id.* at 92:1-6)

Next, although the complaint and her declaration assert some highly speculative and inchoate allegations of her “fear of criminal prosecution for encouraging eligible voters to request an application to vote by mail” and that “[t]he possibility of criminal prosecution by the Defendants under Section 276.016(a)(1) therefore chills [her] from encouraging voters to request mail-in

applications,” (ECF No. 5 at ¶35), she has absolutely no objective evidence that could support any such subjective alleged fear. Among other things, she unequivocally testified that:

- She is not presently being prosecuted for any alleged criminal violation of the Texas Election Code by District Attorney Dick or anybody else. (*Id.* at 94:6-9)
- She has never been prosecuted by District Attorney Dick or anybody in his office for any alleged criminal violation of the election code. (*Id.* at 94:13-16)
- She has never been convicted of any criminal offense established by the Texas Election Code. (*Id.* at 93:8-12)
- She is not currently charged or indicted by District Attorney Dick or his office for any alleged violation of the Texas Election Code. (*Id.* at 94:18-25)
- She is not currently being prosecuted by District Attorney Dick or anyone in his office for anything. (*Id.* at 94:2-5)
- She has never been threatened with prosecution by District Attorney Dick or anybody in his office for any alleged violation of the election code. (*Id.* at 95:6-22)
- She is not aware of any investigation of her by District Attorney Dick for any alleged violation of an election code. (*Id.* at 95:23-96:2)
- She has never been threatened with an investigation or an election code violation by anybody from the Williamson County District Attorney’s office. (*Id.* at 96:3-7)
- She has never been contacted by any law enforcement officer of the State of Texas or Williamson County regarding or in connection with any alleged election code violation. (*Id.* at 96:8-12)

Indeed, Ms. Morgan confirmed that she is not aware of *anyone at all* who has ever been prosecuted by District Attorney Dick for any violation of the Election Code – including Section 276.016(a) – much less threatened with any such prosecution:

- She is not personally aware of any person at all who has ever been prosecuted by District Attorney Dick or his office for an alleged violation of the Texas Election Code. (*Id.* at 96:13-17)

- She is not aware of any threat of prosecution of anybody by District Attorney Dick or anyone from his office in connection with an alleged violation of the election code. (*Id.* at 96:18-22)
- She's not aware of any person who has ever been charged by District Attorney Dick for an alleged violation of Section 276.016(a)(1). (*Id.* at 96:23-97:2)

And, Ms. Morgan testified that she has *never had any communications of any sort* with District Attorney Dick or his office, much less ever read or heard or seen anything by him or attributed to him regarding Section 276.016(a)(1), its contents, or its enforcement:

- She has never communicated with the district attorney. (*Id.* at 70:9-11)
- She has never communicated with anyone from the district attorney's office. (*Id.* at 70:12-14)
- She's never even been contacted by anyone from the District Attorney's office regarding any aspect of her role or responsibilities as a VDR in Williamson County. (*Id.* at 104:18-21)
- She has never personally spoken with District Attorney Dick or anybody in his office about Section 276 of the Texas Election Code, its contents, or enforcement of the statute. (*Id.* at 97:3-7)
- She's never sought any type of clarification, advice or input from District Attorney Dick or anybody from his office about Section 276. (*Id.* at 97:8-12 & 99:17-20))
- She never contacted the Williamson County Elections Administrator to get any kind of clarification or interpretation about Section 276. (*Id.* at 101:22-102:1)
- She's never heard District Attorney Dick or anybody from his office speak about Section 276 of the code, its contents, or enforcement of the statute. (*Id.* at 104:24-104:3)
- She has never read or seen anything authored by District Attorney Dick or anyone in his office regarding Section 276 or its contents. (*Id.* at 104:4-8)
- She has never seen or read anything that was attributed to District Attorney Dick or his office regarding Section 276. (*Id.* at 104:9-12)

- She hasn't seen any social media posts from District Attorney Dick or anyone in his office regarding Section 276 or its enforcement. (*Id.* at 104:13-17)

Indeed, she specifically agreed that she's never seen or heard anything from District Attorney Dick to even "intimate" that enforcement of Section 276 "was on the horizon" for her or anybody else in Williamson County:

Q. Is it true, then, from your personal knowledge, District Attorney Dick, until you sued him, had never heard of you, never threatened you, never accused you of violating the law, and never, to your knowledge, even publicly mentioned Section 276; isn't that true?

[Objection]

A. That is correct.

Q. And that Attorney – District Attorney Dick never intimated or said, that you heard, formal enforcement of Section 276 was on the horizon for you or anybody else in Williamson County; isn't that true?

A. That is true.

(*Id.* at 104:22-105:10)

In fact, Ms. Morgan testified that *no one in the entire State of Texas* has ever threatened to prosecute her or to seek a civil penalty against her in connection with the provision of the Texas Election Code she is challenging or any other provision of that code. Specifically, she testified that:

- No one has ever threatened to prosecute her for violating Section 276.016(a)(1). (*Id.* at 70:15-17)
- She has never been threatened with a criminal prosecution for violating any other law. (*Id.* at 70:18-30)

- No one has ever threatened to seek a civil penalty against her under Texas Election Code Section 31.129. (*Id.* at 70:21-23)
- No one has ever threatened to seek a civil penalty against her under any other provision of law. (*Id.* at 71:1-5)
- She is not being prosecuted for any criminal offense of any kind in the State of Texas currently. (*Id.* at 94:10-12)

Finally, Ms. Morgan testified that she has continued to engage in VDR-related activities – including handing out mail-in ballot applications to potential voters – without repercussion since the “SB1” election legislation was passed last summer (except for very understandable Covid-related concerns). For example, she worked a voter information booth near the University of Texas in Austin for a number of days in October 2021 – handing out a number of mail-in ballot applications. (*Id.* at 20:19-21:3, 37:12-38:15 & 44:17-49:5) And, she has provided mail-in registration information to neighbors. (*Id.* at 21:4-20) But, despite her purported fears regarding Section 276.016(a)(1) and its enforcement, she testified that she has never personally sought advice, clarification, or input from any official in the State of Texas (including the Secretary of State) or Williamson County (including the Williamson County Elections Administrator) about Section 276. (*Id.* at 97:12-15, 99:9-12 & 101:22-102:1)

INCORPORATION OF MOTION TO DISMISS

Mr. Dick incorporates his motion to dismiss (ECF No. 31) and its contents for all purposes as if fully set forth herein.

APPLICABLE LAW

A preliminary injunction is an extraordinary remedy, and the decision to grant such relief is to be treated as the exception rather than the rule. *Valley Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1050 (5th Cir. 1997). “A plaintiff seeking a preliminary injunction must establish that he is likely

to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The party seeking injunctive relief carries the burden on all four of these requirements. *PCI Transp. Inc. v. W.R.R. Co.*, 418 F.3d 535, 545 (5th Cir. 2005).

A movant cannot be granted a preliminary injunction unless she can establish that she will suffer irreparable harm without an injunction. *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1350 (Fed. Cir. 2001). “[B]ecause ‘the court must decide whether the harm will *in fact* occur,’ a party seeking injunctive relief must ‘substantiate the claim of irreparable injury’ and ‘must show that the injury is of such *imminence* that there is a clear and present need for equitable relief to prevent *irreparable* harm.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 482 F.Supp.3d 543, 559 (W.D. Tex. 2020) (quoting *Sierra Club v. U.S. Army Corps of Eng’rs*, 990 F.Supp.2d 9, 39 (D.D.C. 2013)) (italics in original). “[S]peculation built upon further speculation does not amount to a ‘reasonably certain threat of imminent harm’ and does not warrant injunctive relief.” *Id.* (quoting *Friends of Lydia Ann Channel v. U.S. Army Corps of Eng’rs*, 701 F. App’x 352, 357 (5th Cir. 2017)).

ARGUMENT & AUTHORITIES

A. Plaintiffs’ motion for preliminary injunction should be denied because they have failed to make the requisite “clear showing” that subject matter jurisdiction even exists.

As discussed in more detail in Mr. Dick’s pending motion to dismiss, “‘an essential and unchanging part of the case-or-controversy requirement of Article III’ is the requirement that the plaintiff establish standing.” *Daves v. Dallas County*, 2022 U.S. App. LEXIS 547, *40 (5th Cir. Jan. 7, 2022) (citing and quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). “To establish standing, the plaintiff must show ‘(1) that he or she suffered an injury in fact that is

concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.” *Id.* at **40-41. (citing and quoting *Thole v. U.S. Bank N.A.*, 140 S.Ct. 1615, 1618 (2020)). At the preliminary-injunction stage, “the plaintiffs must make a ‘clear showing’ that they have standing to maintain the preliminary injunction.” *Id.* (citing and quoting *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017)). Moreover, standing must be established as to each named plaintiff and each form of relief sought; “[s]tanding to sue one defendant does not, on its own, confer standing to sue a different defendant.” *Id.* at *41.

Plaintiffs’ motion should be denied because they have not even brought their case over this initial jurisdictional threshold for the purposes of preliminary injunctive relief: they have not shown (as is their burden) that subject matter jurisdiction exists. (It does not.) More specifically, they have not met their burden to plead and show clearly that: (i) the *Ex Parte Young* exception to sovereign immunity applies here such that subject matter jurisdiction exists and they may maintain suit against District Attorney Dick in federal court; and (ii) they otherwise have standing to sue Mr. Dick in this matter.

1. Sovereign Immunity and *Ex Parte Young*

As set forth in Mr. Dick’s motion to dismiss, sovereign immunity bars suits against state officials like Mr. Dick unless the “some connection” requirement of *Ex Parte Young* exception is established. (See ECF No. 31 at pp. 6-9) While the Fifth Circuit has held that “[t]he precise scope of the ‘some connection’ requirement is still unsettled, ... the requirement traces its lineage to *Young* itself.” *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 400 (5th Cir. 2020) (citing *City of Austin v. Paxton*, 943 F.3d 993, 997 (5th Cir. 2019). “[I]t is not enough that the official have a ‘general duty to see that the laws of the state are implemented.’” *Id.* (citing *Morris v. Livingston*,

739 F.3d 740, 746 (5th Cir. 2014)). “Moreover, a mere connection to a law’s enforcement is not sufficient – the state officials *must have taken some step to enforce.*” *Id.* (emphasis added). “[T]he plaintiff at least must show the defendant has ‘the particular duty to enforce the statute in question *and a demonstrated willingness to exercise that duty.*’” *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 179 (5th Cir. 2020) (citing *Morris*, 739 F.3d at 746) (emphasis added). “Enforcement typically means ‘compulsion or constraint.’” *Id.* (citing and quoting *K.P. v. LeBlanc*, 627 F.3d 115, 124 (5th Cir. 2010)). At the bare minimum, there must be “some scintilla” of affirmative action of the state official. *Tex. Democratic Party*, 961 F.3d at 40 (citing *City of Austin*, 943 F.3d at 1002).

Here, Plaintiffs – specifically, plaintiff Morgan, who is the only plaintiff asserting a claim against District Attorney Dick in this action – has not pleaded nor can she “clearly show” that Mr. Dick ever took “some step to enforce” Section 276.016(a)(1), that he has ever “demonstrated willingness to exercise that duty,” or that he has taken any “affirmative action.” There is not a scintilla of evidence that Mr. Dick has ever done such, and, indeed, the deposition testimony from Ms. Morgan’s February 4th deposition establishes *just the opposite*. As set forth above, she testified that she has never been prosecuted, charged, indicted or investigated by Mr. Dick or his office in connection with the Texas Election Code or any other statute. She has not been threatened with any such prosecution, charge, indictment, or investigation. She agreed that nobody from Mr. Dick’s office has even “intimated” that any such matters “are on the horizon.” Indeed, she testified that she’s never even met or spoken with Mr. Dick or his office, and has not read or heard or seen anything by Mr. Dick or attributable to him that even remotely relates to Section 276.016(a)(1).

2. Standing Under the *Lujan* and *Thole* Standards

Similarly, issuance of a preliminary injunction enjoining District Attorney Dick is

improper because Plaintiffs have not pleaded and cannot meet their burden to clearly show that they have standing to sue Mr. Dick. Plaintiff Longoria is the Harris County Elections Administrator and is not asserting claims against Mr. Dick, who is the Williamson County District Attorney. Plaintiff Morgan is asserting putative claims against Mr. Dick, but she has not alleged and cannot clearly show that the claims she has attempted to plead satisfy any of the three requirements of standing under *Lujan* and *Thole*: injury-in-fact; causation attributable to the defendant; and redressability.

a) Injury in Fact

To establish standing for the purposes of a preliminary injunction, Ms. Morgan must plead and clearly show that she suffered an injury in fact that is concrete, particularized, and actual or imminent. *Thole, supra*. She has not pleaded any such injury, and, as the deposition testimony cited and discussed above shows, no such injury exists by her own admission. The Supreme Court has held that subjective fears of the sort she has alleged, without more, do “not give rise to standing.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 418 (2013). Speculative and hypothetical allegations of a possible future injury of the sort Ms. Morgan claims are simply not sufficient to establish standing. *See id.* at 409.

b) Causation

Ms. Morgan must also plead and clearly show an injury that was caused by the defendant named. *Thole, supra*. But, she has not pleaded any such injury (or any injury at all) attributable to Mr. Dick, and she admitted in her deposition that there is none.

c) Redressability

Finally, for standing to exist such that preliminary injunctive relief may issue, Ms. Morgan must plead and clearly show that the alleged injury would likely be redressed by the requested

judicial relief. *Thole, supra*. But, again, she has not pleaded anything other than a subjective and unsubstantiated fear – unsubstantiated by any evidence and by her own admissions in her deposition – that would give rise to any redressability for the purposes of the standing analysis.

B. The motion for preliminary injunction should also be denied because Morgan has no irreparable injury attributable to District Attorney Dick, or a substantial likelihood of success on the merits on her claim against Mr. Dick.

1. Irreparable Injury

In addition to making the requisite threshold showing regarding standing, a plaintiff seeking a preliminary injunction must show that she will likely suffer an irreparable injury. *Winter, supra*, at 20. To satisfy this requirement, the plaintiff must show that (1) she will likely suffer an imminent injury, and (2) the injury would be irreparable. *Sierra Club*, 482 F.Supp. at 559. An irreparable injury must be both actual and imminent. *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007). Speculative harm or the mere possibility of irreparable injury is not sufficient; instead, irreparable injury must be likely. *Winter, supra*, at 22.

Here, Morgan has neither plausibly pleaded nor can she prove that there is any irreparable injury exists such that a preliminary injunction may issue. As her deposition testimony shows, there is no actual injury – certainly nothing at all with respect to District Attorney Dick and his office. Nothing is imminent, much less even “on the horizon” by her own admission. She hasn’t even spoken with him, much less heard, read or seen anything remotely relevant to this case that is attributable to him. Instead, the harm she claims is purely speculative and subjective, and she has not even shown that it rises to the “mere possibility” level.

2. Substantial Likelihood of Success

A plaintiff seeking a preliminary injunction in federal court must also show that she has a substantial likelihood of succeeding on the merits of her claim. *Winter, supra*. Irrespective of the

merits of any overarching claims she is asserting in this lawsuit about Section 276.016(a)(1) and its constitutionality, she has made no showing whatsoever that she is substantially likely to prevail on claims she is asserting against a state district attorney who has not said or done anything to even remotely suggest that he has or will impinge upon any of her constitutional rights.

C. The Court should abstain from issuing an injunction under the *Younger* doctrine.

District Attorney Dick has previously raised and briefed the *Younger* abstention doctrine in his pending motion to dismiss. (See ECF No. 31 at pp. 13-15) While *Younger* abstention is “not a jurisdictional issue, a court may ‘abstain under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 748, 27 L.Ed.2d 669 (1971), without deciding whether the parties are presenting a case or controversy.” *Daves, supra*, at *16 (citing *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999)).

Notwithstanding the sovereign immunity, standing, and other issues discussed above, this Court should refrain from issuing any preliminary injunction as to Mr. Dick pursuant to the *Younger* doctrine. In *Younger*, the Supreme Court discussed the longstanding “national policy forbidding federal courts from staying or enjoining state court proceedings” except under “very special circumstances.” *Id.* at 41 & 45. The court quoted its previous holding in *Fenner v. Boykin*, 271, U.S. 240 (1926):

“*Ex parte Young*, 209 U.S. 123, and following cases have established the doctrine that when absolutely necessary for protection of constitutional rights courts of the United States have power to enjoin state officers from instituting criminal actions. ***But this may not be done except under extraordinary circumstances where the danger of irreparable loss is both great and immediate. Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done.*** The accused should first set up and rely upon his defense in the state courts ... ”.

Id. (quoting *Fenner* 271 U.S. at 243-44) (emphasis added). The court then held that an alleged “chilling effect” to First Amendment speech, in and of itself, of the sort that Morgan is claiming here “should not by itself justify federal intervention” in matters concerning state laws and matters pertaining to a state’s prosecutorial discretion to enforce those laws. *Younger*, 401 U.S. at 50. “[I]t can seldom be appropriate for [federal] courts to exercise any such power of prior approval or veto over the [state] legislative process.” *Id.* at 53.

Younger thus underscores the notion under longstanding national policy that *this* federal court should refrain – through use of injunctive relief or otherwise – from exercising any power of prior approval of matters regarding prosecutorial decisions involving state laws by state officials like District Attorney Dick.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, defendant Shawn Dick, sued in his official capacity as Williamson County District Attorney, respectfully requests that (i) the Court deny Plaintiffs’ motion for preliminary injunction (ECF No. 7) in its entirety, (ii) dismiss all claims and causes of action that have been asserted against Mr. Dick in this action pursuant to Rule 12(b)(1) and/or Rule 12(b)(6) for the reasons stated in his motion to dismiss (ECF No. 31), and (iii) for such other and further relief to which he may be justly entitled.

Dated: February 8, 2022

Respectfully submitted,



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*Attorneys for Defendant Shawn Dick
In His Official Capacity as
Williamson County District Attorney.*

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on February 8, 2022, and that all counsel of record were served by CM/ECF.



Sean E. Breen

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Warning!

This is an unfinished rough draft of the proceedings and is not certified. This rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcription of the proceedings.

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P R O C E E D I N G S

THE REPORTER: Today's date in February 4, 2022. The time is 9:32 a.m. Central Standard Time. This is the videotaped oral deposition of Cathy Morgan, and it is being conducted remotely. The witness is located in Austin, Texas.

My name is Debbie Cunningham, CSR Number 2065. I am administering the oath and reporting

1 the deposition remotely by stenographic means from
2 Austin, Texas.

3 Would Counsel please state their
4 appearances and locations for the record, beginning with
5 Plaintiffs' Counsel?

6 (No audible response.)

7 THE REPORTER: Do we have Plaintiffs'
8 Counsel present?

9 MR. GARBER: Excuse me. I was thinking
10 Deponent's Counsel. Andrew Garber for Plaintiff at the
11 Brennan Center for Justice.

12 MR. MORALES-DOYLE: This is Sean
13 Morales-Doyle also for Plaintiffs from the Brennan
14 Center for Justice.

15 MR. THOMPSON: It sounds like no more
16 Plaintiffs' Counsel to be announced. My name is Will
17 Thompson. I'm from the Office of the Attorney General
18 for the Attorney General.

19 MR. BREEN: Good morning. Sean Breen and
20 Randy Leavitt. Subject to the Motions to Dismiss, we're
21 appearing on behalf of Shawn Dick, the District Attorney
22 of Williamson County.

23 THE REPORTER: Do we have any more
24 announcements?

25 (No audible response.)

1 THE REPORTER: Then, Ms. Morgan, may I
2 swear you in, please? Will you raise your right hand?

3 CATHY MORGAN,
4 having been duly sworn, testified as follows:

5 EXAMINATION

6 BY MR. THOMPSON:

7 Q. Good morning, Ms. Morgan. As you may have
8 heard, my name is Will Thompson. I'm a lawyer
9 representing the Attorney General.

10 Have you ever been deposed before?

11 A. No, sir.

12 Q. All right. Well, let's just discuss some of
13 kind of the ground rules for a deposition, especially a
14 deposition over Zoom. So I'd like to confirm right now
15 that the technology is working properly. Are you able
16 to hear me okay?

17 A. Yes, I can.

18 Q. Okay. And I can hear you, but it's a little
19 bit faint. And so I might ask the court reporter if she
20 can hear you all right.

21 THE REPORTER: It's a bit faint for me,
22 too.

23 THE WITNESS: Okay. I'll try to speak
24 louder.

25 Q. (BY MR. THOMPSON) Thank you. And,

1 Ms. Morgan, are you familiar with the audio settings on
2 Zoom?

3 A. In terms of on my keyboard I am.

4 Q. So if it would be easier for you compared to
5 speaking up, there is an option to kind of make the
6 microphone more sensitive on your computer would you
7 like me to to talk to you about how to do that?

8 A. Certainly.

9 Q. Okay. So in the bottom left-hand corner of
10 your screen, there's a button that looks like a
11 microphone; and it says "mute."

12 A. Yes.

13 Q. And there's a little arrow in the right-hand
14 corner of that button. Do you see that?

15 A. Yes.

16 Q. Okay. Click that arrow, and then click the
17 bottle option that says "audio setting."

18 A. All right. And volume?

19 Q. And about halfway down the dialogue box
20 there's a bold thing that says "microphone," and there's
21 kind of a slide bar where you can adjust how sensitive
22 the microphone is. Do you see that?

23 A. Yes.

24 Q. Feel free to just move that over towards the
25 right so you don't have to speak up as loudly.

1 A. How does that sound?

2 **Q. I think that's a little bit better.**

3 MR. THOMPSON: But, Ms. Cunningham, do
4 you have an opinion on that?

5 THE REPORTER: It seems better to me,
6 too.

7 THE WITNESS: How about this?

8 MR. BREEN: There we go.

9 MR. THOMPSON: I think that's even
10 better, still.

11 THE WITNESS: All right.

12 THE ZOOM TECH: I will also add, if you
13 don't mind, make sure to deselect the automatic adjust
14 microphone volume so that it doesn't readjust it lower.

15 THE WITNESS: It's not -- automatically
16 adjust microphone volume is not selected.

17 THE ZOOM TECH: You sound much better.
18 Thank you.

19 THE WITNESS: All right. Thank you.

20 MR. THOMPSON: All right. So thank you
21 for doing that. I'm sorry for the technological
22 difficulties there.

23 **Q (BY MR. THOMPSON) So if at any time during**
24 **the deposition you're not able to hear me clearly, will**
25 **you please tell me that?**

1 A. Uh-huh, yes.

2 Q. Now, I'm going to show you exhibits today --
3 not very many of them -- but I will send them to you
4 electronically using the chat function; and I think it
5 makes sense to just test that right now.

6 A. All right.

7 Q. Is that okay with you?

8 A. Certainly.

9 Q. Okay. So I'm going to send you what I'll mark
10 as Exhibit 1, and it will just be the Deposition Notice
11 for this deposition.

12 (Exhibit 1 marked.)

13 Q. (BY MR. THOMPSON) And I just put it in the
14 chat feature. So it should arrive --

15 A. Yes.

16 Q. -- on your screen and to your counsel as well
17 and anyone else who's on the deposition. Do you see it?

18 A. Yes.

19 Q. And are you able to open that document and
20 look at it?

21 A. Yes.

22 Q. Okay. So can you just read the bold title on
23 the first page to confirm?

24 A. United State District Court, Western District
25 of Texas, San Antonio Division.

1 Q. That's true that is on the page. I should
2 have been more clear --

3 (Simultaneous speakers.)

4 A. Isabel Longoria --

5 Q. -- about halfway down --

6 A. Isable Longoria and Cathy Morgan, Plaintiffs,
7 versus Warren K. Paxton, in his official capacity as the
8 Attorney General of Texas, et al.

9 Q. Okay. Thank you.

10 And then about -- a little farther down,
11 it says Paxton's Notice of Intent to Take Deposition of
12 Cathy Morgan. Do you see that?

13 A. Yes, I do.

14 Q. Okay. Great. Then our test has been
15 successful.

16 MR. THOMPSON: Counsel, I assume if you
17 did not receive it, you'll let me know before we get too
18 much further.

19 MR. GARBER: That's correct, I have it.
20 Thank you.

21 Q. (BY MR. THOMPSON) Okay. So this deposition
22 is an opportunity for us to discuss the case and I'll be
23 asking you questions and you'll, of course, be providing
24 answers; but it's important for the court reporter that
25 I get all the way through my question before you start

1 an answer and that you get all the way through your
2 answer before I start another question. Does that make
3 sense to you?

4 A. Yes, it does.

5 Q. It's also important that even though we're on
6 video, that we give verbal questions and answers rather
7 than shaking our heads or pointing or something because
8 we have a court reporter. Does that make sense?

9 A. Yes.

10 Q. Now, we talked about you being able to hear my
11 questions. It's also important that you understand my
12 questions. So if you don't understand a question, will
13 you please tell me that you don't understand it before
14 you try to answer that question?

15 A. Yes.

16 Q. Okay. And if you do under- -- I'm sorry -- if
17 you do answer a question, I'm going to assume that you
18 understood the question. Is that fair?

19 A. Yes.

20 Q. All right. So now that we're through some of
21 those kind of technical preliminaries, could you just
22 state your name and introduce yourself?

23 A. I'm Cathy Morgan. I live in Austin, Texas.

24 Q. And is that your full legal name?

25 A. My full legal name, depending how many you

1 want, Catherine Elise Eldridge Morgan.

2 Q. All right. What do you do for a living,

3 Ms. Morgan?

4 A. I'm a retired teacher.

5 Q. I may use acronyms or initialisms for some
6 longer phrases during the deposition today. Are you
7 familiar with the phrase "volunteer deputy registrar"?

8 A. Yes, I am.

9 Q. And what does that phrase mean to you?

10 A. That is a person who has been through training
11 through the county and is deputized to register people
12 to vote.

13 Q. Okay. So if I use the term "VDR" during the
14 deposition, we'll both understand that I'm referring to
15 a volunteer deputy registrar, right?

16 A. Yes.

17 Q. I'm hopeful that this will be a short
18 deposition; but if you need a break at any time, that's
19 completely fine. We try to get through whatever
20 question is pending on the table at that moment, but
21 then we'll be able to take a break. Does that work for
22 you?

23 A. Yes.

24 Q. And are you aware of anything that would
25 affect your ability to testify truthfully today?

1 A. No.

2 Q. And I know it's early in the morning, but you
3 haven't consumed any alcohol or taken any drugs or
4 anything like that?

5 A. No.

6 Q. Okay. Have you heard of Senate Bill 1?

7 A. Yes.

8 Q. And if I refer to Senate Bill 1 as "SB 1,"
9 will that make sense to you?

10 A. Yes.

11 Q. All right. What is that SB 1?

12 A. SB 1 is a bill through the Senate of the state
13 legislature that has to do with voting.

14 Q. When did you first hear about SB 1?

15 A. I don't remember exactly.

16 Q. Do you have an estimate?

17 A. An estimate was probably in the late summer.

18 Q. So something like August?

19 A. Probably.

20 Q. Are you challenging a provision of SB 1 in
21 this case?

22 A. Yes.

23 Q. Which provision or provisions is that you're
24 challenging?

25 A. I can't give you the number. It has --

1 Q. Can you describe it some other way?

2 A. Yes. It has to do with ability to offer a
3 person an application to vote by mail.

4 Q. So I've read your declaration, and we'll put
5 it up here on the screen in a second. I believe it
6 refers to Section 276.016(a)(1). Does that sound right
7 to you?

8 A. I think so -- yes.

9 Q. Okay. If I refer to Section 276.016(a)(1)
10 during this deposition, will you know that I'm referring
11 to the provision you're challenging?

12 A. Yes, yes.

13 Q. Okay. When did you first consider filing this
14 lawsuit?

15 MR. GARBER: Objection.

16 Cathy, I'll just advise you to be careful
17 not to divulge any privileged information in answering
18 that question.

19 A. I really can't quite remember.

20 Q (BY MR. THOMPSON) Sure. And just like
21 before, even if you don't have the exact date at hand,
22 an estimate is fine. Was it, for example, in that late
23 summer time period when you heard about SB 1?

24 MR. GARBER: Objection.

25 A. No -- well, I'm going to back up, please.

1 Please rephrase the question --

2 Q. (BY MR. THOMPSON) Understood.

3 A. -- completely.

4 Q. I want to know when you first considered
5 filing the lawsuit that you have now filed. And what I
6 was asking was: Did you first consider filing the
7 lawsuit in August when I believe you said you had heard
8 about SB 1 for the first time?

9 A. It was not in August. It was late September
10 would be my first memory of being alarmed at
11 understanding what that part of that bill said.

12 Q. What caused you to have that alarm you
13 referred to?

14 A. I have always felt that my impetus for serving
15 as a VDR and as serving in voting booths, information
16 booths, was to give every person who is eligible to vote
17 a method to vote.

18 Q. Sure. I can appreciate that and we'll get
19 into some of your beliefs a little bit later in the
20 deposition, but I meant to ask a slightly different
21 question.

22 A. Okay.

23 Q. What changed to cause you to become alarmed
24 when previously you had not been alarmed? For example,
25 you might say, "My neighbor told me that this was going

1 **to affect me in some way," or something like that?**

2 MR. GARBER: Objection.

3 A. I honestly don't know the moment.

4 **Q (BY MR. THOMPSON) Do you know what the change**
5 **in circumstance was, even if you don't know when it**
6 **occurred?**

7 A. Let me think about this for a minute.

8 **Q. Sure.**

9 A. Because I want to be honest and clear.

10 I don't remember the date. I don't
11 remember the time. I just know that when the
12 opportunity came up, it seemed to me to be the right
13 thing for me to do. That probably -- I can't guess.
14 I'm not going to guess. I'd have to look back at some
15 notes and maybe on my cell phone, but it was in the
16 fall.

17 **Q. I understand. So I understand you don't**
18 **remember when the opportunity arose. Can you tell me**
19 **how the opportunity arose?**

20 A. Yes. Through Bee Morehead, I believe -- I
21 know, I was put in contact with some lawyers who were
22 interested in talking with me and I with them.

23 **Q. Who is Bee Morehead?**

24 A. She is the director of Texas Impact.

25 **Q. What is Texas Impact?**

1 A. It is a large group in the state of Texas made
2 up of a little over 5 million people who are people of
3 faith and who work for -- working through the
4 legislature for areas of common concern, as in voting
5 rights, as in healthcare, as in education and health --
6 things like that.

7 Q. Who are the lawyers that Bee Morehead put you
8 in touch with?

9 A. The Brennan Center lawyers.

10 Q. All right. Ms. Morgan, I'm going to mark
11 Exhibit 2, your declaration. I'm going to send that in
12 the same way that I sent Exhibit 1 --

13 A. All right.

14 Q. -- through the chat feature.

15 (Exhibit 2 marked.)

16 Q (BY MR. THOMPSON) You should have just
17 received it.

18 A. Uh-huh.

19 Q. Do you see Exhibit 2 on your computer?

20 A. Just one moment. Is it 7-2, Exhibit B?

21 Q. Yes. This, Ms. Morgan, was attached to a
22 filing that your lawyers made in this case; and the
23 markings at the top indicate the case number and the
24 docket number.

25 A. Uh-huh.

1 Q. And the the first page says Exhibit B because
2 it's Exhibit B to a Preliminary Injunction Motion. So
3 why don't we skip past the first page and look at the
4 second page. Do you see in the center it says
5 Declaration of Cathy Morgan?

6 A. Yes.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. Can you tell me what it is?

10 A. I cannot tell you what exactly the document
11 does except states information about me and what I
12 declare.

13 Q. Sure. Let's look at the last page of the
14 document, which is marked as 6 of 6 at the top.

15 A. Yes.

16 Q. Do you see a signature on that page?

17 A. Yes.

18 Q. Is it your signature?

19 A. Yes.

20 Q. Is this a declaration that you signed and
21 submitted in this case?

22 A. Yes.

23 Q. Did you write this declaration?

24 A. I -- I read it and approved it.

25 Q. Do you know who wrote the declaration?

1 A. I had input into it. I don't know exactly
2 who, but the Brennan Center was advising me at that
3 point.

4 Q. How long did you spend reviewing this
5 declaration before you signed it?

6 A. At the time I spent time.

7 Q. Sure. How much time was that?

8 A. Probably 10 or 15 minutes.

9 Q. And did you make any edits to the document
10 after you received it but before signing it?

11 MR. GARBER: Objection.

12 Again, Cathy, be I'll just advise you to
13 be careful not to divulge anything you talked about with
14 your lawyers, talking about this document.

15 A. Honestly, I don't remember.

16 Q (BY MR. THOMPSON) I'm looking at Paragraph 9
17 of your Declaration. Can you see that?

18 A. Yes.

19 Q. It says, "I have submitted my name to be an
20 alternate judge during the 2022 elections in Williamson
21 County." Do you see that?

22 A. Yes.

23 Q. Who decides whether you will be an alternate
24 judge?

25 A. The person handling the volunteers here in the

1 Williamson County that are willing to be an alternate.
2 I, after that -- after this declaration, in the last
3 month and a half made a decision to be a clerk instead
4 of an alternate judge.

5 **Q. If I understand correctly --**

6 (Simultaneous speakers.)

7 A. I'm sorry.

8 **Q. I'm sorry. Please, go ahead.**

9 A. No, I just made that decision on my own in
10 terms of it being a little less pressure; and I have
11 another -- I have a lot of other pressures going on in
12 my life, moving for instance. So I wanted to alleviate
13 some of that.

14 **Q. Sure. And I'm not -- certainly not**
15 **criticizing you for your choice. I just want to make**
16 **sure I understand exactly what you chose. So is it fair**
17 **to say you're not going to be an alternate judge during**
18 **the 2022 election?**

19 A. I will not be an alternate judge in the
20 March 1st primary.

21 **Q. Okay. Have you submitted your name to be an**
22 **alternate judge in any other future election?**

23 A. That would come up later.

24 **Q. So "no"?**

25 A. Not right now, no.

1 **Q. Okay. And you said something about you might**
2 **be a clerk. Did I hear that correctly?**

3 A. Yes, sir.

4 **Q. What do you mean by "clerk"?**

5 A. A clerk is a person who sits for Williamson
6 County behind a plexiglass screen, with a mask on; and
7 when people come in and they hand you their driver's
8 license, for instance -- that's most of the time the ID
9 that's given -- then I'm the one who scans it. And the
10 computer pops up with their name and tells me
11 information about whether they're eligible to vote and
12 then gives me their -- the number for their ballot, the
13 ballot style. It's just a style according to exactly
14 where they live, and so that ballot contains all the
15 people that they are eligible to vote for or against.
16 And then, after checking all that out and looking at
17 them and it's the -- it's the person on the picture,
18 then I print the ballot, which is a ballot that has --
19 at the top of it, it has the ballot style on it. It
20 does not have any name on it. It's rectangular in
21 terms of being more narrow and very long, maybe
22 sometimes 16 inches long or so, depending on -- well,
23 that usually is the way it is; and that ballot, then,
24 they take to the voting machine.

25 **Q. I appreciate that explanation.**

1 **Is it fair to say that your work as a**
2 **clerk is a volunteer position during which you interact**
3 **with voters who are voting in person?**

4 A. While I do volunteer to do it, I am paid some
5 money for it at the same time.

6 Q. Okay. I've heard of county clerks who are
7 elected in Texas. You're not talking about being that
8 kind of clerk, are you?

9 A. No, I'm not.

10 Q. And is -- your clerk position, will that take
11 place just on election day; or does it extend beyond
12 that?

13 A. I'm choosing to only work on election day,
14 that day.

15 Q. Okay. Thank you very much.

16 A. Uh-huh.

17 Q. What made you decide to become a VDR?

18 A. I think I did look that up, and now I really
19 can't remember. The year 2014 comes up -- comes to
20 mind, but I'm not absolutely certain.

21 Q. I may not have spoken clearly. I didn't mean
22 to say when.

23 A. Oh.

24 Q. I meant to say: What made you decide to
25 become a VDR?

1 A. Because I wanted to help people do the process
2 that they need to do in order to vote.

3 **Q. What was the process for you to apply to**
4 **become a VDR?**

5 A. I signed up for training, went through
6 training and then was assigned a number and given a
7 piece of paper that says I'm now a VDR for two years.

8 **Q. Was that training provided by the Secretary of**
9 **State's Office?**

10 A. No.

11 **Q. Who provided the training?**

12 A. One year -- this is every other year that we
13 go through training. You have to re-up every other year
14 on the odd years. One year I went to Travis County for
15 it. Another year I went to Williamson County for it.

16 **Q. Was the training substantively different**
17 **between the two counties?**

18 A. No.

19 **Q. Are you working as a VDR this year?**

20 A. Yes.

21 **Q. When was the last time that you acted as a**
22 **VDR?**

23 MR. GARBER: Objection.

24 A. I can state a time period when I was active as
25 a VDR. The virus that we're living with has limited my

1 work substantially. I'm over 75 a little bit and so I'm
2 very careful, but I was working a voter information
3 booth in October.

4 **Q (BY MR. THOMPSON) So if I understand you**
5 **correctly, you haven't worked as a VDR since that time**
6 **in October; is that right?**

7 MR. GARBER: Objection.

8 A. I'm not sure. I do give out the "take away"
9 cards, which is a card -- a registration card that a
10 person can fill out on their own and mail on their own.
11 It's not one that they fill out and give to me and I
12 tear off a receipt and then I take their card to the
13 county office. So I -- I'm fairly certain when -- when
14 people move in my neighborhood anywhere, I generally
15 take them two "take away" cards and also have my own
16 cards with me in case they want to sign up with me; and
17 I can just take their registration cards in, uh-huh.

18 **Q. (BY MR. THOMPSON) So are you saying you've**
19 **handed out the "take away" cards since October?**

20 A. I believe I did to a neighbor that moved in.

21 **Q. All right. I think this might be easier if we**
22 **go through Paragraph 13 of your Declaration. Do you**
23 **still have your Declaration in front of you?**

24 A. Yes, I do.

25 **Q. It says in Paragraph 13, "As a VDR, my role is**

1 not to judge whether someone is eligible to vote or
2 eligible to vote by mail. Rather, my job is to explain
3 options to voters and help fill out forms." Do you see
4 that?

5 A. Yes.

6 Q. Is it fair to say that your job as a VDR has
7 two parts?

8 A. Would you talk about "two parts"?

9 Q. Sure. I'm just looking at Paragraph 13 of
10 your Declaration; and it says, "My job is to explain
11 options to voters and help fill out forms." So I'm
12 thinking that your job might have two parts: One,
13 explaining options to voters and, two, helping fill out
14 forms. Is that fair?

15 A. That would be fair.

16 Q. And when you say, "help fill out forms," are
17 you referring to forms to register to vote?

18 A. Yes.

19 Q. Has anybody ever complained about how you
20 perform those tasks as a VDR?

21 MR. GARBER: Objection.

22 A. Would you repeat the question? I didn't hear
23 the first part.

24 Q. (BY MR. THOMPSON) To the best of your
25 knowledge, has anyone ever complained about how you

1 perform those tasks as a VDR?

2 A. No.

3 Q. And when you help a voter fill out a form, are
4 you just kind of explaining the instructions of the form
5 to the voter?

6 A. I'm essentially making sure that they fill in
7 all of the spaces that they're required to fill in.
8 They'll fail -- they'll sometimes fail to check a box
9 saying they're a U.S. citizen. So I watch for that and
10 just head them up to that question to answer that
11 question.

12 Q. So when you're helping them fill out forms,
13 your role is to make sure the form is complete; is that
14 correct?

15 A. Yes.

16 Q. When you explain options to voters, have you
17 explained a vote-by-mail option?

18 A. The answer is yes, before December 1st of last
19 year.

20 Q. So before December 1st of last year, how did
21 you explain the vote-by-mail option when you did?

22 A. If the situation -- I can give you an example.
23 It's easier for me to give you an example. I was
24 staffing a voter information booth outside of our
25 church -- strictly nonpartisan -- and a student walked

1 by and said, "Oh, I'm registered."

2 And I said, "Great. Here's the ballot."

3 And I had list of the propositions. There was no
4 comment on them. It was just a list of the propositions
5 we were voting on last November.

6 And a student would say, "Oh, I'm
7 registered in Harlingen; and I just can't get back home
8 to vote."

9 And I would say -- at that point, when
10 there was still time, I would say, "You can sign up for
11 ballot by mail since you're out of the county for this
12 particular election."

13 And one young woman said, "Oh, that's
14 fabulous."

15 That's an example.

16 **Q. I appreciate that example.**

17 **So is it fair to say that when you were**
18 **explaining options, including vote by mail, you were**
19 **providing factual information?**

20 A. Yes.

21 **Q. You weren't telling voters what they should**
22 **do? You were just telling them what they could do --**

23 A. Yes.

24 **Q. -- is that right?**

25 A. Yes.

1 Q. You weren't saying, "You should vote by mail
2 rather than go back to Harlingen," in that example,
3 right?

4 MR. GARBER: Objection.

5 A. Honestly, I can't remember my exact words.
6 My -- I can speak to my intent, and that was to offer
7 them a possibility.

8 Q (BY MR. THOMPSON) That's fair. And was that
9 the same intent you had in your all your interactions
10 where you explained the vote-by-mail option?

11 MR. GARBER: Objection.

12 A. I'll have to go back a few years. With my
13 sweet Mrs. Banks, who lives two blocks over, I knocked
14 on her door -- this was probably five years ago -- don't
15 hold me to five; but it's been a while. I knocked on
16 her door. She took a while. She came to the door. We
17 talked for a minute; and she said, "Please come in. I
18 would love to just sit."

19 "Okay." And I did.

20 And she said, "I'm registered to vote.
21 I'm not sure I'm going to be able to get to the polling
22 places, and my husband is bedridden. His mind is
23 clear."

24 I stayed there for 45 minutes just
25 because we enjoyed chatting about the furniture in her

1 living room and the history of it and her situation and
2 listening to what was going on. And I said, "There's --
3 there is ballot by mail."

4 She said, "That would be wonderful. Can
5 you help me with that?"

6 And I said, "Yes."

7 So I got her -- I went to Williamson
8 County and got an application and took it to her for her
9 and for her husband.

10 **Q. So in that example, your neighbor wanted to**
11 **vote by mail and asked you for help; is that right?**

12 A. Yes. I'm certain she said -- no, I'm not
13 certain. I'm not certain. I'm going to back off on it.

14 My vague recollection from that long ago
15 is that we were having a very congenial conversation --
16 she was just delightful -- and she said she really
17 wanted to vote; and I said, "You can vote by mail."

18 And she said, "Yes, I would like to do
19 that."

20 **Q. Okay. So I think that the question I had**
21 **asked when you gave that very helpful example was: In**
22 **your interactions when you have explained the**
23 **vote-by-mail option, was it always your intent to**
24 **provide factual information that would help a voter do**
25 **what the voter otherwise wanted to do?**

1 MR. GARBER: Objection.

2 A. Yes. To provide factual information, yes.

3 MR. GARBER: Will, I'll just mention --
4 it seems like you might be a little between questions --
5 Cathy, are you doing well? Do you want a break? Do you
6 want to keep going?

7 THE WITNESS: Maybe a three-minute break
8 to get a drink of water.

9 MR. THOMPSON: Not a problem at all.

10 MR. GARBER: All right. Thank you.

11 THE REPORTER: We're going off the record
12 at 10:07 a.m.

13 (Off the record from 10:07 to 10:11 a.m.)

14 THE REPORTER: We're back on the record
15 at 10:11 a.m.

16 Q (BY MR. THOMPSON) All right. Ms. Morgan,
17 welcome back.

18 Before the break we were talking about
19 your intent when you had previously explained the vote-
20 by-mail option. Do you remember that?

21 A. I remember we were talking about that.

22 Q. Now, shifting from kind of the past to the
23 future, with regard to what you would like to do going
24 forward in explaining the vote-by-mail option, would you
25 have the same intent that you just explained to me?

1 A. If I felt it safe for me personally, yes.

2 Q. And when you say, "If I felt it safe," do you
3 mean if you weren't deterred by the threat of criminal
4 prosecution for explaining the vote-by-mail option?

5 A. Yes.

6 Q. Do you contend that explaining the vote-by-
7 mail option, as you've just discussed it, qualifies as
8 soliciting the submission of an application to vote by
9 mail under Section 276.016(a)(1)?

10 MR. GARBER: Objection.

11 A. Yes.

12 Q (BY MR. THOMPSON) Why do you contend that?

13 MR. GARBER: Objection.

14 A. Define "solicit."

15 Q. (BY MR. THOMPSON) Well, actually, Ms. Morgan,
16 that's kind of part of the question I'm asking you is I
17 was asking whether you contend that explaining the
18 vote-by-mail option, as you've described it, qualifies
19 as soliciting the submission of an application to vote
20 by mail under Section 276.016(a)(1)?

21 MR. GARBER: Objection.

22 A. My understanding is soliciting is my asking a
23 voter if they would like information about voting by
24 mail, not answering a question if a voter asks me about
25 voting by mail.

1 Q (BY MR. THOMPSON) All right. Are there any
2 other reasons you contend that explaining the vote-by-
3 mail option, as you've discussed it, constitutes
4 soliciting under 276.016(a)(1)?

5 MR. GARBER: Objection.

6 A. I might have to go to a dictionary to look up
7 "soliciting" again.

8 Q. (BY MR. THOMPSON) Sure. And I understand
9 there may be things you know while you're sitting here
10 today in the deposition and there may be things you
11 don't know, but I'm honestly just asking about the
12 things you do know. So has anyone told you that
13 explaining the vote-by-mail option constitutes
14 soliciting under SB 1?

15 MR. GARBER: Objection.

16 And, Cathy, just a warning on privilege,
17 again. If you feel you can answer the question, go
18 ahead.

19 A. I was part of a Zoom meeting and that part of
20 SB 1 was being explained and the definition of
21 "soliciting" then at that moment from that person was
22 that soliciting was asking a person if they wanted
23 information on ballot by mail and --

24 Q. Do you know --

25 A. Go ahead.

1 Q. Do you know if the Zoom meeting you're
2 referring to is the video that your lawyers linked in
3 the discovery responses they sent?

4 A. Yes.

5 Q. And is it the same?

6 A. Yes -- yes.

7 Q. So this was a Zoom meeting with a lawyer from
8 a group called Texas Impact; is that right?

9 A. Yes.

10 Q. Didn't that lawyer tell the audience that the
11 meaning of "soliciting" was unclear?

12 A. He suggested that that being unclear meant
13 that we should caution -- we -- use caution.

14 Q. So he didn't tell you that explaining the
15 vote-by-mail option was soliciting. He told you it
16 might be soliciting; is that correct?

17 A. He said that the Courts were going to have to
18 decide this issue.

19 Q. If a Texas Court clarified whether explaining
20 the vote-by-mail option constituted soliciting under
21 SB 1, would that be helpful to you?

22 MR. GARBER: Objection.

23 A. I need to know how it applies to VDRs.

24 Q. (BY MR. THOMPSON) And so if a Texas Court
25 explained how that provision applies to VDRs, would that

1 **be helpful to you?**

2 MR. GARBER: Objection.

3 A. I'm not sure I can answer that. I feel very
4 strongly that all eligible citizens should have every
5 right to vote in a way that is most encouraging to them
6 to vote.

7 When I was walking some of the blocks in
8 my area and I came upon a man and I said, "Sir" -- he
9 had two maybe nine- and twelve-year-old kids with him.
10 I said, "Sir, are you registered to vote?"

11 He said, "I don't believe in voting. It
12 doesn't do any good. People with money are always going
13 to decide what to do."

14 And I could not talk him off that ledge,
15 and I thought: He is giving up his voice.

16 MR. BREEN: Object as nonresponsive.

17 MR. THOMPSON: Same objection.

18 **Q. (BY MR. THOMPSON) Ms. Morgan, I want to make**
19 **sure I understand what's going on here. You say that**
20 **the meaning of "solicit" under SB 1 is unclear, right?**

21 A. My understanding of "soliciting" is asking
22 someone if they want something.

23 **Q. And did --**

24 A. I may have to pull out a dictionary.

25 **Q. And did you get that understanding of the word**

1 **"solicit" from the lawyer in the Zoom meeting we just**
2 **discussed?**

3 A. I think that I had a lot of questions before
4 that discussion -- no, I don't want to say "I think." I
5 did have questions before that discussion.

6 **Q. To whom did you pose those questions?**

7 A. To a friend who works for a state legislator.

8 **Q. Who is that?**

9 A. Allison Heinrich.

10 **Q. And who does Allison Heinrich work for?**

11 A. John Bucy.

12 **Q. I'm afraid I don't know John Bucy. Is he a**
13 **Democrat or a Republican?**

14 A. He's a Democrat.

15 **Q. Do you know what --**

16 A. He's a Representative.

17 (Simultaneous speakers.)

18 A. I'm sorry?

19 **Q. Do you know what part of the state he**
20 **represents?**

21 A. Yes, Williamson County -- well, it's changed
22 now; but...

23 **Q. Is he your Representative?**

24 A. Yes.

25 **Q. And so Mr. Bucy's staffer explained to you the**

1 **meaning of "solicit" in SB 1?**

2 A. She looked it -- looked up that part of the
3 bill and sent that to me. That's my best recollection
4 of that interchange. I wanted to see the actual part of
5 the bill, and she sent that to me.

6 Q. All right. So aside from the Zoom meeting
7 with lawyer from Texas Impact and your conversation with
8 a staffer for Representative Bucy, what other sources of
9 information do you have that support your contention
10 that explaining the vote-by-mail option to voters
11 qualifies as soliciting the submission of an application
12 to vote by mail under Section 276.016(a)(1)?

13 A. I don't remember if I looked up the
14 definition. It is likely that I did, but I cannot say
15 for sure that I did.

16 Q. So if I told you that the definition of
17 "solicit" in the American Heritage Dictionary of the
18 English Language is "to seek to obtain by persuasion,
19 entreaty, or formal application," would you have any
20 reason to disagree with me?

21 MR. GARBER: Objection.

22 A. I'd have to pull out my dictionary. I don't
23 have any reason to not believe you.

24 Q (BY MR. THOMPSON) When you explained the
25 vote-by-mail option with the intent you previously

1 described of providing factual information, are you
2 trying to persuade that person to vote by mail; or are
3 you trying to explain the option of voting by mail?

4 MR. GARBER: Objection.

5 A. I'm explaining an option.

6 Q. (BY MR. THOMPSON) So not persuading, right?

7 A. They have to make their own decision.

8 Q. It sounds like you're saying "not persuading,"
9 but I need a clear answer on the record. "Yes" or "no,"
10 are you trying to --

11 A. No, I'm not --

12 Q. -- persuade them to vote by mail?

13 A. -- trying to persuade them. I'm offering them
14 options.

15 Q. Have you ever communicated with anyone from
16 the Texas Secretary of State's Office?

17 A. No, no.

18 Q. Did any county officials tell you that
19 explaining the vote-by-mail option would constitute
20 soliciting under SB 1?

21 A. No.

22 Q. Sorry. I'm just skipping a few things now
23 that I think we've covered them.

24 I went through some of the documents your
25 lawyers produced. Are you familiar with the documents

1 that your lawyers produced in this case?

2 A. Yes.

3 Q. And we can put them in front of you if that
4 would be helpful, but you may recall that a lot of them
5 related to University Presbyterian Church. Do you
6 remember that?

7 A. Yes.

8 Q. You work as a VDR at a booth located by
9 University Presbyterian Church; is that right?

10 A. Yes.

11 Q. Can you tell me --

12 A. That was for a short duration.

13 Q. What was the duration of that?

14 A. During the month of October, Tuesday,
15 Wednesday, Thursday from 1:00 to 3:00 each of those
16 days; and I worked either five or six of those shifts.

17 Q. Do you have any plans to continue working at a
18 booth by University Presbyterian Church?

19 A. Yes. We had hoped to do it in January; but
20 between omicron and the weather and having people who
21 are around my age all working the booth, we decided
22 against it.

23 Q. I can certainly understand that. Do you have
24 any plans to do it going forward?

25 A. Yes.

1 Q. When?

2 A. It will depend on the weather and omicron.

3 We -- generally we would do it in the month preceding an
4 election. We've only done it once. We've done it once,
5 and I was the coordinator for it. But I don't -- I'm
6 not so sure if we're doing it again this spring. We
7 haven't -- the group that I work with has not decided.

8 Q. All right. So there's a March primary this
9 year, right?

10 A. Yes.

11 Q. And we're now in February, which is a month
12 before the primary, right?

13 A. Yes.

14 Q. Will there be a booth outside University
15 Presbyterian Church this month?

16 A. No.

17 Q. Well, when is the next election --

18 A. We're at Stage 5 in Austin for omicron.

19 Q. Is Stage 5 a local designation relating to
20 COVID risk?

21 A. Yes, it's the highest risk.

22 Q. When is the next election when you might have
23 a booth outside University Presbyterian Church?

24 A. Well, there will be a runoff. I can't peg the
25 date right now, right at this moment; and I don't know

1 if we would try to do something with that. I don't
2 know.

3 **Q. Okay. How about the next election after that?**

4 A. For the fall, yes, probably we would start the
5 voter information booth in September.

6 **Q. All right. So you might have a voter
7 information booth in September of 2022; is that right?**

8 A. Yes, and word is "might."

9 **Q. All right. You're not sure because you don't
10 know about omicron and the weather and things like that?**

11 A. Uh-huh, yes.

12 **Q. Where is University Presbyterian Church?**

13 A. It is located, nicely enough, very close to
14 the university. It's half a block off of Guadalupe,
15 which is a road that goes by one side of the university,
16 and we are on the backside of those buildings that front
17 Guadalupe. So we -- and we're on a corner. So we get a
18 lot of student traffic.

19 The amount of students -- student
20 housing going up in what we call that west campus area
21 is just immense. They're everywhere. The last time I
22 drove down -- and it's been a while now because we're
23 not in -- in worship in person right now, but there's
24 another huge building going up. They're all -- we're
25 surrounded by tall buildings.

1 Q. And so I can appreciate that answer, but the
2 person reading this may not be from Austin. Is it fair
3 to say that the church is in downtown Austin?

4 A. I would not call it downtown. "Downtown" --

5 Q. Call it north of downtown Austin?

6 A. "Downtown" indicates the Capitol area and all
7 of the businesses around the Capitol and down to the
8 river, and then it's kind of spread out from there. UT
9 is north of there by several blocks, and it's kind of
10 like its own area. So if you say "the UT area," then
11 people will know where you're talking about. If you say
12 "downtown," they'll go: Oh, downtown on Congress.

13 Q. Understood. And we're talking about Travis
14 County, right?

15 A. Yes.

16 Q. All right. I'm going to send you in the chat
17 feature again what I'll mark as Exhibit 3.

18 MR. THOMPSON: It is, for the benefit of
19 Counsel, Bates stamped Morgan 8 through Morgan 11.

20 (Exhibit 3 marked.)

21 Q (BY MR. THOMPSON) Ms. Morgan, have you
22 received Exhibit 3?

23 A. Yes, I've just clicked on it; and there it is.
24 Yes.

25 Q. Okay. Can you see a table that in the upper

1 left-hand corner says, "How many people"?

2 A. Yes.

3 Q. Now, it looks to me like this is a table for
4 Tuesday, October 5th, through Thursday, October 7th; is
5 that right?

6 A. Yes, that was our first week.

7 Q. And so this kind of captures some statistics
8 about your first week of having the voter information
9 booth outside your church; is that right?

10 A. Yes.

11 Q. Okay. So towards the top it has a row that
12 says, "Stopped by booth." Do you see that?

13 A. Yes.

14 Q. Does that refer to the total number of people
15 with whom you spoke as part of your VDR activities that
16 day?

17 A. Yes. Many more went by. Only a few wanted to
18 stop because of our candy. We had a big bowl of candy
19 out.

20 Q. And then I see a highlight cell down in what's
21 marked as Row 12. It says, "Vote by mail info." Do you
22 see that?

23 A. Yes.

24 Q. Does that refer to the total number of people
25 to whom you offered information about voting by mail?

1 A. I believe so, yes -- I don't want to say "I
2 believe." To the best of my recollection.

3 **Q. Did you prepare this table?**

4 A. Yes. It was -- it went through several
5 iterations before we ended the four weeks, only
6 slightly -- slightly adjusted.

7 **Q. Sure. I guess, do you have personal knowledge
8 that the numbers in this table are correct?**

9 A. I have personal knowledge of October 5th and
10 October 7th. I was not there on October 6th.

11 **Q. Okay. Who prepared the numbers for
12 October 6th if it wasn't you?**

13 A. I'd have to go back and look at the schedule
14 of who worked that day.

15 **Q. Would it be someone else from University
16 Presbyterian Church?**

17 A. Absolutely.

18 **Q. So I'll just go through these quickly. So on
19 Tuesday, October 5th, it looks like 22 people stopped by
20 your booth --**

21 A. Yes.

22 **Q. -- is that right?**

23 A. Yes.

24 **Q. And six of them received information about
25 voting by mail --**

1 A. Yes.

2 Q. -- is that right?

3 A. Yes.

4 Q. Now, on Wednesday, October 11th [sic], at
5 least according to this form, it looks like 11 people
6 stopped by the booth; is that right?

7 A. Let me see. October the 11th?

8 Q. Oh, I'm sorry. I meant to say Wednesday,
9 October 6th.

10 A. Oh, okay. And you asked if all people stopped?

11 Q. Yes.

12 A. That's -- I'm going to explain that if I may.

13 Q. Please.

14 A. I'm a retired school teacher. I'm a grandma.
15 And these are young people passing by. So I quickly
16 learned that students, when they realized we were there
17 and it was obvious from signs that they could register
18 to vote, they'd go -- they'd wave and go, "I'm
19 registered."

20 And so I learned to pick up my page that
21 had all the ballot propositions on it and hold it up and
22 say, "Do you know what's on your ballot?"

23 And they'd whip around and go, "What?"

24 And so then they would read it. And I
25 would say, "If these don't make sense to you" -- and

1 some of them really were hard -- were difficult to
2 interpret -- I would will say, "Go to the League of
3 Women Voters." And I would give them the website to go
4 and see people who were speaking for both sides of each
5 proposition. Then I would give a page that had some
6 information about voting, like what you can take in the
7 booth and things like that, child -- your own child,
8 yes; guns, no, things like that.

9 The -- that process then had more people
10 stopping by than if you were just sitting at the table
11 without beginning to have a discussion with students.
12 So I think that's why those numbers were higher on
13 Tuesday and Thursday if you wondered.

14 **Q. That's perfectly fine; but no, I don't**
15 **particularly need to know why the numbers were higher or**
16 **lower.**

17 A. Okay.

18 **Q. I just wanted to go through the numbers with**
19 **you.**

20 A. Okay.

21 **Q. And I'm going to keep doing that. And if**
22 **there's something you feel is important, that's fine;**
23 **but I'm not -- I promise, if I need to know, I'll ask**
24 **you.**

25 A. All right.

1 Q. So on Wednesday, October 6th, it looks like 11
2 people stopped by the booth; is that right?

3 A. Uh-huh, yes.

4 Q. And no one is listed as having received vote-
5 by-mail information for Wednesday, October 6th; is that
6 right?

7 A. Correct.

8 Q. For Thursday, October 7th, it looks like 35
9 people stopped by the booth; is that right?

10 A. Correct.

11 Q. But for Thursday, October 7th, no one received
12 vote-by-mail information, right?

13 A. Correct.

14 Q. All right. Now, it looks like there's a total
15 in the last column for this week; and it shows 68 people
16 stopping by the booth and 6 people receiving vote-by-
17 mail info; is that right?

18 A. Yes.

19 Q. Ms. Morgan, if you can turn to the next page
20 of the exhibit, which is marked Morgan 9, it --

21 A. I don't know --

22 Q. -- is a similar table.

23 A. -- why that's there. There's no numbers
24 there, but there should be.

25 Q. Well, that was going to be my question. Do

1 you have a table that has numbers in it for that week?

2 A. I will have to go search for it, but I'm quite
3 sure --

4 Q. All right. Do you know -- I'm sorry. Go
5 ahead.

6 A. That is very strange. I don't know.

7 Q. Do you think there should be numbers for this
8 week?

9 A. Yes, and there are at some place in my files.

10 Q. All right.

11 MR. THOMPSON: And, Counsel, obviously,
12 we'll hope to get that document from you --

13 THE WITNESS: Yes.

14 MR. THOMPSON: -- if you have it.

15 MR. GARBER: Yes. Please follow up with
16 any request; and we'll, of course, look into it.

17 Q (BY MR. THOMPSON) Ms. Morgan, let's turn past
18 Page Morgan 9 and look at Page Morgan 10. Do you see
19 that page?

20 A. Uh-huh, 10, yes.

21 Q. Is this table like the first table we talked
22 about, just for a different week?

23 A. Yes.

24 Q. And the week it shows is Tuesday,
25 October 12th, through Thursday, October 14th?

1 A. Correct.

2 Q. Were you working at the table during that
3 week?

4 A. I know I was, but I cannot tell you which
5 days. I would have to go look at my schedule.

6 Q. Do you know how many days of the three?

7 A. It's possible there were two days. I went one
8 day to help a person who was uncertain of what they were
9 doing, so I didn't want the VDR on site at that point to
10 be left with everything.

11 Q. So for Tuesday, October 12th, it looks like 48
12 people stopped by the booth; is that right?

13 A. Yes.

14 Q. And two people received vote-by-mail
15 information; is that right?

16 A. Yes.

17 Q. For Wednesday, October 13th, 27 people stopped
18 by the booth, correct?

19 A. Yes.

20 Q. And zero people received vote-by-mail
21 information?

22 A. Correct.

23 Q. For Thursday, October 14th, 35 people stopped
24 by the booth, right?

25 A. Yes.

1 Q. And five people received vote-by-mail
2 information, correct?

3 A. Yes.

4 Q. Ms. Morgan, if you turn to the next page,
5 which is marked Morgan 11, you'll see another blank
6 table --

7 A. Yeah.

8 Q. -- for this same week. Do you see that?

9 A. Yes.

10 Q. There's no reason to doubt the numbers on the
11 previous page, is there --

12 A. No.

13 Q. -- on Morgan 10?

14 A. No.

15 Q. Do you have any other tables that would
16 provide these types of numbers for your voter
17 information booth?

18 A. Yes. I do apologize. I thought that I had
19 put in the table that has the cumulative numbers for the
20 four weeks. So I'll have to look that up and send it to
21 Andrew.

22 Q. Okay. So you think you have kind of a table
23 that has the totals; is that right?

24 A. Yes.

25 Q. That's great.

1 **And with regard to both the tables that**
2 **we've just looked at in your production and the table**
3 **that you're referring to, are those tables all accurate?**

4 A. I would say they're probably an undercount for
5 stopped by the booth and for people taking materials,
6 like UKirk, which our college student program at church.
7 There's several things that -- let me explain. I was
8 there in a VDR role when I was there. We always had one
9 VDR and one person who was not. The person who was not
10 the VDR was in charge of keeping up with this count; but
11 as we older women tend to do, we like to talk with
12 students, especially those of us who are former
13 teachers. And so the person working with me might often
14 go, "Oh, how many people just stopped by?" And so we
15 would have to estimate, and I seem to remember that we
16 didn't overestimate. We probably underestimated
17 slightly, but the numbers would not be vastly different
18 at all.

19 **Q. Do you think this is the best source of**
20 **information we have for figuring out how many people**
21 **stopped by the booth and received vote-by-mail**
22 **information?**

23 MR. GARBER: Objection.

24 A. Yes.

25 **Q. (BY MR. THOMPSON) Were these table prepared**

1 in the ordinary course of the task of having a voter
2 information booth at the church?

3 A. Yes.

4 Q. Are the people who prepared these tables
5 trustworthy and honest?

6 MR. GARBER: Objection.

7 A. My perception is that they're totally
8 trustworthy and honest.

9 Q. (BY MR. THOMPSON) So I did some math -- and
10 one might be suspicious of lawyer math -- but I totalled
11 up, according to the production, how many people stopped
12 by the booth; and it was 178. Does that sound about
13 right to you?

14 A. All -- all I can honestly tell you -- yeah;
15 but, honestly, I have a memory of around 260 total that
16 stopped by for the four weeks. That's the only total I
17 really have in my head.

18 Q. And, again, according to my math, it appears
19 that about 7 percent of the people who stopped by
20 received vote-by-mail information. Does that sound
21 about right to you?

22 A. Being a former math teacher, I would have to
23 go check you out.

24 Q. If the --

25 A. It's not unreasonable.

1 Q. Sure. If you did check my math and you got
2 7 percent or 7.3 percent, based on the production and
3 the tables therein, would you have any reason to doubt
4 that number?

5 A. No.

6 Q. So I think you've mentioned kind of two
7 components of your work as a VDR, one being this booth
8 outside your church and the other being leaving cards at
9 people's doors when you go door to door; is that right?

10 A. Yes, and other booths.

11 Q. And other booths. Okay. So, yeah, I want to
12 get a complete list of the activities that you include
13 in your work as a VDR. So we've got the University
14 Presbyterian Church booth, leaving the cards door to
15 door; and now, you've mentioned other booths. Can you
16 tell me about those?

17 A. I worked at a booth at our farmers' market
18 that is a voter registration booth.

19 Q. Was it similar to the booth outside your
20 church?

21 A. It didn't have additional information on --
22 I'm going to back up. The booth was not centered around
23 when the next election was. It's just an ongoing booth
24 whenever the farmers market is open that is there to
25 register people to vote. Oftentimes those people will

1 come up and say, "I've moved. Do I need to update my
2 registration?"

3 I'll say, "Are you in the same county?
4 Have you changed counties," that kind of thing about
5 what to do with their voter registration card.

6 **Q. When you were working at this farmers' market**
7 **booth, were you providing factual information about**
8 **options like we discussed before?**

9 A. Yes.

10 **Q. When was the last time you worked at the**
11 **farmers' market booth?**

12 A. Oh, I haven't worked since we've been inside
13 for COVID. It's been a long time.

14 **Q. Would that be since early 2020?**

15 A. Yes.

16 **Q. Do you have any plans to work at the farmers'**
17 **market booth in the future?**

18 A. I have plans. We'll see what works out.

19 **Q. When is your next planned time to work at the**
20 **farmers market booth?**

21 MR. GARBER: Objection.

22 A. I don't have a plan in mind. I just know that
23 that's an option for me to go work, and I do not like to
24 work in bad whether.

25 **Q. (BY MR. THOMPSON) I understand. Would you**

1 say that you intend to do it someday, but you're not
2 sure when in light of the circumstances?

3 MR. GARBER: Objection.

4 A. Yes.

5 Q. (BY MR. THOMPSON) Okay. So we've gone
6 through those three options, the University Presbyterian
7 Church booth, the farmers' market booth, and leaving the
8 cards when you go door to door.

9 A. Uh-huh.

10 Q. Is there anything I'm missing from that list?

11 A. I'm not going to rule out something else.
12 Nothing else is coming to mind right at the moment; but
13 there -- there are people, say, at my church or people
14 in my larger neighborhood that will write me or call me
15 and ask me questions about their voter registration.

16 Q. Is it fair to say that you don't have any --
17 is it fair to say that you don't have any firm plans to
18 do anything other than the three things we talked about
19 on the list, but that they might happen some day,
20 depending on the circumstances?

21 MR. GARBER: Objection.

22 A. Correct.

23 Q (BY MR. THOMPSON) So earlier I think you
24 talked about the effective date of SB 1. Do you
25 remember that?

1 A. I believe it was December 1st.

2 Q. Since SB 1 took effect, have you worked as a
3 VDR?

4 A. Only in my neighborhood when the new people
5 moved in.

6 Q. Are you referring to leaving the cards door to
7 door in your neighborhood?

8 A. I offered to either have them fill out at the
9 time or leave them for them. And they said, "We'll just
10 take the cards, but you can leave." So that was fine.

11 Q. I mean, is that the only -- sorry. When you
12 say the new people moved in, was that one family that
13 moved into your neighborhood or multiple --

14 A. Yes, it was one. Although, typically my --
15 people will say, "Oh, you've just moved in. Go see
16 Cathy for voting, for registration."

17 Q. So is it fair to say that you've worked as a
18 VDR one time since SB 1 took effect?

19 MR. GARBER: Objection.

20 A. I'm not sure I can really safely quantify
21 that, to be honest.

22 Q. (BY MR. THOMPSON) Is one your best estimate?

23 A. At this moment.

24 Q. At this moment, yes?

25 A. Yes.

1 Q. During that time you worked as a VDR after
2 SB 1 took effect, were you deterred from saying
3 something you wanted to say by the threat of criminal
4 prosecution for violation of Section 276.016(a)(1)?

5 MR. GARBER: Objection.

6 A. Yes.

7 Q. (BY MR. THOMPSON) I didn't hear your answer.
8 I'm sorry.

9 A. Yes.

10 Q. You were deterred?

11 A. Yes.

12 Q. What were you deterred from saying?

13 A. I was deterred from saying, "Have you
14 considered voting by mail?"

15 Q. Were you deferred from saying anything --

16 (Simultaneous speakers.)

17 Q. I'm sorry. Please go ahead.

18 A. My sister. My sister's severely
19 immunocompromised, severely.

20 Q. The person you were deterred from saying that
21 to was your sister? Is that what you're saying?

22 A. Uh-huh, uh-huh.

23 Q. May I get a verbal answer?

24 A. Yes. Sorry.

25 Q. Was there anything else you were deterred from

1 **saying?**

2 A. There was a man who wrote me. He's a member
3 of the church, but he does not have e-mail. So he wrote
4 me a snail mail and asked about voting by mail. Because
5 he had asked me, then I felt confident to reply to him.

6 **Q. What did he ask you?**

7 A. He was asking about how to fill out the form
8 or why were so many applications being rejected in
9 Travis County.

10 **Q. And what did you reply?**

11 A. I replied that people were failing to put
12 their license -- driver's license number or their last
13 four digits, and I suggested putting both and putting
14 his phone number on the card where there's an option to
15 do that.

16 **Q. Is it fair to characterize what you told him**
17 **as factual information about how to go through the**
18 **process?**

19 MR. GARBER: Objection.

20 A. It is not required; but because of the
21 50-percent-rejection rate at one time in Travis County,
22 it is commonly viewed by many people as the safest thing
23 to do.

24 MR. BREEN: Object as --

25 **Q. (BY MR. THOMPSON) Is it fair to say that --**

1 (Simultaneous speakers.)

2 MR. THOMPSON: I'm sorry. Did you say
3 something, Mr. Garber?

4 MR. BREEN: I did. Breen did. I just
5 objected to nonresponsive. She didn't answer your
6 question.

7 MR. THOMPSON: Thank you.

8 Same objection.

9 Q (BY MR. THOMPSON) Ms. Morgan, is it fair to
10 say that you provided that member of your church with
11 factual information about the best way to submit an
12 application?

13 MR. GARBER: Objection.

14 A. It is fair to say that I gave them factual
15 information from what I understood.

16 Q. (BY MR. THOMPSON) So other than the examples
17 we've talked about, is there anything else that you
18 want to say that you have been deterred from saying
19 because of the threat of criminal prosecution under
20 Section 276.016(a)(1)?

21 MR. GARBER: Objection.

22 A. I don't remember.

23 Q (BY MR. THOMPSON) How about sitting here
24 today, can you think of anything else that you want to
25 say that you were deterred from saying because of threat

1 of criminal prosecution under Section 276.016(a)(1)?

2 A. Would you restate that question?

3 Q. Sure. Before I do, was it that you didn't
4 hear me or that you didn't understand the words I was
5 using?

6 A. I want to make sure I understand the words
7 you're using.

8 Q. Sure. Is there anything else besides what
9 we've just talked about that you want to say going
10 forward but you have been or will be deterred from
11 saying because of the threat of criminal prosecution
12 under Section 276.016(a)(1)?

13 A. I don't have anything to say to this group of
14 people with fear of that section. I would like to live
15 in a world where it's okay to say to people, "Have you
16 considered ballot by mail?"

17 MR. BREEN: Object to the nonresponsive
18 portion of the answer.

19 Q (BY MR. THOMPSON) Is it fair to characterize
20 the things you want to say but may be deterred from
21 saying as summed up in that phrase you just gave me,
22 "Have you considered voting by mail"?

23 MR. GARBER: Objection.

24 A. I think I've said what I can say.

25 Q. (BY MR. THOMPSON) That's fine. I'm not

1 trying to make you give more examples. I just want to
2 know if there are any other examples. I don't want to
3 hear about them later for the first time. Does that
4 make sense?

5 A. Yes. My -- I will say that, as with a lot of
6 people, things will come to mind later sometimes that I
7 wish I had said at the time or thought of -- thought of,
8 actually, at the time. At this moment, I -- I'm sorry.
9 I'm not comfortable -- say it one more time. I'm going
10 to really try this time, really try.

11 Q. Are there any other examples of things you
12 want to say but have been or will be deterred from
13 saying because you're concerned about criminal
14 prosecution under SB 1?

15 MR. GARBER: Objection.

16 A. I can't give you a "yes" or "no." I can only
17 say: At this moment, no.

18 MR. THOMPSON: Thank you very much.

19 Q. (BY MR. THOMPSON) Do you still have your
20 Declaration in front of you? I believe it is Exhibit 2
21 to this deposition.

22 A. Just one moment. Yes.

23 Q. Let's look at Paragraph 16. Can you see that?

24 A. Yes.

25 Q. The last sentence says, "As an appointee of

1 the county voter registrar, I understand that I am a
2 public official." Do you see that?

3 A. Yes.

4 Q. Do you contend that you're a public official
5 for purposes of Section 276.016(a)(1)?

6 MR. GARBER: Objection.

7 A. I think it enough to not talk with people --
8 not -- not bring up the subject of vote by mail.

9 Q (BY MR. THOMPSON) When you say you think it
10 enough, do you mean you're not sure whether you're a
11 public official?

12 A. My best understanding is that I am.

13 Q. But you're not sure?

14 A. I'm hoping that the Courts will clarify that
15 issue, but I'm going on the basis that I am a public
16 official.

17 Q. What is the basis for your understanding that
18 you are a public official?

19 MR. GARBER: Objection.

20 Cathy, just please don't discuss anything
21 privileged.

22 A. I think it has to do with the word "deputy."

23 Q (BY MR. THOMPSON) So you're saying that you
24 think you might be a public official because your title,
25 Volunteer Deputy Registrar, includes the word "deputy."

1 **Is that right?**

2 A. Yes.

3 **Q. Any other basis for your contention?**

4 A. No.

5 **Q. Do you remember that Zoom meeting you referred**
6 **to earlier with the lawyer from Texas Impact?**

7 A. Yes.

8 **Q. Do you remember that during that meeting, he**
9 **said it wasn't clear whether VDRs are public officials?**

10 A. Yes.

11 **Q. Do you have any reason to disagree with him?**

12 A. No.

13 MR. MORALES-DOYLE: Will, sorry to
14 interrupt. I'm just wondering if you have a sense of
15 about how much longer you have. I'm not trying to press
16 you. I'm just trying to get a sense for my other things
17 I've got going on today.

18 MR. THOMPSON: No, that's perfectly fair.
19 And, I'll be honest, this has taken longer than I
20 expected; but I don't think we have a ton more. I would
21 expect less than an hour.

22 MR. MORALES-DOYLE: Okay. Thank you.

23 MR. GARBER: And, Will, just on that
24 point, does it make sense now or in the near future to
25 just give Cathy a few more minutes' break if she wants

1 one?

2 MR. THOMPSON: Whenever she wants it as
3 far as I'm concerned.

4 MR. GARBER: Okay.

5 THE WITNESS: That would be helpful.

6 MR. BREEN: I'm going to have a few --

7 MR. THOMPSON: Go ahead.

8 MR. BREEN: I'm going to have a few, but
9 not as many as Will.

10 MR. MORALES-DOYLE: Okay. Thank you.

11 MR. BREEN: We decided to take a break,
12 is that what we did? Looks like it. Okay.

13 MR. THOMPSON: Yeah. Ms. Cunningham, I
14 think we can go off the record.

15 THE REPORTER: We're going off the record
16 at 10:57 a.m.

17 (Off the record from 10:57 to 11:04 a.m.)

18 THE REPORTER: We're back on the record
19 at 11:04 a.m.

20 Q (BY MR. THOMPSON) All right. Ms. Morgan,
21 welcome back. Before the break we talked about two
22 things that informed your --

23 THE WITNESS: Your sound -- your sound is
24 garbled.

25 MR. GARBER: Will, I apologize. We're

1 getting some feedback from you.

2 MR. THOMPSON: Oh.

3 THE ZOOM TECH: Mr. Thompson, if you just
4 toggle your microphone, that will clear it up. It's a
5 nuance with those Dell computers.

6 MR. THOMPSON: Can you hear me any better
7 now?

8 THE WITNESS: No.

9 MR. BREEN: No, it's still bad.

10 MR. THOMPSON: Let's try leaving the
11 meeting and coming back, I think.

12 MR. GARBER: Let's go off the record
13 again.

14 THE REPORTER: Going off the record at
15 11:05 a.m.

16 (Off the record from 11:05 to 11:06 a.m.)

17 THE REPORTER: We're going back on the
18 record at 11:06 a.m.

19 Q (BY MR. THOMPSON) All right. Ms. Morgan, can
20 you hear me again?

21 A. Yes.

22 Q. Great. I'm sorry about that.

23 So before that interruption, we were
24 talking about two things that informed your contention
25 that you're a public official: One was the word

1 "deputy" in your title of Deputy Voter -- I'm sorry --
2 Volunteer Deputy Registrar, and the other was the lawyer
3 from Texas Impact saying that the term "public official"
4 was not clear; is that right?

5 A. Correct.

6 Q. Is there any other basis besides those two
7 that informs your contention that you are a public
8 official?

9 MR. GARBER: Objection.

10 Cathy, just careful of privilege, please.

11 A. I can't think of one at this moment.

12 Q. (BY MR. THOMPSON) So the Secretary of State's
13 Office has not told you you're a public official,
14 correct?

15 A. I have not called them.

16 Q. And they haven't otherwise told you you're a
17 public official, right?

18 A. No.

19 Q. And no county official has told you you're a
20 public official, correct?

21 A. Correct.

22 Q. I'm going to send you what I'll mark as
23 Exhibit 4. It is the Texas Volunteer Deputy Registrar
24 Guide.

25 (Exhibit 4 marked.)

1 Q (BY MR. THOMPSON) Let me know when you've
2 received that.

3 A. Okay.

4 Q. Are you able to open and see the document?

5 A. Okay. Here it is.

6 Q. Do you know what this document is?

7 A. I think it's what it says it is, Texas
8 Volunteer Deputy Registrar Guide.

9 Q. Have you ever seen the Deputy -- the Volunteer
10 Deputy Registrar Guide before?

11 A. I really can't remember.

12 Q. Do you see up at the top it says, "Texas
13 Secretary of State"?

14 A. Yes.

15 Q. And can you see at the bottom of the page that
16 it came from the Texas Secretary of State's website?

17 A. Yes.

18 Q. So let's flip back to page 7 of 9 in the
19 document, and I want to look at the second-to-last
20 question. Follow along with me while I read the
21 question, and then I'll ask you to read the answer.

22 A. All right.

23 Q. I just -- excuse me. "QUESTION: I just want
24 to hand out blank voter registration application forms
25 and encourage people to register to vote. Can I do that

1 without being appointed as a volunteer deputy
2 registrar?"

3 What is the answer printed there?

4 A. "Yes."

5 Q. And the answer goes on. I'm happy to read it
6 if you'll just confirm that I'm reading it correctly.
7 "ANSWER: Yes. Anyone can hand out blank application
8 forms to voters for the voters to fill out and mail in
9 themselves. If this is all you want to do, you do not
10 have to be a volunteer deputy registrar. Also, if you
11 are already a volunteer deputy registrar in one county,
12 you can hand out blank forms in other counties where you
13 are not a volunteer deputy. It is the voter's handing
14 the application back to you to review and to deliver to
15 the registrar that triggers the requirement to be an
16 authorized volunteer deputy registrar."

17 Did I read that correctly?

18 A. Yes.

19 Q. Do you have any reason to disagree with the
20 answer that we just read from the Texas Volunteer Deputy
21 Registrar Guide?

22 MR. GARBER: Objection.

23 A. That -- you read what's there.

24 Q (BY MR. THOMPSON) I appreciate that. I mean
25 in substance. There was a question, and there was an

1 answer provided. Do you have any reason to disagree
2 that the answer provided in the document is the correct
3 answer to the question that was asked?

4 A. I understand what is there.

5 Q. I think you said you understand what's on the
6 document. Do you agree with the answer provided in the
7 document?

8 MR. GARBER: Objection.

9 A. I can only say I agree with what you read that
10 that's what's on that document that's from the Secretary
11 of State.

12 Q. (BY MR. THOMPSON) Do you disagree with what
13 the Secretary of State said in that document?

14 MR. GARBER: Objection.

15 A. Can you tell me what the date is on this
16 document?

17 Q (BY MR. THOMPSON) Yes. If you look at the
18 last page, do you see on the last page there's something
19 that says "Rev"?

20 A. Yes.

21 Q. I would interpret that to mean "revision,"
22 9/11/17.

23 A. Yes.

24 Q. And --

25 A. That was several years ago.

1 Q. -- if you look at the top of each page, you'll
2 see a date that says, "2/3/22, 4:58 PM." Do you see
3 that?

4 A. I see.

5 Q. And that's the date that the document was
6 printed to PDF from the Texas Secretary of State's
7 website. Does that look right to you?

8 A. That's what I'm reading, yes.

9 Q. Does that provide whatever information you
10 wanted about the date?

11 A. It provides to me the information on the date
12 that it was printed.

13 Q. Okay. So it's not a trick question.

14 A. Okay.

15 Q. I want to know whether you agree, disagree, or
16 have no opinion about whether the Secretary of State's
17 answer to the question we read is correct.

18 MR. GARBER: Objection.

19 A. I'm going to have no opinion on it. I need to
20 see more information.

21 Q (BY MR. THOMPSON) What additional information
22 would you like to see in order to form an opinion?

23 A. I would like -- I would like the Courts to
24 clarify what with it means to be deputy in this instance
25 with the bill -- with Senate Bill 1.

1 Q. Anything else, any other information you need
2 to form an opinion?

3 A. I can't -- I don't know at this time.

4 Q. Okay. Let's turn back to your Declaration.
5 Do you still have that? I believe it's Exhibit 2.

6 A. Let me pull it up. Yes, I have it.

7 Q. In Paragraph 16 your declaration mentions
8 the "acting in an official capacity" requirement of
9 Section 276.016(a)(1). Do you see that?

10 A. Yes.

11 Q. Do you agree that Section 276.016(a)(1)
12 applies only when an official is acting in an official
13 capacity?

14 MR. GARBER: Objection.

15 A. Yes, but I also then add on my -- the
16 sentence, the next sentence.

17 Q. (BY MR. THOMPSON) Exactly. I wanted to ask
18 you about that, too. I'm trying to go in order.

19 Now, in Paragraph 21 you say, "I do not
20 know what 'while acting in an official capacity' means."
21 Do you see that?

22 A. Yes.

23 Q. Sitting here today, do you have any opinion
24 about what "while acting in an official capacity" means?

25 A. For me, I do not.

1 Q. Okay. I'm going to send you another document,
2 which I believe we're up to Exhibit 5; and it will be
3 Bates stamped Morgan 12 through Morgan 15.

4 (Exhibit 5 marked.)

5 Q (BY MR. THOMPSON) Have you received that
6 document?

7 A. Yes, I have.

8 Q. Do you recognize this document?

9 A. It's loading right now.

10 Yes, I do recognize it.

11 Q. What is this document?

12 A. This is a document from Texas Impact that
13 describes what we did at our church in terms of a voter
14 information booth. That's me on the right in that first
15 picture.

16 Q. If you scroll to the last page of Exhibit 5,
17 which is marked Morgan 15, there's an italicized note at
18 the bottom of the page. Do you see it?

19 A. Yes.

20 Q. Would you read that note for the record,
21 please?

22 A. Are you meaning, "What training might your
23 volunteers needs"?

24 Q. No. I'm sorry. The italics at the very
25 bottom of the page.

1 A. Oh, the italics. "This project..."?

2 **Q. "This project..."**

3 A. Yes. "This project was developed in
4 partnership with University Presbyterian Church of
5 Austin, Texas. Special thanks to Cathy Morgan of
6 University Presbyterian Church for creating and
7 compiling the information in this handout."

8 **Q. The Cathy Morgan referred to in that note is**
9 **you, right?**

10 A. Yes, it is.

11 **Q. Did you write the document?**

12 A. I -- I wrote large sections of it, and the
13 staff at Texas Impact filled in some of it. They --
14 they took what I -- the bones that I had given them and
15 gave it a little more flesh.

16 **Q. So on that same page, Morgan 15, the second-**
17 **to-last paragraph says, in the last sentence, "Texas law**
18 **is ambiguous as to whether VDRs are permitted to assist**
19 **individuals to apply for ballots by mail." Do you see**
20 **that?**

21 A. Yes.

22 **Q. Do you agree with that statement?**

23 A. Yes, I do.

24 **Q. If a Texas Court clarified that ambiguity that**
25 **you identified, would you consider it helpful?**

1 A. Very helpful.

2 Q. Have you ever communicated with the Attorney
3 General?

4 A. No, I have not.

5 Q. Have you ever communicated before this
6 deposition with anyone from the Office of the Attorney
7 General?

8 A. No, I have not.

9 Q. Have you ever communicated with the District
10 Attorney?

11 A. No, I have not.

12 Q. Have you ever communicated with anyone from a
13 District Attorney's Office?

14 A. No, I have not.

15 Q. Has anyone ever threatened to criminally
16 prosecute you for violating Section 276.016(a)(1)?

17 A. No.

18 Q. Has anyone ever threatened to criminally
19 prosecute you for violating any other law?

20 A. No.

21 Q. Has anyone ever threatened to seek a
22 civil penalty against you under Texas Election Code
23 Section 31.129?

24 MR. GARBER: Objection.

25 A. No.

1 Q (BY MR. THOMPSON) Has anyone ever threatened
2 to seek a civil penalty against you under any other
3 provision of law?

4 MR. GARBER: Objection.

5 A. No.

6 THE WITNESS: I'm sorry.

7 Q. (BY MR. THOMPSON) In your Declaration -- I
8 believe it's Exhibit 2 -- there's a Paragraph 22.

9 A. Yes.

10 Q. And the third sentence begins, "The threat of
11 prosecution deters me..." Do you see that?

12 A. Yes.

13 Q. I'd like to know how big a chance of
14 prosecution it has to be for you to be deterred. So if
15 there's any chance at all of prosecution, is that enough
16 to deter you from saying things that you think might
17 violate Section 276.016(a)(1)?

18 MR. GARBER: Objection.

19 A. I find the thought of being put in jail and
20 paying a large fine to be reason enough to hold back on
21 offering assistance -- not offering assistance, but
22 inquiring if people would like to vote by mail.

23 Q (BY MR. THOMPSON) And I'm not trying to
24 disagree with you, Ms. Morgan. I just want to
25 understand kind of how you're thinking about it. So if

1 it's a very small chance of prosecution but the chance
2 of prosecution is still there, is that enough to deter
3 you?

4 A. Yes.

5 Q. One-in-thousand chance, you wouldn't take the
6 risk; is that fair?

7 MR. GARBER: Objection.

8 A. Probably not.

9 Q. (BY MR. THOMPSON) Do you have an opinion
10 about what the chance of prosecution is in your case if
11 you were to engage in the explanation of vote-by-mail
12 option that we've discussed today?

13 MR. GARBER: Objection.

14 A. No, I don't.

15 Q (BY MR. THOMPSON) In some past cases
16 plaintiffs have said that the existence of a statute
17 deters them from violating the statute, even if they
18 wouldn't be prosecuted. Does that make sense to you as
19 a concept?

20 A. No.

21 Q. It's a little bit complicated. I'm going to
22 try and explain it. You could imagine, for example,
23 that a law says you shouldn't do something; but a
24 prosecutor -- the only relevant prosecutor tells you he
25 won't prosecute you even in you violate that law. Does

1 that situation make sense to you?

2 A. No.

3 Q. Let me ask it this way: Would you violate
4 Section 276.016(a)(1) if the law still existed on the
5 books but you knew beyond a shadow of a doubt no one
6 would prosecute you for it?

7 MR. GARBER: Objection.

8 A. I don't know. I don't know.

9 Q (BY MR. THOMPSON) Did the question make
10 sense?

11 A. Yes.

12 Q. You're just not sure whether you would violate
13 a statute even if you knew there was no threat of
14 criminal prosecution?

15 A. I can't imagine having a statute saying that
16 everyone considers not applicable, so why care.

17 Q. I'm not sure I understand that answer. Could
18 you explain it a little more to me?

19 A. If something is a statute, then -- if a
20 statute said -- statute said, "People who run a red
21 light are going to be arrested," but you know that no
22 one's going to arrest you, so you go ahead and run a red
23 light, that just does not make sense to me.

24 Q. It doesn't make sense in the sense that you
25 wouldn't do it? Is that what you mean?

1 A. Well, either a law is a law or it's not.

2 Q. Do you think that Section 276.016(a)(1) could
3 still be a law even if all of the relevant prosecutors
4 weren't going to prosecute any violations of it?

5 MR. GARBER: Objection.

6 A. I think I've answered that.

7 Q (BY MR. THOMPSON) Perhaps you have, but I
8 didn't understand the answer. Would you mind trying one
9 more time?

10 A. I'm going to answer you with a little story.
11 My father was one of the most honest men I have ever
12 met. He was an employee of the City of Austin at a high
13 level. He had a City car. The rule was that only City
14 employees could ride in the City car. So as I walked to
15 school six blocks with it, unbelievably here, freezing
16 and snowing at that time -- I remember well -- he drove
17 by and waved; and I was pretty mad. But my father was
18 being honest. And that's kind of drilled into me.

19 So if there is a law that essentially
20 stops me from doing something, I'm not going to break
21 that law just because, oh, well, maybe no one will find
22 out.

23 MR. BREEN: Objection, nonresponsive.

24 Q (BY MR. THOMPSON) Do you know who Jose Garza
25 is?

1 A. I believe he's with Travis County.

2 Q. Do you know that you've sued Jose Garza?

3 A. I'm sorry?

4 Q. Do you know that you've sued Jose Garza?

5 A. Yes.

6 Q. Do you know that he's the District Attorney
7 for Travis County?

8 A. Yes.

9 Q. Are you aware that you and he have agreed to a
10 stipulation in this case?

11 A. Tell me about that.

12 Q. Well, I can put it in front of you as --

13 A. All right.

14 Q. -- our next exhibit, 6, I believe.

15 (Exhibit 6 marked.)

16 Q (BY MR. THOMPSON) You should be receiving it
17 now. Can you see Exhibit 6 on your screen?

18 A. Oh, here it is. Yes.

19 Q. And does it say Agreed Stipulation in bold,
20 underlined text?

21 A. Yes.

22 Q. Have you seen this document before?

23 A. I'm not sure.

24 Q. Okay. Well, I want to go through just a small
25 part of it. So I'm going to read, and you can follow

1 along with me. I'm going to start right under the words
2 Agreed Stipulation; and when I get to the colon, I'm
3 going to go to Paragraph 3. Okay?

4 A. All right.

5 Q. "Plaintiff's and Defendant Jose Garza in his
6 official capacity as Travis County District Attorney
7 ("DA Garza") stipulates as follows: Paragraph 3,
8 DA Garza agrees not to enforce Section 276.016(a)(1) of
9 the Texas Election Code challenged in the above-styled
10 and numbered cause until such time as a final, non-
11 appealable decision has been issued in this matter." Do
12 you see that?

13 A. Yes, I see it.

14 Q. Do you know what that means?

15 A. It would seem to me to mean that DA Garza
16 would not -- would not enforce that law until a final,
17 non-appealable decision has been issued in the matter.

18 Q. Right. So in light of that stipulation, are
19 you worried that if you violate Section 276.016(a)(1) in
20 Travis County, that District Attorney Garza will
21 prosecute you while this case is still pending?

22 MR. GARBER: Objection.

23 A. I'm going to check with my lawyers to make
24 sure of my answer on that.

25 Q. (BY MR. THOMPSON) Sitting here today, before

1 you check with your lawyers, are you worried or not
2 worried about that situation?

3 A. It causes me to think about it, but I don't
4 think I have a decision at this moment.

5 Q. Is the reason that you don't have a decision
6 is you're not sure what the stipulation means?

7 MR. GARBER: Objection.

8 A. No, I just -- no. That's not it.

9 Q (BY MR. THOMPSON) What is the reason you
10 don't have a decision?

11 MR. GARBER: Objection.

12 A. Oh, I want to make sure I understand the full
13 ramification before I would proceed to offer people
14 ballot by mail without being requested.

15 Q (BY MR. THOMPSON) The time limit on the
16 agreement is interesting to me. Do you still have the
17 stipulation in front of you?

18 A. Yes.

19 Q. So looking at Paragraph 3, it says that
20 District Attorney Garza's agreement not to prosecute
21 applies only, quote, "until such time as a final,
22 non-appealable decision has been issued in this matter."
23 Do you see that?

24 A. Yes.

25 Q. If you violate Section 276.016(a)(1) during

1 2022, for example, and the Court issues a final,
2 non-appealable decision at the end of 2022, then
3 District Attorney Garza could prosecute you in 2023 for
4 violating the statute during 2022; is that your
5 understanding?

6 MR. GARBER: Objection.

7 A. I don't know.

8 Q (BY MR. THOMPSON) That's fair you don't know.

9 If that were true, if it were true that
10 DA Garza has agreed not to prosecute you for a time
11 period, but he could prosecute you down the road for
12 things you did while the case was pending, would you
13 still be deterred from providing the information that
14 you say you want to provide?

15 MR. GARBER: Objection.

16 A. I believe so, yes.

17 Q (BY MR. THOMPSON) So in order to be not
18 deterred, would you need a guarantee that you would
19 never be prosecuted for that conduct?

20 MR. GARBER: Objection.

21 A. I would need to see a Court Order concerning
22 that.

23 Q (BY MR. THOMPSON) I want to make sure I
24 understand the scope of the Court Order you want to see.
25 In order to be not deterred, would you need a Court

1 Order saying that you would never be prosecuted for that
2 conduct?

3 MR. GARBER: Objection.

4 A. I would want a Court Order saying that I
5 could -- that I could give people information without
6 their asking about ballot by mail.

7 Q. (BY MR. THOMPSON) I think I understand the
8 type of Court Order you're asking for. So if you got a
9 Court Order that didn't say that and, instead, said:
10 District Attorney Garza isn't allowed to prosecute
11 Ms. Morgan for the next year; but he could bring a
12 prosecution later in time, you would still be deterred,
13 wouldn't you?

14 MR. GARBER: Objection.

15 A. I would be deterred.

16 Q (BY MR. THOMPSON) In Paragraph 18 of your
17 Declaration, which is Exhibit 2 to the deposition --

18 A. Just one moment. Yes.

19 Q. Are you there?

20 A. Yes.

21 Q. The first sentence in Paragraph 18 says,
22 "Absent Section 276.016(a)(1), I would continue to
23 encourage eligible or potentially eligible voters to
24 vote by mail." My question is: When you say "Absent
25 Section 276.016(a)(1)," do you mean if the Legislature

1 **repealed that provision?**

2 MR. GARBER: Objection.

3 A. If that provision is not considered valid, if
4 the Court says it's not valid. I don't know how else to
5 answer that one.

6 Q. (BY MR. THOMPSON) Sure, and it may sound like
7 an odd question.

8 If you're -- when you say, "Absent
9 Section 276.016(a)(1)," the condition you're trying to
10 set up is either that provision is no longer the law or
11 a Court has said that you are allowed to engage in that
12 conduct and will never be prosecuted for it; is that
13 right?

14 A. So those are two things?

15 Q. Yes.

16 A. So break them apart, please.

17 Q. Sure. Based on your testimony so far, I
18 think there might be two things that you're describing
19 when you say, "Absent Section 276.016(a)(1)," in
20 Paragraph 18. The first thing I think you might be
21 referring to is if the Legislature repealed that
22 provision. Is that something you intend to include in
23 that condition?

24 A. That would be one way, yes.

25 Q. And the second thing I think you might be

1 including is if you got the type of Court Order you
2 referred to early said that said: You are allowed to do
3 this, and you will never been prosecuted for it. Is
4 that correct?

5 A. If it was a Court Order, yes.

6 Q. Is there any other thing besides those two
7 that you're referring to with that phrase "Absent
8 Section 276.016(a)(1)" in Paragraph 18?

9 MR. GARBER: Objection.

10 A. I don't know.

11 Q (BY MR. THOMPSON) Sitting here today, can you
12 think of anything else that's included in that phrase?

13 A. Sitting here today, no.

14 Q. If we scroll down to Paragraph 20 of your
15 Declaration it says, "It is not clear to me what
16 constitutes 'solicit[ing]' a vote by mail ballot." Do
17 you see that?

18 A. Yes, I do.

19 Q. You believe that part of SB 1 is ambiguous,
20 right?

21 MR. GARBER: Objection.

22 A. Yes, I do.

23 Q. (BY MR. THOMPSON) If a Texas Court clarified
24 that ambiguity for you, you'd consider it helpful,
25 wouldn't you?

1 MR. GARBER: Objection.

2 A. It would be helpful.

3 Q (BY MR. THOMPSON) A similar question for
4 Paragraph 21. It says, "I do not know what 'while
5 acting in an official capacity' means." Do you see
6 that?

7 A. Yes, I do.

8 Q. You believe that provision is similarly
9 ambiguous?

10 MR. GARBER: Objection.

11 A. Yes, I do.

12 Q. (BY MR. THOMPSON) And if a Texas Court
13 clarified that ambiguity for you, you would consider it
14 helpful, wouldn't you?

15 MR. GARBER: Objection.

16 A. I would find it helpful.

17 Q (BY MR. THOMPSON) I think earlier today you
18 mentioned that you were moving. Do you remember that?

19 A. I'm moving from this house to another abode in
20 Travis County.

21 Q. So if I recall correctly, you currently live
22 in Williamson County; is that right?

23 A. I do, barely.

24 Q. Barely. And you're moving from Williamson
25 County to Travis County; is that right?

1 A. Yes. I don't know when it will be. It will
2 be in the next year or two.

3 Q. Okay. Do you know where, more precisely than
4 Travis County, you're moving?

5 A. Yes, I'll be living in a retirement center off
6 of MoPac, near 35th Street --

7 Q. Okay.

8 A. -- called Westminster Manor.

9 Q. What's the name of the center if you remember
10 it?

11 A. Westminster Manor.

12 Q. When you move to the retirement center, do you
13 intend to continue working as a VDR?

14 A. Yes.

15 Q. We've talked about how you sometimes go door
16 to door, or at least have in the past. Would you do
17 that in or near your retirement center after the move?

18 MR. GARBER: Objection.

19 A. I don't know.

20 Q (BY MR. THOMPSON) Do you have any plans after
21 you move to go back to Williamson County to go door to
22 door?

23 MR. GARBER: Objection.

24 A. I don't know on that, either.

25 Q (BY MR. THOMPSON) The last exhibit I want to

1 send you, which is Exhibit 7, I believe, is Bates
2 stamped Morgan 41. Let me know when you have it.

3 (Exhibit 7 marked.)

4 A. I have it.

5 Q (BY MR. THOMPSON) Do you recognize this
6 document?

7 A. I do.

8 Q. Does it include an e-mail from you on
9 January 7th, 2022?

10 A. It does.

11 Q. In this e-mail you refer to yourself as a
12 precinct chair in the paragraph labeled Number 1. Do
13 you see that?

14 A. Yes.

15 Q. What is a precinct chair?

16 A. A precinct chair is a -- I'm going to
17 rearrange my -- just a second. Re arrange my... Okay.
18 Is a part of a political party that is more grassroots,
19 that's on the ground in neighborhoods and... Yeah,
20 yeah.

21 Q. How did you get selected to be a precinct
22 chair?

23 A. A person -- "selected" is interesting. A
24 person begged me to apply.

25 Q. And correct me if I'm wrong. I seem to

1 **remember that to be a precinct chair, you have to be**
2 **elected; is that right?**

3 A. You have to be elected if it's the season in
4 which elections would occur. For instance, I just
5 filled out -- not recently -- I filled out a form to be
6 reelected; and the elections will take place during the
7 runoff election. I don't have anyone running against
8 me, which is typical; but other times, if it's not
9 around a voting time, then the precinct chairs of
10 Williamson County, in their monthly meeting, would vote
11 on whether a new person could be a precinct -- a new
12 precinct chair.

13 MR. BREEN: Pardon me. What exhibit is
14 this?

15 THE WITNESS: I'm sorry?

16 MR. BREEN: I was just talking to Will to
17 tell me what exhibit this was.

18 MR. THOMPSON: I believe it is Exhibit 7,
19 and it is Bates stamped Morgan 41.

20 MR. BREEN: Okay. Thank you.

21 **Q (BY MR. THOMPSON) You're a Democrat, right?**

22 A. Yes, I am.

23 **Q. So when running for reelection as a Democratic**
24 **precinct chair, you'll be running on a ballot during the**
25 **Democratic primary runoff; is that right?**

1 A. Yes, sir.

2 Q. So the people voting for you will all be
3 Democrats, right?

4 A. Yes.

5 Q. You think SB 1 was a Republican bill, don't
6 you?

7 MR. GARBER: Objection.

8 A. It was a bill that came out of the Senate.

9 Q. (BY MR. THOMPSON) Do you know whether it was
10 supported by Republicans or Democrats or both?

11 MR. GARBER: Objection.

12 A. I don't have a strict lineage, but fewer
13 Democrats for sure.

14 Q (BY MR. THOMPSON) Do you remember when the
15 Democrats in the Texas House of Representative left the
16 state and broke quorum?

17 MR. GARBER: Objection.

18 A. Yes.

19 Q. (BY MR. THOMPSON) Was that related to SB 1?

20 MR. GARBER: Objection.

21 A. Honestly, I don't remember.

22 Q (BY MR. THOMPSON) Did you want the
23 Legislature to vote down SB 1?

24 MR. GARBER: Objection.

25 A. I haven't read all of SB 1.

1 Q (BY MR. THOMPSON) Did you want the
2 Legislature to vote for or vote against SB 1?

3 MR. GARBER: Objection.

4 A. All I can say is that this provision is
5 problematic for me, and I would want it removed.

6 Q. (BY MR. THOMPSON) You wanted the Legislature
7 to vote against this provision, at least, right?

8 A. At least that, yes.

9 MR. THOMPSON: All right. I think we're
10 probably about finished here. If we could just take a
11 three-minute break, then I'll confirm and then come back
12 on the record. Does that work for anybody?

13 MR. BREEN: Yeah. I'm going to -- I'm
14 going to have a few questions, so.

15 MR. THOMPSON: Yeah. I'm sorry. I
16 didn't mean to say that you couldn't have questions,
17 obviously.

18 MR. BREEN: Got it.

19 THE REPORTER: We're going off the record
20 at 11:42 a.m.

21 (Off the record from 11:42 to 11:45 a.m.)

22 THE REPORTER: We're going back on the
23 record at 11:45 a.m.

24 MR. THOMPSON: Ms. Morgan, I just want to
25 thank you for your time. I know that spending your

1 morning in a deposition is probably not the most fun way
2 you could spend that morning, but we do appreciate you
3 being here.

4 THE WITNESS: Thank you.

5 MR. THOMPSON: I don't have any further
6 questions for you.

7 THE WITNESS: Thank you.

8 EXAMINATION

9 BY MR. BREEN:

10 Q. Hi, Ms. Morgan. My name is Sean Breen. How
11 are you doing this morning?

12 A. I'm doing as well as can be expected.

13 Q. Good. Thank you for being here.

14 I represent Williamson County District
15 Attorney Shawn Dick in his official capacity. Okay?

16 A. Okay.

17 Q. Do you understand who I am and who I
18 represent?

19 A. I do.

20 Q. I have some questions for you. I'm going to
21 try to be very courteous and very respectful. If I'm
22 not, using your school teacher skills, will you let me
23 know at that time?

24 A. Definitely.

25 Q. I don't think that's going to happen, but feel

1 free. All right?

2 A. All right.

3 Q. And if you don't understand one of my
4 questions, will you let me know at that time?

5 A. Yes.

6 Q. Because I want to make sure that the answer
7 you give isn't caused by a bad question or me
8 misbehaving. All right?

9 A. All right.

10 Q. And you've been asked a lot of questions and
11 I'll try not to duplicate and I'm going to be a lot less
12 time consuming, not because I'm any better, just that
13 we've already covered most of it. All right?

14 A. Yes.

15 Q. Now, you are an individual who resides in
16 Williamson County; but it's in the Austin city limits.
17 Is that true?

18 A. Correct.

19 Q. And you've been appointed to serve as a
20 volunteer deputy registrar or a VDR, as that term is
21 used under the Texas Elections Code?

22 A. Yes.

23 Q. And you've been appointed to serve as a VDR in
24 both Williamson and Travis counties since 2014, right?

25 A. Yes.

1 Q. And the "volunteer" means you don't get paid
2 to do that, true?

3 A. Correct.

4 Q. And you're not currently not appointed to
5 serve as an alternate election judge in either
6 Williamson or Travis counties; is that right?

7 A. Not for the March 1st elections, correct.

8 Q. So as we sit here now, you would not be an
9 alternate election judge?

10 A. No, I would not be.

11 Q. And you've applied to serve as one for the
12 2022 election cycle in Williamson County, but that
13 hasn't been appointed yet; is that true?

14 A. That's correct, at my request.

15 Q. Now, you're not an employee, either full time
16 or part time, of the State of Texas or any State agency,
17 true?

18 A. True.

19 Q. And you're not an employee, whether full time
20 or part time of any political subdivision of the state,
21 including Williamson County or Travis County, true?

22 A. True.

23 Q. You don't hold any elected public office in
24 the state of Texas, true?

25 A. No, unless you consider precinct chair; but

1 that's not what you usually put under that description.

2 Q. Right. So you wouldn't be considering
3 yourself as holding any kind of elected public office in
4 the state or even in Williamson or Travis counties,
5 true?

6 MR. GARBER: Objection.

7 A. Except as precinct chair.

8 Q. (BY MR. BREEN) Which you said you don't
9 consider to be an elected official, right?

10 A. I stand for election. I could have an
11 opponent. I don't at this point.

12 Q. Do you have any legal basis to consider that
13 an elected official of the state of Texas?

14 MR. GARBER: Objection.

15 A. I don't consider being a precinct chair having
16 certain guidelines and restrictions other than through
17 the political party.

18 Q. (BY MR. BREEN) And my understanding of the
19 lawsuit you've brought against my client and others
20 isn't based on you being a precinct chair; it's based on
21 you being a VDR, correct?

22 A. Right, correct.

23 Q. Now, you're not the appointed member of any
24 board or commission in the state of Texas or in
25 Williamson County or Travis County, right?

1 A. Correct.

2 Q. And you don't serve in any of the roles listed
3 in Subsection 1.005 of the Texas Election Code, do you,
4 for instance, like, County Clerk, Deputy County Clerk,
5 Elections Administer, et cetera?

6 A. No.

7 MR. GARBER: Objection.

8 Q (BY MR. BREEN) You understand that my client,
9 Shawn Dick, is the elected District Attorney of
10 Williamson County, Texas?

11 A. I do.

12 Q. Do you know when he was elected and began
13 serving?

14 A. I don't remember, actually.

15 Q. And do you vote for elected officials, like
16 he, in Williamson County?

17 A. Yes, I do.

18 Q. If the record shows he's served as District
19 Attorney since 2016, do you have any reason to dispute
20 that?

21 A. No.

22 Q. Do you understand that you've sued him in his
23 official capacity as the District Attorney of Williamson
24 County, not as Shawn Dick, private citizen?

25 A. Yes.

1 Q. You understand that in your lawsuit you're
2 asserting claims and causes of action against him, as
3 the official District Attorney, and also Mr. Garza, in
4 his official capacity as the District Attorney, among
5 other people you're suing?

6 MR. GARBER: Objection.

7 A. Yes.

8 Q. (BY MR. BREEN) Have you ever been convicted
9 of any criminal offense established by the Texas
10 Elections Code?

11 MR. GARBER: Objection.

12 A. No.

13 Q. (BY MR. BREEN) Have you ever been prosecuted
14 or are you currently being prosecuted by District
15 Attorney Dick or anybody in his office for any alleged
16 criminal violation of the Texas Election Code, whether
17 it's Section 276.016(a)(1), or any other section?

18 MR. GARBER: Objection.

19 A. I've forgotten the first part of the
20 question --

21 (Simultaneous speakers.)

22 Q. (BY MR. BREEN) Sure. I'll rephrase it.

23 MR. BREEN: And just for curiosity, what
24 is the basis for that objection?

25 MR. GARBER: It's a multipart question.

1 MR. BREEN: Oh, no problem.

2 Q. (BY MR. BREEN) Here's -- I'll break it down
3 for you. Are you currently being prosecuted by District
4 Attorney Dick or anybody in his office?

5 A. No.

6 Q. Are you being prosecuted for any alleged
7 criminal violation of the Texas Election Code by
8 Attorney Dick or anybody else?

9 A. No.

10 Q. Are you being prosecuted for any criminal
11 offense whatsoever in the state of Texas currently?

12 A. No.

13 Q. Have you ever been prosecuted by District
14 Attorney Dick or anybody in his office for an alleged
15 criminal violation of the election code?

16 A. No.

17 Q. Have you -- strike that.

18 Are you currently charged or indicted by
19 District Attorney Dick or his office for any alleged
20 criminal violation of the Texas Election Code?

21 A. No.

22 Q. Have you ever been charged or indicted by
23 District Attorney Dick or his office for any alleged
24 criminal violation of the Election Code?

25 A. No.

1 Q. Have you ever been or are you currently under
2 threat with prosecution or indictment by District
3 Attorney Dick or his office in connection with any
4 alleged criminal violation of the election code?

5 A. Repeat the first part of that question.

6 Q. Sure. Has Attorney -- District Attorney Dick
7 or anybody in his office ever threatened you with
8 prosecution under any alleged violation of the election
9 code?

10 A. Not that I know of.

11 Q. You'd -- I'm pretty sure you'd know that if
12 you'd been threatened, right, "yes"?

13 A. Well, if it was a verbal threat or a written
14 threat.

15 Q. What other kind of threat is there?

16 A. I wouldn't no.

17 Q. Well, any kind of threat, including verbal,
18 nonverbal, written, unwritten, any kind of threat
19 whatsoever, do you have any information to indicate
20 District Attorney Dick has ever threatened you with
21 criminal prosecution?

22 A. No.

23 Q. Do you -- have you been made aware by anybody
24 or any means that you're somehow under investigation by
25 District Attorney Dick for alleged violation of an

1 election code?

2 A. No.

3 Q. Has anybody from District Attorney Dick's
4 office ever threatened you with an investigation or
5 threatened you in any way about an election code
6 violation?

7 A. No.

8 Q. Have you ever been contacted by any law
9 enforcement officer of the State of Texas or the County
10 of Williamson regarding or in connection with any
11 alleged election code violation?

12 A. No.

13 Q. Are you personally aware, Ms. Morgan, of any
14 person at all, ever, who has been prosecuted by District
15 Attorney Dick or his office for an alleged violation of
16 the Texas Election Code?

17 A. No.

18 Q. Are you aware of any threat of prosecution by
19 District Attorney Dick or anybody in his office in
20 connection with an alleged violation of the election
21 code?

22 A. No.

23 Q. Are you aware of any person at all who's ever
24 been charged by District Attorney Dick for an alleged
25 violation of the very code we're here talking about

1 today?

2 A. No.

3 Q. Now, have you ever personally spoken with
4 District Attorney Dick or anybody in his office about
5 Section 276 of the election code, its contents, or
6 enforcement of the statute?

7 A. No.

8 Q. Did you ever seek any type of clarification,
9 advice, input from District Attorney Dick or anybody in
10 his office about Section 276 of the election code?

11 A. No.

12 Q. Have you ever sought such advice,
13 clarification, or input from any official in the state
14 of Texas about Section 276 of the election code?

15 A. Not personally, no.

16 Q. When you say "not personally," what do you
17 mean?

18 A. I had talked with someone who had talked with
19 someone.

20 Q. And who is that?

21 A. Her name is -- I hate to say her name. I
22 mean, she's just a person. She's Marla Garza-Friel.

23 Q. Marlo Garza-Friel?

24 A. Marla. Marla.

25 Q. And in what context did you visit with Marla?

1 A. We both work on voter registration.

2 **Q. In what county?**

3 A. Williamson.

4 **Q. And who had she spoken with?**

5 MR. GARBER: Objection.

6 A. I'm really not sure, absolutely. I'm not
7 sure.

8 **Q. (BY MR. BREEN) Well, you said you spoke with**
9 **someone who spoke with someone. So that would be you**
10 **spoke with Marla, and she had spoken with someone,**
11 **right?**

12 A. Someone, yes.

13 **Q. But you don't --**

14 A. She felt very strongly about what the law was
15 saying.

16 **Q. And when you say "felt very strongly," you**
17 **mean her interpretation of the law was something that**
18 **she felt strongly about?**

19 A. Yes. I think at the time -- I'm going to be
20 fair to her. I think at the time I wasn't so sure about
21 it; and later, when I began to read it said, I thought:
22 Oh, I think I need to be careful and not --

23 **Q. Okay. Well, who had Marla spoken with? Was**
24 **it some type of --**

25 A. I don't know.

1 Q. -- public official?

2 A. I don't know.

3 Q. All right. Well, then, to be fair, it wasn't
4 as if Marla gave you any information to indicate there
5 was any threat of prosecution to you that was credible;
6 isn't that accurate?

7 MR. GARBER: Objection.

8 A. I think that's probably correct.

9 Q. (BY MR. BREEN) Now, did you call and seek
10 clarification from the Texas Secretary of State's Office
11 about this statute?

12 A. No.

13 Q. Did you call and seek clarification or input
14 from the County Voter Registrar of Travis or Williamson
15 County about the statute at issue?

16 A. No.

17 Q. Did you call and seek input or clarification
18 from the Williamson County District Attorney's Office
19 about the statute at issue?

20 A. No.

21 Q. Did you call and seek clarification or input
22 from the Travis County District Attorney's Office?

23 A. No.

24 Q. Did you call any legislator, your legislator,
25 or anybody else to ask for any type of input, advice,

1 **et cetera about the statute at issue?**

2 A. I had a text with a person in John Bucy's
3 office, who is my State Representative.

4 **Q. And what was that text? What did the text**
5 **say?**

6 A. And she sent me the exact part of the law that
7 I was asking about --

8 (Simultaneous speakers.)

9 A. -- a copy.

10 **Q. Okay. She sent you Section 276.016?**

11 A. If that's the part we're talking about, yes.

12 **Q. Yes, ma'am, that's the part you filed the**
13 **lawsuit about.**

14 A. Right.

15 **Q. And she just sent you the law. Did she send**
16 **you any type of commentary?**

17 A. Not that I recall.

18 **Q. She certainly never indicated to you that you**
19 **would be prosecuted for anything you were doing, did**
20 **she?**

21 A. She did not say either way.

22 **Q. Well, my question to you isn't whether she**
23 **said either way; it was whether she said to you, "Hey,**
24 **there's a threat of prosecution" or "You may be**
25 **prosecuted"?**

1 A. Not that I remember.

2 Q. She was just sphinxlike; she just sent the
3 statute to you, and that was it?

4 A. That was my -- that was my request of her.

5 Q. Did you have any follow-up with her or with
6 Senator -- or Representative Bucy about any questions
7 you had?

8 A. No, I did not.

9 Q. Now, was this before you went to the Zoom or
10 saw the Zoom video meeting that you testified about or
11 after the Texas Impact Zoom lawyer meeting?

12 A. I think -- I'm not -- I'm not remembering very
13 clearly, but I think it was after.

14 Q. Okay. So you had already become alarmed by
15 the Zoom Texas Impact meeting at that time and sent the
16 text to the legislator to get the exact copy of the law?

17 A. Yes.

18 Q. And do you remember when that was? Was that
19 approximately late September or October of 2021?

20 A. I don't remember. It was after the date of
21 the Zoom meeting.

22 Q. Okay. And I take it you never contacted the
23 Williamson County Elections Administrator to get any
24 kind of clarification or interpretation about the
25 statute; is that right?

1 A. That's correct.

2 Q. So if I understand your testimony, the only
3 real clarification and/or opinion you've received about
4 the statute you're suing about, setting aside your own
5 attorneys, would be the Zoom lawyer from Texas Impact;
6 is that right?

7 MR. GARBER: Objection.

8 A. I have probably read something in newspapers,
9 but I cannot be specific on that.

10 Q (BY MR. BREEN) You don't recall if you did;
11 is that true?

12 A. No, I can't recall.

13 Q. And what you read or may have read didn't
14 indicate that you were going to be prosecuted in any
15 way, did it, in the newspaper?

16 A. It raised a question.

17 Q. Well, when was that, after the Zoom lawyer
18 Texas Impact meeting?

19 A. I'm sure it was.

20 Q. So by the time you read whatever you read in
21 the newspaper, you had already gotten the opinion from
22 the Texas Impact lawyer about the statute; is that
23 right?

24 A. Yes, that there was a question.

25 Q. And the opinion by the Texas Impact lawyer

1 that there may be a question or ambiguities in the
2 statute, that person and that lawyer, other than your
3 own, is actually the only opinion you ever got or sought
4 before you filed a lawsuit; isn't that true?

5 MR. GARBER: Objection.

6 A. I really actually don't remember.

7 Q (BY MR. BREEN) You can't remember any others
8 besides that one; is that accurate?

9 A. I don't remember at this moment.

10 Q. When you say you don't remember, what you mean
11 is you don't remember any opinion other than that Zoom
12 Texas Watch lawyer that you can point me to now?

13 A. It's Texas Impact.

14 Q. Texas Impact.

15 A. Yes.

16 Q. Is that true?

17 A. In substance. I really -- if I remember
18 something later, I will try to tell you that.

19 Q. Sure. As far as we sit here now, though,
20 you've told me any other opinion you received, which is
21 none, other than the one from the Texas Impact lawyer
22 before you lawsuit, right?

23 A. At this moment that's my answer.

24 Q. Now, have you ever heard District Attorney
25 Shawn Dick speak or anybody in his office speak about

1 Section 276 of the election code, its contents, or
2 enforcement of the statute?

3 A. No.

4 Q. Have you ever read or seen anything authored
5 by District Attorney Dick or anyone in his office
6 regarding Section 276 of the election code or its
7 contents?

8 A. No.

9 Q. Have you ever seen or read anything that was
10 attributed to District Attorney Dick or anybody in his
11 office about Section 276 of the Texas Elections Code?

12 A. No.

13 Q. Have you ever seen any social media posts or
14 tweets or Instagrams or DMs or anything like that from
15 District Attorney Dick or anyone in his office about
16 Section 276 of the election code and enforcement of it?

17 A. No.

18 Q. Has anybody from District Attorney Dick's
19 office ever contacted you regarding any aspect or your
20 role or responsibilities as a VDR in Williamson County?

21 A. No.

22 Q. Is it true, then, from your personal
23 knowledge, District Attorney Dick, until you sued him,
24 had never heard of you, never threatened you, never
25 accused you of violating the law, and never, to your

1 knowledge, even publicly mentioned Section 276; isn't
2 that true?

3 MR. GARBER: Objection.

4 A. That is correct.

5 Q (BY MR. BREEN) And that Attorney -- District
6 Attorney Dick never intimated or said, that you heard,
7 formal enforcement of Section 276 was on the horizon for
8 you or anybody else in Williamson County; isn't that
9 true?

10 A. That is true.

11 Q. Now, if I understood your testimony earlier,
12 it's clear to you that the training you've received over
13 the years as a VDR does not call for you to go solicit
14 or lobby somebody to vote by mail; is that right?

15 MR. GARBER: Objection.

16 A. That training, I don't recall ever -- that
17 ballot by mail was ever mentioned.

18 Q (BY MR. BREEN) Well, of course, in your VDR
19 training, they train you to provide all voter
20 information to voters, right?

21 A. They train us to register people to vote.

22 Q. And do they also train you to provide voting
23 information, such as websites or handouts, et cetera?

24 A. I would have to go back to that training, but
25 my recollection is that it only has to do with how to

1 correctly fill out the information on the cards and what
2 to do with them and what's -- that it is not our job to
3 decide whether or not the person is able to vote; that
4 our job is just to take the registration for someone
5 else to make that decision.

6 Q. So there was nothing in your VDR training that
7 trained you: Hey, Ms. Morgan, you need to solicit
8 people to vote in a certain way, true?

9 MR. GARBER: Objection.

10 A. Not that I recall.

11 Q (BY MR. BREEN) That's not part of your role
12 as a VDR, to solicit people to vote in a certain way;
13 isn't that accurate?

14 MR. GARBER: Objection.

15 A. Define "vote in a certain way."

16 Q. (BY MR. BREEN) Well, to vote by mail, to vote
17 in person, to absentee vote, et cetera. Your job as a
18 VDR isn't to solicit people to vote in a certain way;
19 isn't that true?

20 A. That's the training.

21 Q. That's the training and that's the job
22 description as a VDR and it doesn't include soliciting
23 people to vote in a certain way, does it?

24 MR. GARBER: Objection.

25 A. When you're speaking of voting and being a VDR

1 and taking that seriously, I believe that it is my
2 responsibility to assist people in making sure they can
3 vote whatever -- whatever way they choose and however
4 they choose.

5 **Q. Right. The key there is for them to vote how**
6 **they choose, not how you want them to vote, the manner**
7 **in which you want them to vote, true?**

8 A. What I care about is people voting.

9 **Q. Exactly.**

10 A. How they vote is their decision.

11 **Q. The manner in which the person votes is not**
12 **your care, is it, as a VDR; that is, absentee, vote by**
13 **mail, vote in person? You don't care the manner; you**
14 **just want them to vote, right?**

15 A. I care that they have the ability to vote in
16 whichever way meets their circumstances and needs best.

17 **Q. And they're the person that decides which way**
18 **meets their circumstances the best, true?**

19 A. True.

20 **Q. You're not, as a VDR, there to try to get them**
21 **to vote in one manner or another, are you; that is, vote**
22 **by mail versus vote in person? You just want them to**
23 **vote?**

24 A. I would like them to vote in whichever way
25 enables them to vote most easily.

1 Q. Exactly, like, for instance, I think it was
2 Mrs. Banks; that was an example you used, correct?

3 A. Yes.

4 Q. And as a VDR, what your job was with
5 Mrs. Banks was get her information; and that information
6 happened to include that she could vote by mail, right?

7 A. I went to her house being a VDR, also a caring
8 neighbor. So as she told me her circumstances and how
9 difficult it was for her to get to the polling places
10 and since she was well over 65, then, I made the
11 suggestion at that point, several years ago, that she
12 consider ballot by mail. And she said, "That would be
13 wonderful. Can you help me do that?"

14 Q. Exactly. You said, I believe, before, you
15 told her, "You can vote by mail," right?

16 A. Yes.

17 Q. You didn't tell her, "You should vote by
18 mail," did you?

19 A. No. "You can."

20 Q. You didn't say, "Would you vote by mail," did
21 you?

22 A. No.

23 Q. You didn't say, "I'd like you to vote by
24 mail," did you?

25 A. No.

1 Q. That would all be soliciting her to vote by
2 mail, wouldn't it?

3 MR. GARBER: Objection.

4 A. I think what we're ask- -- what I'm asking the
5 Court to decide is exactly what soliciting means.

6 Q. (BY MR. BREEN) Right. Well, have you looked
7 up the definition of "solicit"?

8 A. I did at one time. It was unclear to me.

9 Q. The definition was unclear to you?

10 A. Unclear in this circumstance.

11 Q. Now, back to Ms. Banks, though, what was clear
12 was you were providing her information about voting by
13 mail, right?

14 A. Yes, I did.

15 Q. But you weren't asking her to vote by mail?

16 A. No.

17 Q. You weren't trying to get her to vote by mail?

18 A. No.

19 Q. That wouldn't be proper as a VDR, would it?

20 A. It wouldn't be proper as a VDR or not.

21 Q. It wouldn't be proper as a VDR, per your
22 training, to try to get somebody to vote in a certain
23 way, true?

24 A. I don't think the training ever addressed
25 that.

1 Q. Well, your personal practice, then --

2 A. Yes.

3 Q. -- isn't to try to get somebody to vote in a
4 certain way; it's to give them information, isn't it?

5 A. Yes, yes.

6 Q. Do you know that the statute itself says it's
7 okay to provide information, general information about
8 voting by mail, voting-by-mail process, and the
9 timelines to a person?

10 A. I don't remember that in the statute.

11 Q. That's important, isn't it?

12 MR. GARBER: Objection.

13 A. It is important.

14 Q. (BY MR. BREEN) That's exactly what you do as
15 a VDR when you provide information about voting by mail,
16 like you did to Mrs. Banks. You give her general
17 information about voting by mail. You give her
18 information about the mail process, and you give her the
19 timelines; isn't that right?

20 MR. GARBER: Objection.

21 A. I did that.

22 Q. (BY MR. BREEN) And did you not realize
23 currently, as we sit here now, that 276.016 has a
24 specific section that, even if you were somehow acting
25 in your official capacity, you can provide that

1 information to people?

2 A. No.

3 Q. You didn't know that?

4 A. No.

5 Q. That's important. And now that you know it,
6 do you understand that you can provide that information
7 to people?

8 MR. GARBER: Objection.

9 A. I want that clarified. I need to go read it.

10 Q (BY MR. BREEN) Okay. Is there anything
11 unclear to you about the ability to provide general
12 information about voting by mail; you understand what
13 that means, right?

14 A. Yes.

15 Q. And how about providing information about the
16 vote-by-mail process, you understand what that means,
17 right?

18 A. Yes.

19 Q. And the timelines associated with voting to a
20 person or the public, you understand what that means,
21 don't you?

22 A. Yes.

23 Q. And that's all, really, as a VDR you want to
24 give people when you are giving them the information
25 about voting by mail; isn't that true?

1 MR. GARBER: Objection.

2 A. That's what I want to do for people.

3 Q. (BY MR. BREEN) But until I just read that in
4 the statute, you didn't realize that was in the statute;
5 is that accurate?

6 A. That's accurate.

7 Q. Now, you're seeking attorney fees in this
8 case. Did you understand that?

9 MR. GARBER: Objection.

10 A. I -- I don't remember.

11 Q. (BY MR. BREEN) Okay. Well, I'll represent to
12 you that the pleadings I've seen in the case that have
13 been filed on your behalf are seeking attorney fees from
14 different individuals in the case, including my client.
15 Did you know that?

16 A. No.

17 Q. Are you paying for attorneys to represent you
18 in this lawsuit?

19 A. No.

20 Q. Who's paying for those attorneys?

21 MR. GARBER: Objection.

22 A. I don't know.

23 Q. (BY MR. BREEN) But it's not you?

24 A. No.

25 Q. Did somebody connect you with the attorneys

1 that are suing on your behalf in this lawsuit?

2 A. Yes.

3 Q. Who?

4 A. Bee Morehead, Director of Texas Impact.

5 Q. Did you know that the judge in this case has
6 the discretion to award fees, attorney fees, to the
7 prevailing party?

8 MR. GARBER: Objection.

9 A. No.

10 Q. (BY MR. BREEN) And that the prevailing party
11 may not be you; did you know that?

12 MR. GARBER: Objection.

13 A. No.

14 Q. (BY MR. BREEN) Ms. Morgan, have you
15 understood the questions that I asked you here today?

16 A. I think so.

17 Q. Have I been courteous to you?

18 A. Yes, you have been.

19 Q. Through my demeanor have I caused you to
20 answer questions in any way other than you wanted to
21 answer?

22 A. Not by your demeanor, no.

23 Q. Okay. By anything that you alerted me to,
24 like we had a deal at the beginning of the deposition
25 that I started, is there anything I did that caused you

1 to answer other than you wanted to?

2 A. No.

3 MR. BREEN: Thank you so much for your
4 time, ma'am.

5 I'm going to reserve the rest of my
6 questions.

7 Anybody else?

8 MR. THOMPSON: No more questions from me.
9 I think -- Mr. Garber, I didn't hear your answer.

10 MR. GARBER: I'm not going to ask any
11 questions at this time, but I wanted to give you or any
12 other defense counsel the opportunity first.

13 MR. BREEN: Thanks, Andrew.

14 MR. GARBER: Thank you, Mr. Breen.

15 MR. BREEN: Okay. I think this concludes
16 the depo, then.

17 THE REPORTER: Excuse me. Before we go
18 off the record, Counsel, can you state if you need a
19 copy of the transcript?

20 MR. GARBER: Yes, please.

21 MR. BREEN: Sean Breen, yes, I need a
22 copy.

23 THE REPORTER: And how about the video?

24 MR. BREEN: Yes.

25 THE REPORTER: Mr. Garber, do you need

1 the video?

2 MR. GARBER: I think we're all right with
3 just the transcript.

4 THE REPORTER: All right. This concludes
5 the deposition at 12:18 p.m.

6 (Deposition adjourned at 12:18 p.m.)

7 (Signature not requested.)

8 --ooOoo--

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