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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA, HELENA DIVISION

MONTANA PUBLIC INTEREST  
RESEARCH GROUP; MONTANA  
FEDERATION OF PUBLIC EMPLOYEES,

Plaintiffs,

v.

CHRISTI JACOBSEN, in her official  
capacity as Montana Secretary of State;  
AUSTIN KNUDSEN, in his official  
capacity as Montana Attorney General;  
CHRIS GALLUS, in his official capacity as  
Montana Commissioner of Political  
Practices,

Defendants,

REPUBLICAN NATIONAL COMMITTEE  
and MONTANA REPUBLICAN PARTY,

Defendant-Intervenors.

Cause No. 6:23-cv-070-BMM

**MOTION TO TAKE JUDICIAL  
NOTICE OF TRANSCRIPT OF  
PROCEEDINGS**

COME NOW Defendants, by and through their counsel of record, and respectfully move this Court for an order taking judicial notice of the Transcript of Proceedings in the Eighteenth Judicial District Court, Gallatin County, Cause No. DV-23-1072 before the Honorable Peter B. Ohman, District Court Judge (attached hereto as Exhibit A). The Transcript of Proceedings occurred in a hearing on February 8, 2024 and consists only of witness testimony in a state court matter challenging the same legislation regarding House Bill 892 on similar grounds. In the hearing in opposition to the Motion for Preliminary Injunction, the defense would offer testimony of Regina Plettenberg, Dana Corson and Connor Fitzpatrick, all of which is provided in the Transcript. In addition to those three witnesses, the League of Women Voters offered the expert testimony of Dr. Alex Street. In the interest of completeness, defense intends to seek judicial notice of the entire transcript.

Counsel for Defendants, Thane Johnson, has contacted counsel for Plaintiffs, Raph Graybill, and a decision has not been made as to whether they object to this Motion.

WHEREFORE, pursuant to Fed. R. Evid. 201, Defendants respectfully move this Court for an order taking judicial notice of the Transcript of Proceedings in opposition to Plaintiffs' Motion for Preliminary Injunction in the Eighteenth Judicial District Court of Gallatin County.

DATED this 13th day of March, 2024.

Austin Knudsen  
Montana Attorney General

*/s/ Thane Johnson*

---

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**CERTIFICATE OF SERVICE**

I certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: March 13, 2024

/s/ Thane Johnson  
Thane Johnson

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MONTANA EIGHTEENTH JUDICIAL DISTRICT

COUNTY OF GALLATIN  
\* \* \* \* \*

LEAGUE OF WOMEN VOTERS )  
OF MONTANA, )  
 )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 AUSTIN KNUDSEN, ET. AL., )  
 )  
 DEFENDANT. )

CAUSE NO. DV-23-1072

TRANSCRIPT OF PROCEEDINGS

Before the Honorable Peter B. Ohman, Judge Presiding

Date: February 8, 2024  
Place: Law and Justice Center  
615 South 16th Avenue  
Bozeman, MT 59715

JOSEY LONEY  
Official Reporter, Eighteenth Judicial District  
615 South 16th Avenue, Room 305  
Bozeman, MT 59715  
(406) 582-2161

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INDEX

WITNESS

PAGE

ALEX STREET	
DIRECT EXAMINATION BY MS. HULING	18
VOIR DIRE BY MR. THANE JOHNSON	24
DIRECT EXAMINATION (CONT.) BY MS. HULING	27
VOIR DIRE BY MR. THANE JOHNSON	50
DIRECT EXAMINATION (CONT.) BY MS. HULING	52
CROSS-EXAMINATION BY MR. THANE JOHNSON	73
REDIRECT EXAMINATION BY MS. HULING	99
REGINA PLETTENBERG	
DIRECT EXAMINATION BY MR. HAYDEN JOHNSON	104
CROSS-EXAMINATION BY MR. THANE JOHNSON	139
REDIRECT EXAMINATION BY MR. HAYDEN JOHNSON	141
DANA CORSON	
DIRECT EXAMINATION BY MS. LANSING	144
CROSS-EXAMINATION BY MR. HANCOCK	149
CONNOR FITZPATRICK	
DIRECT EXAMINATION BY MR. NOONAN	166
CROSS-EXAMINATION BY MR. HAYDEN JOHNSON	172

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Court was in recess from 3:28 to 3:36	102
Court was adjourned at 5:18	186

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**EXHIBITS**

<b><u>NUMBER</u></b>		<b><u>PAGE</u></b>
	Plaintiffs' Exhibit 6 was admitted	51
	State's Exhibit A was admitted	167
	State's Exhibit D was admitted	170
	Plaintiffs' Exhibit 24 was admitted	185

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1 THE COURT: This is DV-23-1073, League of  
2 Women Voters v. Knudsen, et. al. Afternoon. What I  
3 was hoping to do here today is just go around the  
4 room, and people can say who's here for the record.  
5 I don't know if there's any counsel on Zoom, but we  
6 can get to that.

7 Sir, if you want to go ahead.

8 MR. PATALANO: Good afternoon, Your Honor,  
9 Christopher Patalano for the Plaintiff.

10 MR. HAYDEN JOHNSON: Afternoon, Your Honor,  
11 Hayden Johnson for Plaintiffs. We don't have any  
12 counsel on Zoom.

13 THE COURT: Okay. Sounds good.

14 MS. HULING: Good afternoon, Alice Huling  
15 for Plaintiff.

16 MR. HANCOCK: Good afternoon, Your Honor,  
17 Kevin Hancock for the Plaintiff.

18 MS. NEAL: Good afternoon, Your Honor,  
19 Melissa Neal for the Plaintiff.

20 MS. LANG: Good afternoon, Your Honor,  
21 Danielle Lang for the Plaintiff.

22 THE COURT: All right. Is that chair going  
23 to work for you back there?

24 MS. LANG: It is.

25 MS. LANSING: Good afternoon, Alwyn Lansing

1 for the Defendants.

2 MR. NOONAN: Good afternoon, Michael Noonan  
3 for the Defendants.

4 MR. THANE JOHNSON: Thane Johnson, Your  
5 Honor, for the State.

6 THE COURT: Okay. Sounds good. Thanks  
7 everybody for that. So I think Ms. Loney said --  
8 since I don't know a lot of you guys; you guys don't  
9 know me -- if there's just one person that's doing  
10 questioning -- I don't know how you're going to do  
11 that -- then, we'll probably be okay, but if there's  
12 an objection or whatnot, or if there's some  
13 statement, just try and let us know who you are just  
14 so it's clear on the record. We appreciate that.

15 I just had a couple of things that I wanted  
16 to address before we got moving here. I did issue an  
17 order on the motion to strike that letter that I got,  
18 and so that should be taken care of. Then, I also  
19 got a new declaration, I think -- I haven't even  
20 looked at it -- that came from the Plaintiffs --

21 Or is that from you guys?

22 MR. THANE JOHNSON: From us, Your Honor.  
23 Sadie Dallaserra from the Secretary of State's  
24 Office. If you need the original, I have the  
25 original with me.

1 THE COURT: That's fine. You know, there's  
2 a lot of paperwork here, so I didn't have a chance to  
3 look at that one yet, so I'll look at it here as we  
4 move on.

5 MR. HAYDEN JOHNSON: Your Honor, if I may?

6 THE COURT: Yeah.

7 MR. HAYDEN JOHNSON: We also have two new  
8 declarations that had to be filed yesterday, but it  
9 was on a signature page. They're on today. It's  
10 from -- they're updates to the declarations.

11 THE COURT: Your name?

12 MR. HAYDEN JOHNSON: Sorry. Hayden Johnson.  
13 There's a declaration for Marga Lincoln and Joye  
14 Kohl.

15 THE COURT: Okay. So then, from Plaintiffs,  
16 any objection to the declaration from the Defendants?

17 MR. THANE JOHNSON: No objection.

18 THE COURT: And from the Defendants, any  
19 objection to the declaration from the Plaintiffs?

20 MR. THANE JOHNSON: No, Your Honor.

21 THE COURT: All right. And I'll let the  
22 Plaintiffs address this first, and then, the  
23 Defendants can address it. It came to my attention  
24 recently that there's a federal case that's pending  
25 that might have some of the same issues that is

1 before this Court, or maybe it doesn't. I don't  
2 really know. But if somebody could just give me a,  
3 kind of, run down as to where that case is at  
4 procedurally, just so I know. So if anybody wants to  
5 speak to that.

6 Mr. Johnson?

7 MR. HAYDEN JOHNSON: Sure, Your Honor.

8 Hayden Johnson, again. So that case is in federal  
9 court. It has had a motion for preliminary  
10 injunction pending, and there's a hearing scheduled  
11 before Judge Morris on March 11th.

12 THE COURT: Okay. And when did that case --  
13 did that case get filed after this case, or do you  
14 know?

15 MR. HAYDEN JOHNSON: It was filed before  
16 this case -- I believe September 29th. The State  
17 could be more precise on that.

18 THE COURT: All right. Then, are there any  
19 overlapping issues, or is that all, kind of, a  
20 federal claim and these are state claims?

21 MR. HAYDEN JOHNSON: They're all -- all the  
22 claims in the federal case are federal claims. They  
23 have, sort of, federal analogues, if you will, of a  
24 vagueness and a right to vote claim, but our claims  
25 are exclusively under the Montana Constitution.

1 THE COURT: Okay. Mr. Johnson, anything you  
2 want to add to that?

3 MR. THANE JOHNSON: No, I would agree with  
4 that. The federal one is a 19 -- Section 1983 claim.

5 THE COURT: All right. So then, anything  
6 else from the Plaintiffs for preliminary matters?

7 MR. HAYDEN JOHNSON: A couple of things,  
8 Your Honor. First is that we have a couple of  
9 pending pro hac vice motions for some counsel, one  
10 that's hoping to present a witness today.

11 THE COURT: Okay. When did those come in?  
12 I thought I was up-to-date on them.

13 MR. HAYDEN JOHNSON: Those were a few months  
14 ago. I don't have the exact dates, but it was on the  
15 docket. It's Dock 20 and Dock 21.

16 THE COURT: Sorry about that. I thought I  
17 had approved everything.

18 MR. HAYDEN JOHNSON: So we just move those  
19 to be admitted. No opposition.

20 THE COURT: And those are for who?

21 MR. HAYDEN JOHNSON: For Kevin Hancock and  
22 Melissa Neal.

23 THE COURT: Okay. So no objection from the  
24 Defense?

25 MR. THANE JOHNSON: No objection, Your

1 Honor.

2 THE COURT: All right. So then, the Court  
3 orders that Mr. Hancock and Ms. Neal can get admitted  
4 pro hac vice.

5 What else?

6 MR. HAYDEN JOHNSON: The next is that we're  
7 moving to admit our other affidavits that we've  
8 submitted. It's 1 through 5 of our exhibits, and,  
9 you know, we think that's proper under Montana Code  
10 27-19-303(2). Those are witnesses that are not here  
11 to testify today, but will be testifying via their  
12 affidavits.

13 THE COURT: All right. So they're going to  
14 testify?

15 MR. HAYDEN JOHNSON: They're providing  
16 testimony to the Court, via an affidavit, but they're  
17 not here to testify live in court, and then, that's  
18 the same thing for the new declarations. Those are  
19 26 and -- 25 and 26.

20 THE COURT: Okay. Mr. Johnson?

21 MR. THANE JOHNSON: I think that's  
22 permitted, pursuant to § 27-19-303, that it can be  
23 either live testimony or affidavits.

24 THE COURT: For preliminary injunction  
25 hearings?

1 MR. THANE JOHNSON: Yes.

2 THE COURT: All right. I hadn't looked at  
3 it. So with no objection, then, the Court can  
4 consider those.

5 MR. HAYDEN JOHNSON: And then, Your Honor,  
6 our first witness is going to be our expert witness,  
7 Dr. Alex Street, and we're planning to recall him as  
8 a rebuttal witness, under Rule 611. I just wanted to  
9 keep the Court apprised of that. Then, next, we'll  
10 have Ms. Plettenberg, one of the Defendants to  
11 Clarence. She's in Ravalli County, so she's going to  
12 be remote. We were hoping to, sort of, try to give  
13 the Court a heads up about this -- share a screen so  
14 we can share documents. Does that still work for  
15 you?

16 THE COURT: Well, you know -- we'll see.  
17 Preferably, that's where it gets. I don't care if  
18 you pull up here by Zoom. It's easier. It saves  
19 money -- all that sort of stuff. But once you get to  
20 where you have written documents, and you're  
21 presenting them to people, it does become difficult,  
22 so we'll have to see how it plays out.

23 MR. HAYDEN JOHNSON: I understand. And  
24 we've got physical copies for the Court to have for  
25 those exhibits. We've sent the witness the exhibits

1 in advance as a fall back. There's a couple of  
2 places, just for expediency, we're hoping to be able  
3 to show the screen on there.

4 THE COURT: I don't know how we're going to  
5 show the screen. We don't really have that -- this  
6 is old school court here. We don't have that  
7 capability. If you want to wait until we get the new  
8 building built, we can do this then.

9 MR. HAYDEN JOHNSON: Our client has some  
10 urgency here, as the Court might understand.

11 THE COURT: I know.

12 MR. HAYDEN JOHNSON: Well, our thought is  
13 that we would join the Zoom as well, and then, share  
14 screen function on the Zoom. I called your judicial  
15 assistant about this earlier this week. She said  
16 that she thought that would be possible, but I just  
17 want to make sure.

18 THE COURT: All right. I don't know about  
19 that. How would you join the Zoom call? From where?

20 MR. HAYDEN JOHNSON: We've got the Zoom  
21 link.

22 THE COURT: You've got a laptop?

23 MR. HAYDEN JOHNSON: We've got a laptop  
24 here.

25 THE COURT: Do you have access to wifi?



1 Okay. Well, we'll see what happens.

2 MR. HAYDEN JOHNSON: Okay. That sounds  
3 good.

4 THE COURT: How many witnesses do you have?

5 MR. HAYDEN JOHNSON: We have two witnesses.

6 THE COURT: And then, the woman from Ravalli  
7 County?

8 MR. HAYDEN JOHNSON: We've actually called  
9 her, so Dr. Street, and we have Ms. Plettenberg.

10 THE COURT: So just two?

11 MR. HAYDEN JOHNSON: We have just two.

12 THE COURT: And then, your affidavits and  
13 whatnot?

14 MR. HAYDEN JOHNSON: Correct. If I may?

15 THE COURT: Sure.

16 MR. HAYDEN JOHNSON: One more thing. Sorry  
17 to pile on.

18 THE COURT: That's fine.

19 MR. HAYDEN JOHNSON: We move for the -- one  
20 of the State's witnesses, Mr. Fitzpatrick -- to be  
21 sequestered during Ms. Plettenberg's testimony.

22 THE COURT: All right. So you're just  
23 talking about Rule 615; is that what you're saying?

24 MR. HAYDEN JOHNSON: Correct.

25 THE COURT: Okay. Tom, can you make sure

1 that you get in the record the admission of those  
2 affidavits?

3 All right. Is that okay with the State?

4 MR. THANE JOHNSON: That's fine. He can  
5 step out. This is Mr. Fitzpatrick.

6 THE COURT: All right. So, sir, if you just  
7 sit in the hallway there, that would be great. And I  
8 don't expect that you will do this, but we've had  
9 people that stick their ear up against the door there  
10 to listen in, but I expect you're above board, and  
11 we're not going to have to worry about that. So if  
12 you just head out there, and we'll call you when  
13 we're ready, okay? Thanks very much. You need to  
14 head out now.

15 MR. HAYDEN JOHNSON: And that's it for the  
16 Plaintiffs. Thank you.

17 THE COURT: All right. Well, if I miss any  
18 of that stuff as we go along, just let me know.

19 MR. HAYDEN JOHNSON: Thank you.

20 MR. THANE JOHNSON: Just a couple issues.  
21 We're going to have Dana Corson testify via Zoom.  
22 Where do you want us to be when we --

23 THE COURT: So I think what we're going to  
24 do is -- the camera is on me now, but we'll turn it  
25 to you guys and probably turn -- if it's just

1 video -- we can maybe turn the screen a little bit,  
2 and then, you guys can see your witness; the witness  
3 can see you.

4 MR. THANE JOHNSON: I can stand up there, if  
5 you wanted me to.

6 THE COURT: The thing is it's just keeping  
7 you near a mic. It's no problem. We'll just turn  
8 that, and everybody can see each other.

9 MR. THANE JOHNSON: The only other issue  
10 that I have is I can see in Exhibit 27 -- if it's  
11 going to be offered -- it's communication between  
12 Mr. Hayden Johnson -- love the name. That's my  
13 middle son's name -- and Connor Fitzpatrick. I think  
14 there's an issue with regard to Rule 3.7 on the Rules  
15 of Practice that he may be a witness -- a material  
16 witness -- in this case. I'm not going to -- I need  
17 to --

18 THE COURT: And he's counsel, too, is that  
19 what you're talking about?

20 MR. THANE JOHNSON: What's that? Yes, he's  
21 counsel -- if he's counsel and an author of some of  
22 these exhibits, I think we may have a problem. I  
23 don't think we necessarily have a problem with this  
24 hearing, but I want the Court to know that I'm  
25 probably going to seek to depose him, so I can see

1 what his interaction was with Mr. Fitzpatrick.

2 THE COURT: And that was Mr. Fitzpatrick  
3 that just left?

4 MR. THANE JOHNSON: Yes. And then, I would  
5 also object on hearsay grounds, if they introduce  
6 that exhibit, any communication from Mr. Hayden  
7 Johnson that's on the email because I think it's  
8 hearsay, and he's got to lay the foundation for it.  
9 I won't do that today, but I think that's going to be  
10 essential for the Court to know.

11 THE COURT: Okay. And you're talking about,  
12 like, at a trial stage, or something like that?

13 MR. THANE JOHNSON: Yes. I mean, I got a  
14 good lesson from the Honorable Sam Haddon on that  
15 issue one time, and I never forgotten it. That's a  
16 Sam Haddon lesson, and I learned that very well.

17 THE COURT: I didn't have the pleasure of  
18 appearing in front of Judge Haddon, but from what  
19 I've heard, you probably wouldn't forget that  
20 experience.

21 MR. THANE JOHNSON: I never forgot.

22 THE COURT: All right. Anything else before  
23 we get going?

24 MR. THANE JOHNSON: I think that's it, Your  
25 Honor.

1 THE COURT: Okay. Mr. Johnson, are you  
2 going to, kind of, be leading the pack here today, or  
3 who's doing it?

4 MR. HAYDEN JOHNSON: It's a team effort  
5 here. Our first witness will be presented by  
6 Ms. Huling.

7 THE COURT: Okay. Ms. Huling, if you want  
8 to go ahead. The Plaintiffs have the burden here  
9 with the new statute, so please proceed. Your first  
10 witness is going to be --

11 MS. HULING: Yes, Dr. Street.

12 THE COURT: In person?

13 MS. HULING: In person.

14

15

ALEX STREET,

16 called as a witness by the Plaintiffs, was first duly  
17 sworn, as hereinafter certified, examined, and  
18 testified as follows:

19

20 THE WITNESS: My name is Alex Street.

21 A-L-E-X, S-T-R-E-E-T.

22 THE COURT: Go ahead.

23 MS. HULING: Good afternoon, Your Honor.

24 Good afternoon, Court.

25

1 DIRECT EXAMINATION

2 BY MS. HULING:

3 Q. Good afternoon, Dr. Street. Could you  
4 please state your name for the record -- maybe we  
5 actually just did that, so never mind. Were you  
6 retained as an expert witness in this case by  
7 Plaintiffs?

8 A. Yes.

9 Q. And did you prepare an expert report in this  
10 case?

11 A. Yes.

12 Q. Do you see the white binder next to you?

13 A. Yes.

14 Q. Could you open that to Tab 6, please? Do  
15 you recognize that document?

16 A. Yes.

17 Q. What is it?

18 A. This is my initial report in this case.

19 Q. All right. And if you turn to Tab 24,  
20 please?

21 A. Yup.

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. And what is it?

25 A. This is a supplemental report that I filed

1 in this case.

2 Q. Thank you. Sorry to make you flip back and  
3 forth, but if you head back to Tab 6, I'm going to  
4 work through that. Where did you do your  
5 undergraduate studies?

6 A. I grew up in the UK, and I did my  
7 undergraduate degree there at the University of  
8 Oxford.

9 Q. And what did you get your degree in?

10 A. Politics, philosophy, and economics.

11 MR. THANE JOHNSON: Your Honor, I have no  
12 objection to him -- just having his CV introduced, I  
13 mean, if that speeds this up.

14 THE COURT: All right. Well, that's okay.  
15 We'll see how long it takes, but thanks.

16 BY MS. HULING:

17 Q. And where did you do your graduate work?

18 A. I studied for a little while in Germany and  
19 Berlin, and then, I moved to continue my PhD work at  
20 the University of California at Berkley.

21 Q. And what were those studies in?

22 A. I got a PhD in political science.

23 Q. Do you currently teach and publish?

24 A. Yes. I teach and publish research in  
25 political science at Carroll College, which is in

1 Helena, Montana.

2 Q. And what is the general subjects that you're  
3 teaching there?

4 A. I teach in a couple of areas. One of them  
5 is what we call political behavior, so that's the  
6 study of how people engage, or some cases, don't  
7 engage with political systems, so it's things like,  
8 public opinion voting, forming views of parties and  
9 issues.

10 Q. And have you published academic research?

11 A. Yeah. So I've published peer reviewed  
12 articles in academic journals. I've published, I  
13 think, about ten of those at this point.

14 Q. And are those on the subjects of voting and  
15 elections?

16 A. Yeah, some of them. And then, as I said,  
17 there's another area that I do my work, my research,  
18 and teaching, and that's, what we call, the subfield  
19 of comparative politics, so that's studies of how  
20 politics work in various countries around the world,  
21 so questions like why some countries are democratic  
22 or not. My research has been broadly in the field of  
23 political behavior, and then, some of it applied to  
24 elections and voting, and attitudes in the United  
25 States, and some of it in other countries, mostly in



1 western Europe.

2 Q. Do you have any experience conducting  
3 studies and surveys?

4 A. Yeah. So for some of my research articles,  
5 I was part of a team that ran public opinion surveys.  
6 I've also used other data that were provided by other  
7 sources, including other researchers and governments,  
8 and as part my teaching work, since I got to Carroll,  
9 I've been teaching a class on elections every couple  
10 of years, and in that class, we run a survey of  
11 voters, which -- the idea is that this is a really  
12 good idea -- a really good way for my students to  
13 also be thinking about what kind of questions we  
14 would ask; what kind of methods would we use to  
15 analyze the responses. So this has been a great  
16 opportunity, I think, for the students to learn and  
17 for me to learn more about elections and voters in  
18 Montana. We've been doing this every couple of  
19 years, roughly, since 2014, and each time, we've had  
20 hundreds or, a couple a cases, around a thousand  
21 people participating in a year.

22 Q. I think you may have mentioned this, but do  
23 you have experience reviewing elections data?

24 A. Yeah, so I have used election outcome  
25 data -- so voting numbers -- in my research, and

1 also, what researchers in this field called, voter's  
2 files, so that's records of registered voters,  
3 including, for some questions, it's interesting to  
4 know what voting history those people have; what the  
5 timing -- the dates on which they did things, like  
6 register to vote.

7 Q. In this case, did you reach any opinions  
8 based on your areas of expertise and study?

9 A. Yes.

10 Q. And are your opinions and the basis for them  
11 included within your report?

12 A. Yes.

13 Q. And any specific facts or data that you used  
14 in reaching those opinions, is that included in your  
15 report?

16 A. Yeah, as it is good practice in my field, I  
17 have done my best to be clear about the sources of my  
18 information, and also when I've done analysis, and  
19 some of the results of the analysis appear in the  
20 report, I've done my best to be transparent about  
21 where I got the information, and what kind of  
22 analysis I used, so that people can understand what  
23 that means.

24 Q. Your opinions are based on reliable  
25 principles and methods within the fields of political

1 science?

2 A. I believe so.

3 Q. And your opinions are accurate to a  
4 reasonable degree of certainty?

5 A. Yes.

6 Q. Outside of what we've already talked about,  
7 do you have any other sources of direct knowledge of  
8 election administration in Montana?

9 A. Yeah, I have -- partly because we've been  
10 doing this survey work with the class -- right away  
11 when I got involved in that, I reached out to the  
12 Secretary of State Office and, also, to the local  
13 county election office to make sure that this was  
14 going to be okay, and wasn't going to be disruptive,  
15 and that none of my students were going to get  
16 arrested while they were trying to just learn some  
17 things. And so I've been in touch with election  
18 administrators to try and make sure that I understand  
19 how that works, and we're not messing with their  
20 processes. I've also had the chance for several of  
21 my students -- in some cases during their studies, or  
22 right after their studies -- have been able to work  
23 in the election -- the county elections office, which  
24 has just been a great experience for them, and I  
25 think mutually beneficial. I have also served as an

1 election judge in my county a couple years ago. I  
2 was trained as an election judge, and I served as a  
3 precinct chief election judge. I believe, it was --  
4 was it the 2022 primary? I think so. And then, I  
5 was away for general that year, but I am hoping to  
6 work as an election judge again.

7 MS. HULING: Your Honor, we would like  
8 tender as an expert witness Dr. Street with expertise  
9 in American politics, voting behavior, election  
10 administration, and statistical and data analysis.

11 THE COURT: Okay.

12 MR. THANE JOHNSON: May I voir dire?

13 THE COURT: Sure.

14

15

VOIR DIRE

16 BY MR. THANE JOHNSON:

17 Q. Did you perform any data collection, with  
18 regard to voter registration, from May 2023 to the  
19 present?

20 A. I'm not exactly sure what you mean.

21 Q. Did you do any numerical data collection of  
22 voter registration from May 2023 to the present date?

23 A. So the data that I've used in my research  
24 before is -- it's collect -- I'm not the person who  
25 collects that. It's the State that collects the

1 voter registration, and they're the ones who compile  
2 and maintain, what we refer to as, the voter file.

3 Q. So in assessing -- in making your opinions,  
4 you're not relying upon actual numerical data of vote  
5 registration from that date -- May 2023 to the  
6 present date; is that correct?

7 A. No, that's not correct. Your question, as I  
8 understood it, is you asked whether I had collected  
9 the voter registrations data, and I told you that,  
10 no, it's the State that maintains that.

11 Q. So you don't have any objection to what the  
12 State's numbers are, then; is that safe to say?

13 A. That's not what I said.

14 Q. Do you disagree with their numbers?

15 A. In general, for me to have an understanding  
16 of any particular number -- I'm afraid I'm not sure  
17 exactly which number you're talking about, so it's  
18 hard for me to -- I can't apply this to a particular  
19 number. But what I can say is that, in general, in  
20 order for me to understand what I can learn from some  
21 data, I need to have an understanding of where it  
22 came from, and how it was generated, and what kind of  
23 calculations were used.

24 Q. Would you agree that your opinions are not  
25 based upon the actual numerical date of registrations

1 in Montana from May 2023 to this date -- to today's  
2 date?

3 A. I would not agree.

4 Q. Your opinions are, basically, that people  
5 are mobile and moving in and out of Montana; isn't  
6 that true?

7 MS. HULING: Your Honor, this seems to be  
8 moving into a full on cross-examination.

9 THE COURT: Right. Just so you know,  
10 Mr. Johnson, I see where you're going with this. I'm  
11 just going to weigh it when I get to that point, so  
12 we'll let him say what he wants, and then, you can do  
13 your cross-examination. We'll figure it out  
14 afterwards, okay?

15 MR. THANE JOHNSON: Okay. Thank you.

16 THE WITNESS: So may I ask? Your name is  
17 Mr. Johnson as well?

18 MR. THANE JOHNSON: My name is Thane  
19 Johnson.

20 THE COURT: Okay. I'm so sorry.

21 MR. THANE JOHNSON: You can call me Thane if  
22 you want to, if that makes it more clear.

23 THE WITNESS: Okay. No, no, no, I was just  
24 confused. I'm afraid I hadn't caught that. I  
25 apologize.

1 MR. THANE JOHNSON: When you have a name  
2 like Thane, you answer to anything.

3 THE WITNESS: Thank you. I was just  
4 confused because I know that one of the lawyers over  
5 here is Mr. Johnson as well. I apologize.

6 MR. THANE JOHNSON: You're fine. You can  
7 call me Thane.

8 THE WITNESS: Okay. Thank you. And you can  
9 call me Alex as well, as we go.

10

11 DIRECT EXAMINATION (CONT.)

12 BY MS. HULING:

13 Q. I'm going to continue calling you  
14 Dr. Street, though.

15 A. Sure. Sure. That's what the students do,  
16 and I've gotten used to it.

17 Q. Dr. Street, what were you asked to do when  
18 you were engaged by Plaintiffs as an expert witness  
19 in this case?

20 A. So I was asked to apply the expertise that I  
21 have, based on my training and my work in this  
22 area -- my research and my teaching -- to understand  
23 HB 892, and what it means, how and whether it could  
24 work, and what effects it might have on voters and on  
25 civic organizations, like the League of Women Voters.

1 Q. I'd like to ask you to turn to your report  
2 on page 4. There's a section called, "New  
3 Legislation HB 892," do you see that?

4 A. Yes.

5 Q. In preparing your report in this case, did  
6 you review the enrolled bill text of HB 892?

7 A. Yes.

8 Q. Is that what we see here?

9 A. Here is my report.

10 Q. I'm so sorry.

11 A. That's okay.

12 Q. If you, then, look at Tab 8.

13 A. Of 8, okay. Yes, this appears to be the  
14 text of HB 892.

15 Q. What, in your understanding, does HB 892 do?

16 MR. THANE JOHNSON: Objection. Calls for a  
17 legal conclusion. I think that's up the Court to do.

18 THE COURT: I'll allow it.

19 THE WITNESS: Okay. So it does several  
20 things. The first is that it rewords an existing  
21 prohibition of double voting. So that was already  
22 there, but it's reworded a bit. The next thing it  
23 does is it also prohibits voting twice in equivalent  
24 elections, and it gives a bit of an explanation of  
25 what equivalent could mean in that context. So as I



1 understand it, an example would be a primary  
2 election, which might be held on different dates in  
3 different places, but if it's the primary for -- I  
4 mean, I guess the obvious example at the moment is  
5 the presidency -- the nominee for the presidency for  
6 each party -- those will be considered now equivalent  
7 elections under the HB 892.

8 BY MS. LANSING:

9 Q. And for the purposes of your report, do you  
10 understand either of those parts of HB 892 to be at  
11 issue in this case?

12 A. I believe those are not at issue in this  
13 case. So I can keep on going? Okay. The next  
14 section has a couple of different provisions in it,  
15 both of them related to voter registration. So the  
16 first one says that you are not allowed to  
17 purposefully -- I'm not exactly sure what that  
18 means -- but purposefully remain registered to vote  
19 in more than one place in this state or another state  
20 any time, whether -- an exception about special  
21 district elections.

22 Q. And if I refer to that, going forward, as  
23 the deregistration requirement, will you understand  
24 what I mean?

25 A. Yeah, so I think what this implies is that,

1 if you're already registered to vote somewhere, you  
2 would have to deregister before you could register to  
3 vote in Montana, or in a different place in  
4 Montana -- is the wording here. So yeah, that seems  
5 to be a requirement to deregister before you could  
6 register.

7 Q. And are there any other parts of HB 892?

8 A. Yeah, and so then, there's another sentence  
9 that follows on right from that, which is also about  
10 voter registration, and this says that you have to  
11 provide information on a previous voter registration.

12 MR. THANE JOHNSON: May I have a continuing  
13 objection to legal conclusions? He's just reading  
14 the statute.

15 THE COURT: No, I get it. You know, I  
16 sustained it, but, obviously, if he gets into issues  
17 about speech, or if he gets into issues about  
18 suffrage or association and those kinds of  
19 conclusions, then, I'll sustain it. So I'm  
20 listening, but it's noted for the record.

21 MR. THANE JOHNSON: Thank you, Your Honor.

22 THE WITNESS: It doesn't say what kind of  
23 information -- what level of detail you have to  
24 provide with this. In one language, it's slightly  
25 different than the previous sentence. It refers --

1 the other one said about any place, and this one  
2 is -- refers specifically to you're not allowed -- or  
3 if you are previously registered to vote in another  
4 county or another state, then, those are the  
5 circumstances under which you have to provide the  
6 previous information. There was a provision on the  
7 Montana voter registration form asking for that  
8 information, but it wasn't entirely clear that it was  
9 required. This is, now, different, in that there's  
10 now a big new penalty. That's the other -- that's  
11 the final thing that HB 892 does is that it  
12 increases -- it imposes a new penalty for violating  
13 any of these sections, and the penalty is, I think,  
14 up to \$5,000 fine, or up to 18 months in jail.

15 BY MS. HULING:

16 Q. And for clarity, do those potential  
17 penalties attach to violation of either the  
18 deregistration requirement or this sort of omission  
19 provision?

20 A. That's my understanding.

21 Q. And what parts of HB 892 do you understand,  
22 for purposes of your report, to be relevant to this  
23 case?

24 A. So it is these final -- these sections about  
25 voter registration, so the deregistration and, then,

1 the omission of previous registration information,  
2 and then, also, the big new penalties for any  
3 violations of those.

4 Q. And who do you understand -- what groups of  
5 voters do you understand -- or what types of voters  
6 do you understand the deregistration requirement or  
7 omission provision to apply to?

8 A. So it seems to apply to people who were  
9 previously registered. They're the ones that who,  
10 now, have to deregister, or would have to provide  
11 some level -- it's not entirely clear what level of  
12 detail -- about their previous registration. So that  
13 would be people who have moved who need to -- and  
14 now, in order to vote in the place where they live,  
15 which is now the only place where they're eligible to  
16 vote -- they need to register or update their  
17 registration, and this provision seems to be saying,  
18 now, that they actually should have deregistered  
19 first, and that there's a big new penalty if they  
20 didn't provide the information on the previous  
21 registration.

22 Q. Dr. Street, you mentioned earlier that one  
23 of the focuses of your works and research has been in  
24 election administration?

25 A. Yes.

1 Q. Can you provide, at a high level, an  
2 overview about elections that are administered in the  
3 United States?

4 A. Yeah. So there are some distinctive  
5 features of the American system. One is that it is  
6 very decentralized. So different states, and  
7 sometimes, even different counties, administer  
8 elections in somewhat different ways. Another  
9 important feature is that, in the system, the onus is  
10 on the voter to register. So there are places where  
11 the government has information on where you live,  
12 often, and then, they can put you on the voter list.  
13 But in general, the US approach -- there are now some  
14 exceptions -- but in general, the US approach is  
15 that, now, it's actually on you. You're the one that  
16 needs to register, and you need to register in  
17 advance of a deadline, or whatever. So it's  
18 decentralized; the onus is on the voter to register.  
19 It's also important to understand that the US system,  
20 it is the states and the counties that deal with,  
21 what is known as, list maintenance. So when somebody  
22 dies, or when somebody moves away, the way that it  
23 works is that it's the states or the counties that  
24 check and, then, eventually remove that person from  
25 the list of registered voters in that place.

1 Q. Focusing on that last section -- the list  
2 maintenance obligations, and turning specifically to  
3 Montana, can you describe some of the steps that  
4 election administrators here take to maintain voter  
5 lists?

6 A. Yeah, so these are regulated by state and  
7 federal law. There is the National Voter  
8 Registration Act of the early '90 and the Help  
9 America Vote Act, I believe, of 2002. They have  
10 requirements on what you should do, what sources you  
11 should check to try and keep voter lists so that they  
12 reflect who is actually there. So those include  
13 things like, there is a national change of address  
14 system, and the -- Montana -- I believe the counties  
15 or state refer to that information to find out --  
16 "Okay. Who is listed as moving?" -- and if they have  
17 information that suggests you've moved, then, they  
18 try and follow up with you to see whether you're  
19 still where they have, so they'll send you a mailer,  
20 and they try and send it so it will go forwarded, if  
21 you've left a forwarding address, which some people  
22 do if they move. Then, they use that, and if you  
23 respond and you say, "No, no, I'm still here," then  
24 you stay on the lists; or if you say, "Yeah,  
25 actually, I moved away. I live in Hawaii now," then,

1 they're very happy for you, but they will remove you  
2 from their list of registered voters there; or if you  
3 don't respond, or if you don't vote in a general  
4 federal election, then, they will also send a mailer  
5 like this, and then, if you're not voting and not  
6 responding, they will -- first, they will list you as  
7 inactive. You can still vote in the state. If you  
8 go to your polling place, your name will still be on  
9 the list, and then, if you vote, you go back to being  
10 active again. But once you're inactive, if you,  
11 then, don't vote in two more federal general  
12 elections -- so spaced a couple more -- four more  
13 years -- then you, eventually, do get removed. So  
14 those are some of the processes of list maintenance.  
15 They also refer to lists of people who have died and,  
16 then, remove those people, so there's a variety of  
17 sources that they use.

18 Q. You mentioned that HB 892 appears to apply  
19 when voters have moved between Montana counties?

20 A. Uh-huh. Yeah, I mean, the second part of it  
21 explicitly refers to another county; the first part  
22 of it is not so clear.

23 Q. What is your understanding of how election  
24 administrators would currently update a voter's  
25 registration information when that person's moved

1 between counties in Montana?

2 A. Yeah, so if you're within the same county,  
3 then they have you on their list of registered voters  
4 already. If you are from another county, then you're  
5 not on their list, so what the election officials do  
6 is they refer to a state-wide system, and they see if  
7 they see a match, and if they do, then they update  
8 your record in that state-wide system. So it's a way  
9 in which the election administrators, in the  
10 different counties, can, kind of, keep track, and if  
11 somebody -- if they need to move somebody and say,  
12 "Oh, no, this person's here now," then that person  
13 will be removed from the list in the previous county  
14 and added to the list in the new one. It is the  
15 election administrator who is doing this process, and  
16 so it's not clear to me whether this would keep a  
17 voter in compliance because, under HB 892, it  
18 suggests that you are meant to deregister because it  
19 talks about your purpose. I'm not sure whether  
20 they're going to another county and saying, "I want  
21 to vote here," and they check what's going on in that  
22 system -- whether that would count as keeping you in  
23 compliance. That's not clear to me.

24 Q. Are you aware of any process or system in  
25 Montana where a voter could affirmatively deregister



1 themselves?

2 A. I don't think there is a state-wide system  
3 for deregistering or canceling your voter  
4 registration.

5 Q. And are you aware of any other systems that  
6 Montana administrators could use to effectively  
7 maintain and update their registration lists?

8 MR. THANE JOHNSON: Objection. Irrelevant.

9 THE COURT: Can you repeat the question?

10 BY MS. HULING:

11 Q. You've listed several ways that Montana  
12 election administrators maintain their voter lists.  
13 Are you aware of any other possibilities that other  
14 states use to update their voter lists?

15 MR. THANE JOHNSON: What would be the  
16 relevance of that? I mean, this is the bill that  
17 they're challenging. Whether another state does  
18 something else has absolutely no bearing on whether  
19 this is constitutional or not.

20 THE COURT: Sustained -- well, go ahead.  
21 What's your argument?

22 MS. HULING: With respect, there is a  
23 question of whether this law is narrowly tailored to  
24 the point it's supposed to serve -- to the state  
25 interest -- and if there are other options that other

1 states are using that Montana's not availing itself  
2 of, that could be relevant.

3 THE COURT: I'll allow it, but once again,  
4 I'll give it the weight it deserves, but I understand  
5 the objection, Mr. Johnson.

6 MR. THANE JOHNSON: Fair enough, Your Honor.  
7 Thank you.

8 THE WITNESS: Yeah, there is -- I mean, this  
9 is also linked to what I was saying about list  
10 maintenance -- is that there are a bunch of states  
11 that have joined together to create an organization  
12 that helps them to keep track of people who are  
13 moving between states. It's called ERIC -- the  
14 electronic registration information center -- and  
15 what it does is it cross references the voter files  
16 from different states to see whether it seems to be  
17 seeing the same person is now showing up in this  
18 place. They also use a variety of other sources.  
19 They do use the information from the National Change  
20 of Address system; I believe they use other state  
21 sources of information on who's, you know,  
22 registering, or registering an address with the  
23 state. I believe, in some circumstances, they also  
24 have -- they're able to get information that would  
25 help them to really make sure they're identifying

1 people correctly.

2 THE COURT: Are they required to do this by  
3 law, or is this just something the election  
4 administrators do on their own?

5 THE WITNESS: No, this is a -- the states  
6 have agreed to this, so it's a system that the states  
7 have created.

8 THE COURT: I know, but I'm just wondering  
9 if they've just agreed to it within their  
10 administrator process, or whether it's required by  
11 law that they engage in this sharing of information.

12 THE WITNESS: I believe it's a mix. I  
13 believe some of the states now have it written into  
14 their law.

15 THE COURT: You don't know for sure?

16 THE WITNESS: I think I remember reading  
17 that, but you're right, I want to be a bit cautious.

18 THE COURT: All right. Go ahead.

19 BY MS. HULING:

20 Q. Is being registered in two places the same  
21 as voting in two places?

22 A. No.

23 Q. And you previously mentioned the  
24 deregistration requirement of HB 892. Nationally, is  
25 there any sort of centralized deregistration process

1 for folks who are moving to Montana from other  
2 states?

3 A. No, there is no national deregistration or  
4 cancelation system. There is a national voter  
5 registration form that can be used in all states, but  
6 there is no equivalent. I suspect that reflects the  
7 fact that this is just not how it's done. Again, the  
8 onus, in the US system, is almost always that it's on  
9 the voter to register; then, it's the states and the  
10 counties, and sometimes, the states cooperate, as in  
11 the ERIC system, where -- think about half of them  
12 are in that system. They're the ones that do the  
13 list maintenance. In that context, it, kind of,  
14 makes sense that there is not a federal  
15 deregistration system because that's not something  
16 the voter is expected to do.

17 Q. Could you turn to Tab 17 in the binder  
18 please?

19 A. Yeah.

20 Q. What is that document?

21 A. This looks like it is part of the election  
22 assistance commissions website.

23 Q. And what kind of information is included in  
24 that?

25 A. This has some information on whether a

1 state -- each state -- and some territories have a  
2 statewide centralized one stop place where you go to  
3 cancel or to deregister as a voter.

4 Q. Where it says -- for some of the states --  
5 "Cancellation form NA," what do you understand that  
6 to mean?

7 A. I understand that to mean it's not  
8 applicable, but there isn't a statewide system.

9 Q. And so how would a voter who has moved from  
10 that state go about deregistering?

11 A. That would probably not be clear to --

12 MR. THANE JOHNSON: Objection. Calls for  
13 speculation and foundation.

14 THE COURT: All right. If you can lay a  
15 foundation, you can go ahead, Ms. Huling.

16 BY MS. HULING:

17 Q. Is there anything in that document that  
18 would explain how a voter from, say, Arkansas would  
19 deregister?

20 A. I mean, I think there's an implied  
21 suggestion that, if there's no cancelations form  
22 statewide, then what you should do is contact your  
23 local election office, and there's a directory for  
24 each state.

25 MR. THANE JOHNSON: Same objection.

1 THE COURT: All right. Sustained for  
2 speculation.

3 BY MS. HULING:

4 Q. Moving on. In your research, is it common  
5 for states to require voters to deregister?

6 A. No.

7 Q. Could there ever be an instance when a voter  
8 has been previously registered without realizing it?

9 MR. THANE JOHNSON: Objection. Speculation.  
10 Foundation.

11 THE COURT: All right. If you can lay the  
12 foundation.

13 BY MS. HULING:

14 Q. In your experience working with voters and  
15 studying voter behavior, have you ever come across  
16 instances when voters may not realize whether or not  
17 they're previously registered?

18 A. Yeah, this is an issue that is increasingly  
19 relevant because there are, now, a few states that  
20 are doing a version of what is called -- there is an  
21 umbrella term -- it's called automatic voter  
22 registration, where the states, now, will register  
23 you as a voter when you provide state agencies with  
24 information on your address. It varies a little bit  
25 exactly what combination of sources they're using

1 from state to state. Oregon and Washington are doing  
2 versions of this, for example. They do typically  
3 have an opt out --

4 MR. THANE JOHNSON: Objection. Again,  
5 irrelevant. I mean, it doesn't matter what  
6 Washington is doing. What we're challenging is the  
7 constitutionality of this statute.

8 THE COURT: Right. Well, my thought is, if  
9 he's saying that people are getting automatically  
10 registered in Oregon or Washington, they might move  
11 to Montana, not knowing that they're registered in  
12 Oregon and Washington, and not knowing that they have  
13 to deregister in Oregon or Washington, so overruled.

14 MR. THANE JOHNSON: Okay. Thank you.

15 THE WITNESS: Your Honor, that is where I  
16 was going. That's the problem with this. I think it  
17 actually is an issue both with the deregistration  
18 requirement, the language in the laws about  
19 purposefully remaining registered, but it's not clear  
20 whether these people would count as purposefully  
21 having registered in the first place. I don't know  
22 what would happen to them, and I think they would  
23 also potentially violate the second part where they  
24 wouldn't know what information was listed under their  
25 previous registration because they may not have

1 affirmatively thought that that's what they were  
2 doing, and then, they would also be in violation of  
3 that requirement that they should have told Montana  
4 about something that they may not affirmatively have  
5 done.

6 BY MS. HULING:

7 Q. And specifically for that omission  
8 provision, in your experience -- working with voters,  
9 studying their behaviors -- are you aware of any  
10 other reasons a person might not know, or might  
11 misremember, their prior registration information?

12 A. Yeah, this can happen quite easily. People  
13 could have been registered a long time ago, and then  
14 dropped off, and may not be sure now, any longer,  
15 whether they were. It's also an issue with people  
16 who are moving a lot. So if you've been moving, you  
17 may not be sure which of those previous locations you  
18 were registered at. For example, people in the  
19 military are often required by their job to move  
20 every few years, and -- so people on the Malmstrom  
21 Base outside Great Falls, for example, they may not  
22 be sure exactly which of these addresses they are  
23 previously registered. It's even more complicated if  
24 they've been stationed overseas because you can vote  
25 as an uniformed American who's been stationed



1 overseas. And then, your vote counts in the place  
2 where you're listed for tax purposes as registering,  
3 but you may not have a house address there any  
4 longer. In some cases, the county in the place where  
5 you were previously registered would say, "Okay.  
6 Just use the county courthouse as your address on  
7 your voter registration." But those kind of details  
8 are, in my experiences and the research that people  
9 do on voters, they just tend to really -- these are  
10 not the issues that are at the top of their head, so  
11 it's quite easy to think -- to understand why a lot  
12 of voters may not have command of this. You know,  
13 there are other examples of groups of people who are  
14 particularly mobile, and who are particularly likely  
15 to come into -- potentially come into violation of  
16 these new laws.

17 Q. Sticking with this issue of voter mobility,  
18 in your research, do you have any awareness of about  
19 how many voters are moving?

20 A. Yeah, so according to census data, roughly  
21 one in seven Americans moves each year, so it's  
22 something in the region of 40 million -- a bit more.

23 Q. Do you have any sense for how many of these  
24 voters are moving locally, or inter-county, or  
25 inter-state?

1           A.    Uh-huh.  Yeah, so of the people who move,  
2    around half move within a county; another quarter  
3    move between counties and a state; and then, another  
4    quarter move between states, and that true  
5    nationally, and according to the census data, that's  
6    also broadly the pattern in Montana.

7           Q.    And is it your understanding for the quarter  
8    moving between counties and the quarter moving  
9    between states, would those moves implicate HB 892?

10          A.    Yes, that is my understanding.  This --  
11    again, the second provision -- this omission  
12    provision -- explicitly refers to people moving from  
13    another county or another state, and I think that may  
14    be the intended meaning of the first provision, which  
15    refers to you're not allowed to remain registered in  
16    a different place.

17          Q.    Based on your research, are you aware  
18    whether there are potentially eligible voters who are  
19    moving to or within Montana?

20          A.    Yes.  So we know from census data that there  
21    are tens of thousands of people moving to Montana  
22    each year, over recent years -- around 40,000 -- and  
23    then, around a similar number -- approaching  
24    40,000 -- also moving between Montana counties each  
25    year.  We also know that Montana --

1 MR. THANE JOHNSON: Objection.

2 Nonresponsive.

3 THE COURT: Sustained.

4 BY MS. HULING:

5 Q. Thank you. And you mentioned that that was  
6 based on US census data?

7 A. That's correct.

8 Q. On pages 8 and 9 in your report, and  
9 specifically Table 1 of your report, you reference  
10 something called EAVS data.

11 THE COURT: Are you going to admit these  
12 reports, or what are we doing here because there's a  
13 lot of reference to them, and they're not in  
14 evidence?

15 MS. HULING: We are -- we will move to admit  
16 the report. I was going to wait until we had gone  
17 through it, happy to do it now.

18 THE COURT: I mean, my take is, if you're  
19 going talk about something, you need to get it into  
20 evidence first. Do you have a motion then?

21 MS. HULING: Yes, we move to admit the  
22 expert report.

23 THE COURT: Which one? You've got six and  
24 then you have what?

25 MS. HULING: For right now, we'll just do

1 Tab 6, the initial expert report.

2 THE COURT: All right. Mr. Johnson?

3 MR. THANE JOHNSON: Your Honor, I object on  
4 hearsay. It's classic hearsay.

5 THE COURT: Well, then --

6 MS. HULING: Your Honor, if I may reply to  
7 that?

8 THE COURT: Sure.

9 MS. HULING: Similar to the declarations  
10 that were previously admitted today, this is a sworn  
11 written statement by Dr. Street, and beyond that, Dr.  
12 Street is here today; he's testifying; the State will  
13 have ample opportunity to ask him questions on the  
14 report, to the extent that they have them, and he's  
15 in the middle of laying the foundation that he has  
16 for this expert report, and I believe, under Matter  
17 of R.N.B., permitting hearsay statements that are  
18 corroborated by competent evidence is admissible.  
19 And even beyond that, this is a preliminary  
20 injunction hearing, and blackletter laws, generally,  
21 that the hearsay objection and rules are relaxed in  
22 this context.

23 MR. THANE JOHNSON: Your Honor, I do object  
24 on hearsay grounds. There's some statements that he  
25 has made in his reports that he has not testified to

1 that I would rather not have to get into them.

2 THE COURT: All right. Well, I mean, I'm  
3 looking at 27-19-303, and it says -- I mean, this is  
4 his sworn statement; he's got it notarized -- it  
5 says, "As long as they're dually verified in the  
6 material allegations, setting forth the grounds for  
7 the order made positively, not upon information and  
8 belief." So if you just want to qualify that part B,  
9 then I'll admit it.

10 MS. HULING: We so qualify.

11 THE COURT: Well, are these made upon  
12 information -- or the information that you presented  
13 in this affidavit is not made upon information  
14 beliefs; is that correct, if know?

15 Or if you want to explain that to him.

16 THE WITNESS: Yeah, I'm sorry. I'm not sure  
17 exactly what that means.

18 MS. HULING: I'm sorry. I don't have the  
19 exact language in front of me.

20 THE COURT: It just says, "Dually verified  
21 in the material allegations of the affidavit setting  
22 forth the grounds for the order are made positively  
23 and not upon information and belief."

24 THE WITNESS: There may --

25 MR. THANE JOHNSON: May I voir dire on that?

1 THE COURT: Well, let her ask the question,  
2 and then you can.

3 BY MS. HULING:

4 Q. Is that true -- the language that was just  
5 read out, and I'm sorry, I can't repeat it all back  
6 from memory.

7 A. Yeah, this is my work. That's what it is.  
8 It's not anything else.

9 THE COURT: Mr. Johnson?

10

11

VOIR DIRE

12 BY MR. THANE JOHNSON:

13 Q. Would you agree that, on page 5, paragraph  
14 10 -- take your time. Get your report.

15 A. Okay. I see paragraph 10.

16 Q. You state that, "House Bill 892 is likely to  
17 have a chilling effect on political participation  
18 among Montana residents"?

19 A. That is part of my conclusion, yes.

20 Q. And you state that without having any  
21 numerical data to support that statement that it is  
22 likely to have a chilling effect?

23 A. I don't think I agree with that  
24 characterization.

25 Q. Well, I don't see any -- in that

1 paragraph -- any numerical data showing that there  
2 was any voters that informed you --

3 MS. HULING: Objection, Your Honor. Again,  
4 this is something that can be addressed on cross.  
5 This is not proper voir dire.

6 MR. THANE JOHNSON: Your Honor, they're  
7 trying to lay the foundation that this is not based  
8 upon his suspicion and belief, and there is no  
9 data -- numerical data -- that says, "Ten voters came  
10 up to me and told me that I was chilled by this  
11 bill," is there?

12 THE COURT: Hold on, Mr. Johnson. You can  
13 ask this on cross examine. Based on the statute that  
14 you both gave me at the beginning of this hearing, it  
15 sounds like it's admissible in this kind of  
16 proceeding, so the Court will admit Plaintiffs'  
17 Exhibit 6.

18

19 (Whereupon Plaintiffs' Exhibit 6 was  
20 admitted.)

21

22 MS. HULING: Thank you, Your Honor.

23

24

25

1 DIRECT EXAMINATION (CONT.)

2 BY MS. HULING:

3 Q. Turning back to your report, we were looking  
4 at pages 8 and 9 and, specifically, Table 1 on that,  
5 where you reference EAVS data, and I was hoping you  
6 could explain to the Court what that is.

7 A. Yeah, EAVS is the acronym for the election  
8 administration and voting survey, which is a survey  
9 that the US election assistance commission runs every  
10 two years after federal general elections. What they  
11 do is they send this out to election administrators  
12 across the country.

13 Q. And if we look at the -- I believe it's the  
14 bottom line in Table 1 -- you reference cross  
15 jurisdiction movers. What does that mean in the  
16 context of EAVS data?

17 A. Yeah, so the EAVS survey is the survey data  
18 available on the election assistance commission  
19 website for people who are trying to understand  
20 election administration, and they also provide, what  
21 we refer as, the survey instrument, which is -- as in  
22 this is what we send them, right? They have a  
23 spreadsheet with the numbers and responses, but then,  
24 they also have showed, this is exactly what the  
25 question we asked the election administrators. So



1 there's a question that is about registration  
2 reforms -- voter registration reforms -- how many  
3 have you received over this two-year period since the  
4 last general federal election? And they use this  
5 two-year period because that is the cycle for these  
6 high attention federal general elections. So over  
7 that time period -- over that whole time period --  
8 what level of activity did you see? And so they ask,  
9 not only for the total number of registration forms  
10 received, but also for a few different types, and so  
11 one of the types that they ask about is where these  
12 people, who are moving across jurisdiction, for  
13 example, across county. And that's relevant here  
14 because HB 892 refers explicitly in places to people  
15 moving across county. So what this means is that, in  
16 addition to the census data, which gives us a sense  
17 of how many people are moving to Montana; what's the  
18 scale -- what's the magnitude of this, we're also  
19 able to corroborate some of those numbers and get a  
20 sense of do other data sources give broadly similar  
21 conclusions? In this case, this is specifically  
22 about voter registrations, right? This has the  
23 advantage that it's specifically about voter  
24 registrations, whereas the census data would include,  
25 for example, children who may not -- aren't old

1 enough to vote yet. So the EAVS data are really  
2 good, and they're really useful, and they -- again,  
3 they help to give us a sense of the scale. And what  
4 this final line here shows is, again, that over the  
5 two-year period, from the 2018 to the 2020 general --  
6 so that was, like, the period leading up to a  
7 presidential election -- there was about 136,000  
8 people who submitted a new registration form in  
9 Montana having moved across counties -- across  
10 jurisdictions.

11 Q. And looking at the EAVS data you've  
12 presented here, did it indicate anything else to you  
13 about the number of people that might be impacted by  
14 HB 892's challenge provisions?

15 A. Yeah, there is -- there is a possibility  
16 that people who are new to the state may -- at least  
17 some of them -- also be showing up in another part of  
18 this table. The reason is the EAVS -- again, they  
19 ask for these categories, and what they ask is have  
20 people moved across jurisdiction, or is it new  
21 registrations? Somebody who comes to Montana and  
22 registers for the first time in Montana, they might  
23 have been registered in another state previously, but  
24 Montana wouldn't know that. If they were part of the  
25 ERIC system, for example, they might, but they

1 wouldn't necessarily know that somebody had been  
2 registered in another state previously. That person  
3 might indicate that they're a new registrant on the  
4 voter registration form, or they might not. It's not  
5 completely clear on the voter registration form  
6 whether it means you have never registered before, or  
7 that you're just moving -- this is new to you in this  
8 state. So it's possible that there are also some  
9 cross state movers in that other category there with  
10 the 60,000 people. So again, in terms of  
11 understanding the scale of what we're talking about,  
12 these different sources clearly show that we're  
13 talking about tens of thousands of people a year are  
14 moving and who need to update their voter  
15 registration so they can move and exercise their  
16 right to vote in the place where they now live. And  
17 under the existing system, that's how it works.  
18 Under HB 892, now, there are these new provisions  
19 that you should have deregistered first, and that you  
20 have to -- there's a legal penalty now, if you didn't  
21 provide any previous registration information.

22 Q. And you mentioned the EAVS data is a  
23 two-year cycle?

24 A. Uh-huh.

25 Q. Are voter registrations happening at a, kind

1 of, constant rate through that period?

2 A. Typically not. When I've done research on  
3 the timing of voter registration, and other people  
4 have done research on this as well, and what we see  
5 is that -- perhaps not too surprisingly -- people  
6 respond to deadlines. So a lot of the voter  
7 registration activity is right around and before the  
8 deadline for registering as a voter. In Montana,  
9 you're also allowed to register as a voter on  
10 elections day, and that is also a day that sees  
11 activity. Now, the federal general election cycle is  
12 probably the most important cycle in the United  
13 States. It's certainly the one that gets, by far,  
14 the most media attention -- there's a lot of research  
15 on this -- the most advertising, spending. These  
16 were all things that the scholars in my field have  
17 studied. There are also other elections, right?  
18 There are school district elections; city elections;  
19 mayoral elections. So in that two-year period, there  
20 are also various other elections in different places  
21 at different times and staggered in different ways  
22 all across the country. Again, it's very  
23 decentralized. So there's some patterns of  
24 registration around those as well, but the biggest --  
25 the focusing event for most people -- for a lot of

1 people -- are these federal general elections.

2 Q. I think I've heard we have some federal  
3 general elections coming up -- and primary  
4 elections -- coming up this year. As we move towards  
5 that, would you expect to see an increase in voter  
6 registrations?

7 A. Yeah, based on the research that I've done,  
8 and my colleagues in this field have done, yes.

9 Q. And how would those registrants have to  
10 interact with HB 892?

11 MR. THANE JOHNSON: Objection. Calls for a  
12 legal conclusion. I think we've been through this.

13 MS. HULING: Let me rephrase, Your Honor.

14 BY MS. HULING:

15 Q. Would those registrants, who are registering  
16 closer in time to an upcoming election, have any  
17 different interaction with HB 892, based on your  
18 experience working with voters?

19 A. Yeah, it is worth thinking about that.

20 MR. THANE JOHNSON: Objection. Calls for  
21 speculation and foundation. I don't know if he can  
22 testify as to how voters are going to interact with  
23 this legislation.

24 THE COURT: Maybe it's not the right choice  
25 of words, but I guess if -- how it would effect them?

1 Or how would it effect their registration in two  
2 different locals when they're doing this, kind of,  
3 last in time registrations? I'll sustain it -- I  
4 mean -- sorry -- I'll overrule it.

5 Go ahead.

6 THE WITNESS: Yes, so this -- again, because  
7 so much of this activity tends to happen in this  
8 fairly short period before the deadline --

9 THE COURT: What is that short period?

10 THE WITNESS: It varies. So the last 30/60  
11 days are really when a lot of the activity happens,  
12 and then, even disproportionately on election day in  
13 Montana.

14 THE COURT: So then -- and I'm not an expert  
15 on this, obviously -- so how close to election day  
16 can I -- if I move from Helena to Bozeman, how close  
17 to election day can I register to vote in Bozeman?

18 THE WITNESS: Under the current system, you  
19 could do it on election day.

20 THE COURT: So then, if I check those three  
21 boxes that the State says I have to check, in order  
22 to comply with the statute, is there an immediate  
23 removal of me from the registration that I previously  
24 had in Helena, if you know?

25 THE WITNESS: Within state, my understanding

1 is that you would -- the way it would work is the  
2 election administrator would, kind of, instantly  
3 switch you from being registered in Helena to being  
4 registered in Bozeman. It's more complicated for  
5 people from out of state because Montana doesn't have  
6 that system with people from out of state. So I  
7 think it would be hard and, quite likely, impossible  
8 for them to verify whether they were able to  
9 deregister. You know, the election offices in those  
10 other states are also going to be super busy in that  
11 time period leading right up to the election.

12 THE COURT: All right. And you can talk  
13 about this, too, Mr. Johnson.

14 So then, if I'm in state, then, there's an  
15 electronic process that, if I properly registered  
16 down here, I would immediately be removed from the  
17 registration up in Lewis and Clark County?

18 THE WITNESS: Yes, I believe so.

19 THE COURT: All right. Sorry, you can go  
20 ahead, Ms. Huling.

21 BY MS. HULING:

22 Q. And just to be clear, that process is  
23 something that is conducted by election  
24 administrators, not by the voter themselves who's made  
25 that county move?

1           A.    Yeah, and this is the system that Montana  
2 has been using, so far as I know, for quite a few  
3 years.

4           Q.    And that would happen regardless of whether  
5 a person had provided their prior registration  
6 information on their registration application?

7           A.    My understanding is yes.

8           MR. THANE JOHNSON:  Objection.  Speculation.  
9 Foundation.  I don't think he knows what the state  
10 does, unless he's -- I mean, that's up to the state.

11           THE COURT:  All right.  Do you know?

12           THE WITNESS:  So when I was an election  
13 judge, we did have some people come in, and they  
14 said, "I'm from a different state -- different  
15 county, but I live here now," and we had to tell them  
16 that they should fill in the registration form, and  
17 go to the county election's office, and then, give  
18 them their name and the date of birth.  And I think,  
19 from what I've heard --

20           THE COURT:  All right.  So that's as far as  
21 you can go?

22           THE WITNESS:  Yeah, that's right.  I think  
23 Mr. Fitzpatrick --

24           THE COURT:  Hold on.

25



1 BY MS. HULING:

2 Q. Do you know whether it's common voter  
3 behavior to deregister?

4 A. It is not.

5 Q. And what is the basis for your answer there?

6 A. So there were a number of sources for that.  
7 One of the sources that I use in this report, and  
8 that I've used in some of my publications, is the  
9 National Council of State Legislatures, which keeps  
10 track of state election laws in all sorts of  
11 different places, and they state that on their  
12 website. This ERIC system, they also say on their  
13 website that --

14 MR. THANE JOHNSON: Objection. Hearsay and  
15 foundation.

16 THE COURT: Well, it's hearsay, so  
17 sustained.

18 BY MS. HULING:

19 Q. The basis for your answer was relying on  
20 data that you were mentioning?

21 A. Yeah, it was relying on this --

22 MR. THANE JOHNSON: Objection. Hearsay. He  
23 says it was from their website, which is hearsay.

24 THE COURT: All right. Well, just ask  
25 another question, or somehow clarify this so it's not

1 hearsay, and you can find out what his conclusions  
2 were, and whatnot, based on his research, or whatever  
3 he's talking about.

4 BY MS. HULING:

5 Q. In your profession, is it common practice to  
6 reference and site to data that is publicly available  
7 and use that in conducting your research?

8 A. Yeah, as I said, I have actually referred to  
9 these sources from the National Council of State  
10 Legislatures in my published research.

11 MR. THANE JOHNSON: Same objection. Just a  
12 continuing, and I'll shut up.

13 THE COURT: Noted.

14 MS. HULING: Moving on, Your Honor.

15 THE WITNESS: The one other thing --

16 THE COURT: Hold on.

17 MR. THANE JOHNSON: Objection.

18 Nonresponsive.

19 THE COURT: Yeah, sustained.

20 BY MS. HULING:

21 Q. You mentioned a bit ago that some folks, in  
22 your experience working with voters, don't always  
23 know or remember their prior registration  
24 information; do you remember testifying to that?

25 A. Yeah.

1 Q. Are there specific populations -- I think  
2 you mentioned a few -- but are there any other  
3 specific populations for whom that's more commonly  
4 true, in your experience?

5 A. Yeah, so there are populations that we know  
6 are more mobile. This includes younger voters,  
7 students; it includes Native Americans on  
8 reservations, in particular in Montana, where housing  
9 tends to be a pretty big issue. The mobility also  
10 applies to some people who are serving in the US  
11 military; housing insecure or homeless people. So  
12 all of these people are mobile, and some of them so  
13 frequently, that it's harder for them to be sure  
14 which of those recent addresses they would have been  
15 registered.

16 Q. Do you see any issues with subjecting these  
17 voters to a criminal penalty for failing to provide  
18 that information?

19 A. Yeah, in general, the research in this field  
20 suggests that when there's the threat of criminal  
21 penalties, that deters people, and that, particularly  
22 if there's some uncertainty, and particularly the  
23 kind of people who are more marginal in their  
24 likelihood of voting, so people who don't have a ton  
25 of resources; don't have a ton of education; haven't

1 had experience dealing with bureaucracies and ways  
2 that don't intimidate them. So people like that, if  
3 they're worried that they may now, under these new  
4 provisions, not be keeping up with this  
5 requirement -- that they should have deregistered  
6 first, or they're not sure whether they're providing  
7 the expected information, or whether they're able to  
8 provide the expected information about a previous  
9 place of registration, the fact that these now carry  
10 these pretty serious penalties, based on the research  
11 in this field, which thinks of these things as costs  
12 that are imposed on voters, which some people,  
13 especially those with resources may be able to bear,  
14 but not everyone, so this is the kind of thing that  
15 will reduce registration and turn out.

16 Q. In your research on voter behavior, have you  
17 done any research or study of the effect of voter  
18 engagement and civic engagement organizations?

19 A. Yeah, so the general view in the field is  
20 that civil organization are very important for the  
21 health of American democracy. This is a long  
22 standing observation that Americans -- you know, they  
23 go -- they're members of all these clubs. And there  
24 was a French author from 200 years ago who showed up  
25 in America and was amazed by this. It's one of the

1 classic texts of political science by a guy called  
2 Alexis de Tocqueville, and he said, "These people,  
3 they keep on meeting, and that must be how they're  
4 learning to be so democratic together. They're  
5 getting all these habits together, and they're  
6 providing each other with resources, and experience,  
7 and skills." And so the general view in the field is  
8 that this is super important for voters, as they  
9 engaged with the political system and giving them the  
10 confidence and ability to do that, and that these  
11 organizations are particularly important for, again,  
12 these people who might be more marginal, whether  
13 they're going to be able to exercise their right to vote  
14 or not.

15 Q. Looking back at the EAVS data that we were  
16 discussing earlier in your report pages 9 and 10, I  
17 believe.

18 A. Yeah.

19 Q. Do we have any sense for how many Montana  
20 voters are typically helped with registration by  
21 civic groups?

22 A. Yeah, so that is another question that the  
23 EAVS includes --

24 MR. THANE JOHNSON: Objection. Foundation.  
25 I'd like to know when.

1 THE COURT: Well, let him answer. I mean, I  
2 think he can answer it, so overruled.

3 THE WITNESS: I think I'll just answer your  
4 question, Ms. Huling. Okay. So yeah, this is  
5 another question they ask. They ask state election  
6 administrators how -- what is the sources for some of  
7 these voter registration forms that they receive, and  
8 there are a few categories. One of the categories is  
9 civic organizations. So groups like the League of  
10 Women Voters would show up in there if they were  
11 reported as the source for that, and that's on the  
12 order of thousands -- around 10,000, I think,  
13 typically over recent election cycles in Montana in  
14 total. They have a couple of categories of response  
15 to that question. When I give that number, I'm  
16 subtracting. They do have some that they say are  
17 duplicates, or rejected, for some reason. They also  
18 have some that they say are new, which, for now, I'm  
19 going to say, again, some of them could be just new  
20 to the state, but actually they've been registered  
21 elsewhere. For now, I'll set that aside. But still,  
22 we've got evidence that there are thousands of people  
23 whose photo registration forms are submitted in this  
24 way, and if anything, that may be an undercount  
25 because the League of Women Voters, for example, they

1 may be helping people to use the State's registration  
2 form, rather than the version that they provide,  
3 which sometimes, these organizations also collect a  
4 little bit more information because, then, they like  
5 doing things like, "Well, now we helped you to  
6 register. We also want to remind you, hey, it's  
7 election day," so they'll use that to contact the  
8 people who they've helped to register. I think the  
9 way that the State knows that the source for these  
10 forms is that they have those, kind of, extra bits on  
11 them. But sometimes, these civic organizations are  
12 helping or encouraging people to use forms that don't  
13 even have that, just a state -- regular state  
14 registration form. So if anything, I think this is  
15 on the low end.

16 Q. In your professional opinion, what would be  
17 the result if civic groups, like the League, were  
18 unable to help with voter registration?

19 A. Fewer people would register.

20 Q. Momentarily turning back to national issues,  
21 in your experience, is voter fraud a common problem  
22 in the United States?

23 A. No.

24 Q. And what do you base that opinion on?

25 A. There are isolated cases, and some of these

1 are prosecuted and some are convicted. To my  
2 knowledge, in Montana, in recent years, there was one  
3 case, I think about 15 years ago, where somebody was  
4 convicted for having used his wife's absentee ballot.  
5 I believe there was somebody who was convicted a  
6 couple of years ago for signing -- for registering  
7 under a fake name -- a joke name. I don't know  
8 whether that -- I mean --

9 THE COURT: It was my case.

10 THE WITNESS: Okay. Great. It seems like a  
11 silly position for him to put himself in, and I don't  
12 know --

13 Your Honor, honestly, was he trying to vote  
14 with that, or was it just, like -- joking or  
15 something? I'm sorry. I'm sure it's not my place to  
16 ask you questions. Okay. I didn't --

17 So yeah, isolated cases of people -- I think  
18 there was -- a couple of years ago a couple of people  
19 up near Havre somewhere who had registered to vote,  
20 even though they were not US citizens.

21 BY MS. HULING:

22 Q. Do any of these cases that you've been  
23 referencing, are you aware of any of these instances  
24 being related to double voting?

25 A. No. The other thing that I was going say,



1 in response to the first question, is political  
2 scientists, I think, will always, when we talk about  
3 these questions, we have to think of the denominator.  
4 We do have a few cases where people are actually  
5 charged, and actually prosecuted, and actually  
6 convicted. We also have hundreds of millions of  
7 people exercising their right to vote, and so when  
8 you think about the scale of the problem, it is a  
9 problem, but the scale of it is very small in the  
10 context of the enterprise of Americans participating  
11 and using their right to vote.

12 Q. In your professional experience working with  
13 voters and [inaudible] voters, do you think that the  
14 challenge provisions here will enhance voter  
15 confidence in the election integrity in Montana?

16 A. No, I don't think that's a plausible claim.  
17 There is research on this question. Researchers have  
18 studied, and I've actually studied this myself with  
19 some of the research I've studied with my students,  
20 how much do people know about election  
21 administration, and which factors seem to be relevant  
22 for when they think about, "How confident am I in the  
23 integrity of the electoral process?" In general, the  
24 findings in my research and that of other scholars in  
25 this area, is that people tend to not know very much.

1 Even in places where they introduce some measure that  
2 are provided elections security measures, typically,  
3 this doesn't change how people see elections in those  
4 states. There's been these really careful  
5 comparisons, over time, in the same place, before and  
6 after. Is there some kind of bump doing this thing  
7 that we said we would do? And the answer is no, that  
8 doesn't seem to matter. Instead people's view on  
9 what they will say about whether they feel like they  
10 have confidence in the system, it seems to be  
11 influenced, to quite a large degree, by whether their  
12 favorite party won recently. Scholars in the field  
13 refer to that as the winner's effect, which really  
14 seems to boost people's confidence, and there also  
15 seems to be partisan differences around this issue,  
16 related to signaling from party leaders who are  
17 signaling different things, over time, in different  
18 context. Voters tend to pick up on those signals,  
19 and they often respond to public opinion surveys in  
20 ways that, kind of, reflect --you know, this is what  
21 this party is saying about voter fraud, so it's my  
22 party, so, now, I'll say something along the same  
23 lines.

24 THE COURT: So, Ms. Huling, how does this  
25 apply to whether or not the statute is constitutional

1 or not? Because, to me, if the legislature decides  
2 that election integrity is a significant issue that  
3 they need to be concerned about, then, that's their  
4 call as a legislature. So why is the last, you know,  
5 few minutes of the doctor's testimony relevant to me  
6 determining whether or not these issues are free  
7 speech, or suffrage, or association, or whatnot?

8 MS. HULING: Understood, Your Honor. So the  
9 State can say that protecting against voter fraud is  
10 an important State interest that its looking to  
11 protect here, but it needs to connect the dots. It  
12 needs to connect the registration provision,  
13 etcetera, at issue here with that harm that they see,  
14 or that interest that they're putting forward.  
15 There's, also, in cases where there's constitutional  
16 claims and infringement of constitutional rights,  
17 those -- the justification needs to be narrowly  
18 tailored.

19 THE COURT: So are you talking -- it just  
20 applies to strict scrutiny or lesser analysis? Is  
21 that what you're talking about?

22 MS. HULING: It certainly applies in strict  
23 scrutiny, but even in a lesser analysis, where you  
24 might have some balancing, you're going to be  
25 weighing the weight of the State's interest in

1 protecting against voter fraud, and so it's directly  
2 relevant -- you know, how weighty that interest is;  
3 how regularly that's happening; how real of a threat  
4 that is, versus the constitutional infringements that  
5 it's imposing.

6 THE COURT: All right. I mean, I got the  
7 case from Ohio that I looked at, and that judge found  
8 that there was a good basis for it.

9 Mr. Johnson, if you want to talk now, that's  
10 fine. I just figured I'd ask the question.

11 MR. THANE JOHNSON: I think we just went  
12 through -- January 6, 2021, I mean voter integrity is  
13 like the issue. Dang near had a civil war over it.  
14 Yeah, it may have been partisan, but there was a big  
15 concern, and it created idiots out of, frankly, good  
16 citizens, so, yeah, it's a huge issue.

17 THE COURT: Okay. I mean, to me, that's the  
18 legislature's call. You know, they make those  
19 decisions. I don't make, kind of, policy decisions  
20 about what's a big issue or not, particularly, with  
21 that. I mean -- anyways.

22 MS. HULING: I was just going to point to  
23 Dr. Street's testimony that he just gave that, to the  
24 extent election integrity is a big issue, the idea  
25 that passing -- criminalizing voter engagement in the

1 system, whether or not that really impacts, or  
2 improves folks' views of the election integrity  
3 that's at place here in Montana, is directly  
4 relevant.

5 THE COURT: All right. It crossed my mind,  
6 so I figured I'd ask. You can go ahead.

7 MS. HULING: Actually --

8 THE WITNESS: Can --

9 MR. THANE JOHNSON: No.

10 THE COURT: You just have to wait.

11 Was that all you had?

12 MS. HULING: That's all I had, yes.

13 THE COURT: Okay. You can just wait until  
14 Mr. Johnson goes ahead, and then, if Ms. Huling has  
15 follow up, she can ask you the questions, okay?

16 THE WITNESS: Thank you.

17

18

CROSS-EXAMINATION

19 BY MR. THANE JOHNSON:

20 Q. Dr. Street, I'm sorry that you're a Saint  
21 because I'm an Oil Digger.

22 A. Which is -- that's Butte, right?

23 Q. Yup.

24 A. Welcome. I'm a very open-minded Saint.

25 It's a Carroll College -- I don't know. I don't feel

1 any particular animosity.

2 Q. Dr. Street, could you take look at both your  
3 report and your supplemental report, and point me to  
4 the data of voter registration, in your report, that  
5 comes from May 2023 to the present date -- the  
6 numerical data. Because, correct me if I'm wrong, I  
7 see it from -- there's a chart that is from 2018 to  
8 2020.

9 A. Yeah, I think there's another -- is there  
10 one from 2020 to '22?

11 Q. But we're not talking May 2023 to the  
12 present date, are we?

13 A. Well, the survey that I've been using here,  
14 which as I've said, is a really good source on these  
15 data, that has not yet been fielding for the current  
16 election cycle because we're not through the election  
17 cycle, right? Like, the way that the EAVS do it --  
18 the reason they do it on this two-year cycle is  
19 because --

20 Q. Maybe we could speed this along.

21 A. -- that's the nature of the phenomenon.

22 Q. So is it safe to say that there is no data  
23 in either your report or your supplemental report  
24 from May 2023 to the present date -- numerical  
25 data -- and I'm just talking about your reports and

1 your supplemental reports because that's all I have.

2 A. Let me see. So I have census data -- some  
3 of the census data. I don't think the census data  
4 for 20 -- so you're particularly interested in May  
5 2023?

6 Q. Yeah, and you understand why because that's  
7 when this legislature was enacted?

8 A. Well, I mean, I do think that it would --

9 Q. No, I want you to focus on your report and  
10 your supplemental report because that's all I have.  
11 Would you agree with me that there is no numerical  
12 data, as to voter registration, from that date -- May  
13 2023 -- to the present date?

14 A. I apologize. Somehow, my answer must be  
15 frustrating you. That's really not my intention.

16 Q. No, I know. What I'm just trying to do is  
17 get that answer. Would you agree? It's that simple.  
18 It's a yes or no. I've had some great judges  
19 instruct witnesses. It's yes, no, or I don't know.

20 MS. HULING: Objection, Your Honor. He's  
21 trying to give an answer.

22 MR. THANE JOHNSON: Well, I'm just helping  
23 him.

24 THE COURT: He hasn't given one yet, so I'm  
25 waiting.

1 BY MR. THANE JOHNSON:

2 Q. Would you agree that, in your report and  
3 your supplemental report, there is no numerical data  
4 on voter registration from May 2023 to the present  
5 date?

6 A. I'm sorry if I'm pausing, I'm just trying to  
7 remember. It's not in the EAVS data, as we said.  
8 They're released on the full two-year cycle. I don't  
9 have anything from since May '23 in the census data.  
10 For the supplemental report, I was asked to look at  
11 an exhibit -- I think a couple of exhibits. I have  
12 looked at voter registration numbers on the State --  
13 Secretary of State's website.

14 Q. In your report, though. That's the  
15 question.

16 A. Well, I'm --

17 THE COURT: Let him finish.

18 THE WITNESS: I'm pretty sure I do cite the  
19 Secretary of State's website. I don't know if I've  
20 looked at it since that date, I think, but I've also  
21 looked at a copy of the voter file, which may -- I  
22 think, may not be from that period. I think I agree  
23 with you that the -- I have not looked at voter --  
24 can you restate -- what exact source of data do  
25 you...



1 BY MR. THANE JOHNSON:

2 Q. Just real simple, and I'll say it again.

3 Would you agree that, in your report and your  
4 supplemental report, there is no registration --  
5 voter registration -- data for May 2023 to the  
6 present date?

7 A. Voter registration -- like, total in a time  
8 period, you mean, for example?

9 Q. Yup, from that period to today.

10 A. I think that is correct.

11 Q. Thank you. So when you state that is it  
12 likely -- House Bill 892 is likely to have a chilling  
13 effect on political participation among Montana  
14 residents -- page 5, paragraph 10 --

15 A. Okay.

16 Q. -- would you agree that that is not based  
17 upon registration data from May 2023 -- that opinion?

18 A. As I've been trying to say to you, that  
19 period that you're focusing on, it's not related to  
20 the cycle. That is the way that I think we should  
21 think about this. We've been talking about the  
22 two-year election cycle, that is the cycle on which  
23 voter registration happens, so --

24 Q. So you agree --

25 A. -- compared to that cycle -- the date that

1 you're picking -- in May 2023 -- is arbitrary.

2 Q. So your cycle is prior to that point,  
3 correct?

4 A. No, it starts after the last federal general  
5 election, and it would run through the federal  
6 general election that we'll see in November, and as  
7 I've been saying, this is how researchers and how the  
8 federal government -- when they ask about these  
9 questions -- this how we think about these questions  
10 because this is a cyclical phenomenon.

11 Q. So what I'm going to ask is real tight.  
12 Would you agree that your statement that House Bill  
13 892 is likely to have a chilling effect on political  
14 participation among Montana residents is not based  
15 upon any registration numbers from May 2023 to the  
16 present date?

17 A. That's correct.

18 Q. Thank you. And, Dr. Street, you are  
19 familiar with voting registration and deregistration  
20 procedure in Montana prior to the passage of House  
21 Bill 892; is that correct?

22 A. I would be a bit cautious of saying that  
23 because my understanding is that the deregistration  
24 system is handled by county election officials, and I  
25 don't know exactly how they deal with that. I

1 believe that, if you contact them, then, I think they  
2 will do that for you, but I don't know exactly how  
3 they do that. The State doesn't have a centralized  
4 or publicized system for council of voter  
5 registration.

6 Q. And do you know whether the deregistration  
7 and registration process has changed procedurally in  
8 the state of Montana since the passage of House Bill  
9 892?

10 A. I mean, I think what I know is HB 892 --  
11 it's the -- now, there are new criminal penalties  
12 that could be imposed on --

13 Q. I didn't ask that question. Sorry, sir. I  
14 asked procedurally, do you realize that the procedure  
15 for registration and deregistration has not changed  
16 since the passage of House Bill 892? It will make it  
17 a lot simpler if you just answer the question.

18 A. Well, I think the voter is part of that  
19 procedure, right? The voter has to initiate this, so  
20 that --

21 Q. That's your understanding?

22 A. That is how it works. You have to initiate;  
23 you have to register, as a voter, right? So that's  
24 why I'm talking about these penalties that would be  
25 imposed on voters if they did not previously

1 deregister, or if they did not provide the required  
2 information at whatever level of detail is required.

3 Q. So if Mr. Fitzpatrick and Mr. Corson testify  
4 that the procedure has not changed since the passage  
5 of House Bill 892, do you have any evidence to  
6 contradict that?

7 A. I mean, what I'm saying is it could be that  
8 their procedure has not changed, but the procedure,  
9 from the point of view of the voter who has to  
10 initiate it, that seems, to me -- so if you want to  
11 understand that differently, that's okay, but it  
12 seems, to me, that this is a procedure that needs to  
13 be initiated by the voter to register or reregister.  
14 That's how the US system works, again, is that the  
15 onus is on the voter. And the thing that's new about  
16 that procedure, now, is these two new provisions and  
17 the --

18 Q. So the -- let me just cut to the chase -- so  
19 the only evidence you have is House Bill 892 -- the  
20 text?

21 A. So the only evidence for what?

22 Q. For disagreeing with the proposition that  
23 the procedure -- that Mr. Fitzpatrick and Mr. Corson  
24 testify that the procedure for regulation and  
25 deregulation has not changed since House Bill 892 --

1 the only evidence you have is the actual text of  
2 House Bill 892; is that your testimony?

3 MS. HULING: Your Honor, I don't know that  
4 we've heard that testimony yet. Speculative.

5 THE COURT: Well, it's in the affidavits and  
6 whatnot, so I think -- he can ask the question.

7 And if you don't know the answer, you can  
8 just say you don't know.

9 THE WITNESS: Can I ask a clarifying  
10 question?

11 THE COURT: I don't think so.

12 BY MR. THANE JOHNSON:

13 Q. No. I'll make that question as clear as I  
14 can. It's going to be fun deposing you. I'll have  
15 to admit. But I'll make that question again -- I'll  
16 ask it again. You want me to ask it one more time?

17 A. I'll be happy to speak with you again. I'm  
18 glad that you're looking forward to it.

19 Q. Do you want me to ask the question again?

20 MR. THANE JOHNSON: Or can we read that  
21 question? That's probably the best way. It's faster  
22 if I just ask it again. I'll just ask it again.

23 BY MR. THANE JOHNSON:

24 Q. If Mr. Fitzpatrick and Mr. Corson were to  
25 testify that nothing has changed in the procedure for

1 registering and deregistering a voter, do you have  
2 any evidence to the contrary -- and you testified  
3 about the House Bill, and I said, so the only  
4 evidence you have is the actual legislation; is that  
5 correct? I think that's a fair statement of the  
6 question.

7 A. I guess I take it that what you're asking  
8 implies that they would not be checking whether  
9 somebody was previously registered.

10 Q. My question is: Do you have any --

11 A. Because I understand it is required by HB  
12 892.

13 Q. My question is: Is there any other  
14 evidence, besides the legislation? That's what I'm  
15 asking.

16 A. I thought I had answered that question. I'm  
17 sorry for your frustration. Yeah, what I'm saying is  
18 that, yeah, my understanding is that HB 892 does  
19 change that procedure.

20 Q. Okay. So it's the HB 892 -- the  
21 legislation. Thank you very much. I appreciate  
22 that. Would you agree that you are not aware of any  
23 person who has been charged with violating the  
24 registration portion of House Bill 892?

25 A. Can you clarify -- the registration

1 portion -- are you referring to the deregistration  
2 portion, or the part you're not allowed to admit the  
3 information on the --

4 Q. Let's go with double registration, okay, and  
5 that's purposely, right?

6 A. So the first part?

7 Q. Yes. Would you agree that you're not aware  
8 of any person who has been charged with violating the  
9 first part -- the double registration portion of  
10 House Bill 892?

11 A. I'm not aware of anyone who's been charged  
12 with that.

13 Q. All right. Thank you. We're making  
14 progress. Would you agree that you're not aware of  
15 any person being charged with the deregulation  
16 portion of House Bill 892?

17 A. Sorry. You said deregulation?

18 Q. Yes. Let's go with the part where you have  
19 to give them your registration -- your prior  
20 registration. Are we on the same page?

21 A. So you said deregulation?

22 Q. Well, let me correct it. Let's get on the  
23 same page. Let's define this, okay? There's a  
24 second part to that bill; would you agree -- House  
25 Bill 892?

1 A. Sir, do you mean deregistration?

2 Q. My bad. I can make an error in my --

3 A. Okay. So the first part is about  
4 deregistration; the second --

5 Q. Let's just -- let me clarify it. Strike  
6 that question -- that second question. Are you aware  
7 of any person -- there's a second part to House Bill  
8 892 to regulation. Do you understand what part I'm  
9 talking about?

10 A. I understand that you're talking about the  
11 section requiring you to provide information on a  
12 previous registration.

13 Q. Correct.

14 A. At some level of detail.

15 Q. Are we on the same page?

16 A. Yeah, let's talk about that section.

17 Q. Okay. Are you aware of anybody being  
18 charged under the second section -- giving prior  
19 registration information -- under House Bill 892?

20 A. I'm not aware of anyone being charged for  
21 having failed to provide that information yet.

22 THE COURT: So then, Mr. Johnson, are you  
23 saying that's a stand-alone charge?

24 MR. THANE JOHNSON: I think there's two  
25 charges that you could do, and they're both



1 purposely. One --

2 THE COURT: That's one of the argue -- you  
3 said, in your brief, that this was actually just an  
4 element of the first one.

5 MR. THANE JOHNSON: I think there's two  
6 portions to it.

7 THE COURT: There's no mental state for the  
8 second one, then?

9 MR. THANE JOHNSON: Well, I think the mental  
10 state has to be implied purposely.

11 THE COURT: Well, I'm not implying mental  
12 states in criminal statutes.

13 MR. THANE JOHNSON: I mean, that is my  
14 understanding -- is under that section, and I think  
15 that has to be -- under construction. I mean --

16 THE COURT: That's not what you said in your  
17 brief.

18 MR. THANE JOHNSON: Understood. Understood.  
19 I can make mistakes, too, Your Honor.

20 THE COURT: So can I.

21 THE WITNESS: Me too.

22 BY MR. THANE JOHNSON:

23 Q. Are you aware that the League of Women  
24 Voters is conducting registration as we speak?

25 A. I was --

1 MS. HULING: Objection. Foundation.

2 THE COURT: He's an expert. He can answer  
3 it.

4 THE WITNESS: I was not aware of that. I do  
5 sometime see people signing people up. I don't think  
6 I've seen that recently, and I think there's a couple  
7 of groups that do it in Helena, so I'm not absolutely  
8 sure which of them is the League, and there's another  
9 group called Montana Women Vote. I haven't seen  
10 either of them doing any of that.

11 BY MR. THANE JOHNSON:

12 Q. In fact, are you aware that one was  
13 conducted yesterday by the League of Women Voters in  
14 Helena?

15 A. So what you're telling me is new to me.

16 Q. Okay. So you're not aware of any future  
17 activity by the League of Women Voters for  
18 registering?

19 A. I have not been talking with the League of  
20 Women Voters. I met the president briefly before,  
21 but I have not -- I don't have other contact.

22 Q. And were you talking about the two Filipino  
23 teachers in Dodson, Montana that were -- that  
24 registered to vote and voted when they weren't  
25 citizens?

1           A.    I'm not sure that I remember all of the  
2 details, but I suspect that that is the -- that we're  
3 talking about the same case that I mentioned that I  
4 had heard. I think, in the last couple of years,  
5 that some people who are not US citizens who had been  
6 charged with voting -- I don't -- yeah.

7           Q.    Okay. And would you agree with me, and  
8 maybe I'm wrong, but purposefully -- because that's  
9 the intent element in the registration part -- is the  
10 same as purposely?

11          A.    Sir, I --

12                   MS. HULING:  Objection.

13 BY MR. THANE JOHNSON:

14          Q.    What would your understanding be of  
15 purposefully versus purposely? Is there a  
16 difference?

17                   MS. HULING:  Objection.  Calls for a legal  
18 conclusion.

19                   THE COURT:  Sustained.

20                   THE WITNESS:  Should I answer the question?

21 BY MR. THANE JOHNSON:

22          Q.    No, he sustained it. Are you aware that the  
23 word "purposely" has been defined in Montana statute  
24 for as long as I've been practicing law, which I'm  
25 pretty gray haired?

1           A.    I'm not aware exactly how long you've been  
2 practicing.  You're looking great.  I'm not aware of  
3 a definition of that word in Montana legal statute.  
4 I've not come across that.

5           Q.    You've never come across that statute?

6           MS. HULING:  Objection, Your Honor.

7           THE COURT:  I'll let him go ahead.

8           You can go ahead.

9           THE WITNESS:  You know, I have read through  
10 Montana election law.  I do not recall reading a  
11 section where it defines -- you said "purposefully"  
12 is the --

13 BY MR. THANE JOHNSON:

14          Q.    Purposely.

15          A.    Is purposely the same as purposefully?

16          Q.    I guess that's something for the Court to  
17 decide, isn't it?  It's your testimony that they're  
18 defined differently -- they should be defined  
19 differently?

20          A.    Sir, that's not what I said.  I was actually  
21 wondering whether it was a pronunciation difference.  
22 I have not read the section of Montana law -- I don't  
23 recall reading sections of Montana law that define  
24 any terms -- slightly different versions of  
25 purposefully or purposely.  I'm afraid I don't --

1 Q. Do you want to see it?

2 A. No, thank you.

3 MS. HULING: Objection. This is beyond the  
4 scope.

5 THE COURT: Overruled.

6 MR. THANE JOHNSON: He already testified  
7 about -- that he didn't know what the definition  
8 of --

9 THE COURT: I overruled it.

10 MR. THANE JOHNSON: Thank you. May I  
11 approach, Your Honor?

12 THE COURT: Sure.

13 BY MR. THANE JOHNSON:

14 Q. I'm going show you the definition of  
15 purposefully and purposely.

16 A. Okay. I honestly have not seen that word  
17 before. I really don't think I have. I think I've  
18 seen the fully one, but, again, this -- I do -- I did  
19 grow up in another country, and maybe our version of  
20 this is slightly different. The word I've seen  
21 before is purposefully.

22 Q. Were you aware that it was a criminal  
23 violation for a person to register another person,  
24 under an official election district, when that person  
25 was not entitled to register, prior to House Bill

1 892?

2 MS. HULING: Objection. To the extent  
3 that's a legal question and beyond the scope.

4 THE COURT: Overruled.

5 If you know the answer, you can answer it.

6 THE WITNESS: I'm afraid I don't think I  
7 recall in -- that detail. I have read sections of  
8 Montana election law, but -- yeah, I don't recall  
9 that detail.

10 MR. THANE JOHNSON: May I approach?

11 BY MR. THANE JOHNSON:

12 Q. Maybe this will refresh your recollection.

13 A. I mean, I don't think this is a question of  
14 recollection.

15 THE COURT: I don't think he knows.

16 BY MR. THANE JOHNSON:

17 Q. So you don't know? And assuming it was a  
18 crime to -- for another person to register someone  
19 for an election when they were not entitled to be  
20 registered, doesn't that change your opinion about  
21 House Bill 892 quelling these civic duty persons or  
22 civic duty organizations?

23 MS. HULING: Objection to the extent that's  
24 a legal conclusion.

25 THE COURT: Well, he said he doesn't know --

1 foundation answer -- because he said he didn't know  
2 about the statute.

3 MR. THANE JOHNSON: So I asked him a  
4 hypothetical. I said assuming that was the case.

5 THE COURT: Well, if he knows.

6 MR. THANE JOHNSON: Maybe he doesn't.

7 THE COURT: He said he doesn't know about  
8 the statute, so I don't know how he can, even  
9 hypothetically, answer it.

10 THE WITNESS: I mean, I think what I  
11 remember is -- I do remember something that I  
12 interpreted -- again, I don't think I've been asked  
13 as for a lawyer for a legal opinion -- as a  
14 [inaudible] against helping people to break election  
15 law -- so I don't know whether this is -- your  
16 hypothetical example would fall --

17 BY MR. THANE JOHNSON:

18 Q. If you want to try to answer my  
19 hypothetical, let me ask it real clearly. Assuming  
20 that was the state of the law, does that change your  
21 opinion that House Bill 892 is going to have any  
22 different effect upon the civic organizations in  
23 registering people?

24 A. I feel like there are a lot of steps in what  
25 you're asking, and it would be helpful if you could

1 try and -- if you could try and lay out every single  
2 one, so I can see whether -- whether I --

3 Q. Okay. We will lay out every one, okay?

4 MR. THANE JOHNSON: May I approach and show  
5 him the prior -- the statute that's in effect with  
6 regard to that topic?

7 THE COURT: All right. You can approach.  
8 What is the statute?

9 MR. THANE JOHNSON: Your Honor, it is  
10 13-35-209. I'm showing him 2017 version. It's the  
11 same version --

12 THE WITNESS: 13-35-209.

13 BY MR. THANE JOHNSON:

14 Q. It says fraudulent registration. Please  
15 review the first paragraph, sub 1.

16 A. Yeah, I have read that.

17 Q. Okay. Would that change your opinion that  
18 House Bill 892 is going to quell -- I think was the  
19 word -- or likely cause civic organizations to be in  
20 fear of registering persons, when in fact that has  
21 been in existence, and still is in existence?

22 A. I do feel uncomfortable here because this  
23 feels like I'm being asked to speculate about legal  
24 definitions. I guess the way I think about it is an  
25 organization, like the League of Women Voters helps



1 people to register, and I don't see the word "help"  
2 in here, so I don't...

3 Q. Procure, isn't that assist?

4 A. I kind of thought that was when you buy  
5 something.

6 Q. I guess that's up to the Judge.

7 A. I'm sorry. Yeah, I don't feel like I can --  
8 like I have the legal training that, it seems to me,  
9 your questions are implying that I might have for  
10 this question.

11 Q. Okay. So you don't have an opinion on that?

12 A. That's not what I said. I think what I was  
13 trying to say is that you are asking me to speculate  
14 in a certain way.

15 Q. I was not asking you to speculate. I just  
16 said would that change your opinion?

17 A. Well, but I thought you said you were asking  
18 a hypothetical question.

19 Q. I did. I asked, assuming this has been in  
20 existence because you didn't know it existed, and  
21 now, you've read it. Would that change your opinion  
22 that House Bill 892 would have any effect on quelling  
23 civic organization in registering persons to vote?

24 A. So for example, the fact that it's not clear  
25 to me whether helping would be a problem in the --

1 you seem to be implying that helping is the same as  
2 procuring -- I think it's possible if it's to me, it  
3 would also be not clear to people who volunteer with  
4 the League of Women Voters. I think it is also worth  
5 understanding that one of the things that is tricky  
6 about HB 892 is --

7 Q. So the question --

8 THE COURT: Let him finish.

9 MR. THANE JOHNSON: I'm just trying to --

10 THE COURT: Hold on. Just let him finish.

11 THE WITNESS: One of the things that's  
12 tricky about HB 892 is that some voters may not know  
13 for sure, and then there could be people that worry  
14 that they may have been registered, but they actually  
15 hadn't been, so they could be people who actually are  
16 not at risk of breaking the law. And then maybe, the  
17 League of Women Voters could help them, but now,  
18 those people could have been chilled because they're  
19 not sure. So this -- particularly this requirement  
20 that you had to deregister --

21 MR. THANE JOHNSON: Your Honor, he's not  
22 answering --

23 THE WITNESS: -- and provide the previous  
24 information, that's something the people may just not  
25 know, so then, the League may have to be more

1 cautious with all sorts of people, unless they can  
2 be --

3 MR. THANE JOHNSON: He's not answering the  
4 question.

5 THE COURT: We can move on here.

6 BY MR. THANE JOHNSON:

7 Q. Would you agree with me that prior  
8 registration information of a voter -- that box, and  
9 it says, "Have you been registered anywhere prior to  
10 this" -- something to that effect -- or do I have get  
11 out the actual information?

12 A. So I understand that -- I'm assuming that  
13 you're talking about the Montana voter registration  
14 form?

15 Q. And the federal one. They both ask for  
16 prior registration information, correct?

17 A. The one that I -- can I just say what I was  
18 going to say about the Montana --

19 Q. No, I want you to answer my question. The  
20 Montana form and the federal one -- and if you want  
21 me to grab the forms, I can.

22 A. The Montana one has a section at the top  
23 saying that -- required section have an asterisk, and  
24 then, there are some sections that have an asterisk.  
25 It also has a section that asks for previous

1 registration information, and I think it says that  
2 that is required if you have a previous registration,  
3 but it doesn't have an asterisk.

4 Q. So it does ask for it?

5 A. It does ask for it, yeah. I mean, I think  
6 we went over -- I think I said that in my original --  
7 whatever it was -- testimony. The thing that's  
8 different is there is now a big legal penalty for not  
9 doing it.

10 Q. I understand --

11 A. There are states that have that on their  
12 voter registration form. I think Idaho does, but I  
13 don't think they have this big legal penalty, so  
14 that's the way which what Montana is now doing one is  
15 different.

16 Q. Okay.

17 A. It's one thing to ask for something, and it  
18 seems to me that it's another thing --

19 Q. So the answer is, yes, it does ask for prior  
20 registration information?

21 A. There is a section on the Montana voter  
22 registration form, and it's not completely clear  
23 whether it's required from the language on the form,  
24 but it does ask -- there is a section where it asks  
25 you to provide previous registration information, if

1 you had one.

2 THE COURT: It says required if name changed  
3 or if previously registered to vote in another  
4 Montana county or in another state.

5 THE WITNESS: The thing I find a little  
6 confusing, Your Honor, is that there is a section at  
7 the top that says the required sections have an  
8 asterisk, and then, bits of it have an asterisk and  
9 that doesn't. So my experience is that -- this is  
10 partly my experiences in conducting voter surveys --  
11 it's very easy for people to get confused when  
12 they're filling out forms and surveys, and you just  
13 get all sorts of interesting possible combinations of  
14 responses, and so any little -- and this is  
15 definitely the research advice is to avoid --

16 THE COURT: Hold on. Let Mr. Johnson go  
17 ahead.

18 MR. THANE JOHNSON: Thank you.

19 BY MR. THANE JOHNSON:

20 Q. And the federal form also has a section  
21 where you fill out prior registration forms -- prior  
22 registration?

23 A. I will -- I'm afraid that I'm not absolutely  
24 sure that I recall that correctly, but I'll take your  
25 word for it.

1 Q. Well, I don't want you to take my word for  
2 anything.

3 MR. THANE JOHNSON: May I approach, Your  
4 Honor?

5 THE COURT: Yes.

6 BY MR. THANE JOHNSON:

7 Q. Do you recognize Exhibit E that will be  
8 admitted?

9 A. I don't know if I've seen that before.

10 Q. Okay. Do you recognize the voter  
11 registration application behind Exhibit E?

12 A. So I did look at a --

13 Q. The question is do you recognize it? If you  
14 don't recognize it, then I'm done.

15 A. I looked at the EAC website, and I'm  
16 wondering if this is the same document from the EAC  
17 website that has a link to a national voter  
18 registration form. This looks similar to me, but I'm  
19 not absolutely a hundred percent sure.

20 Q. Fair enough.

21 MR. THANE JOHNSON: I have no further  
22 questions, Your Honor.

23 THE COURT: Okay. Ms. Huling, any redirect?

24 MS. HULING: Just a couple, Your Honor.

25 THE WITNESS: Thank you, Mr. Johnson.

1 REDIRECT EXAMINATION

2 BY MS. HULING:

3 Q. Do you remember being asked about whether  
4 you analyzed 2023 voter registrations data?

5 A. With Mr. Johnson?

6 Q. Yes.

7 MR. THANE JOHNSON: Objection. Form of the  
8 question. I asked this very specifically with regard  
9 to his report and his supplemental report.

10 THE COURT: Right. I understand what's  
11 going on. You can go ahead.

12 BY MS. HULING:

13 Q. You remember that conversation from a few  
14 minutes ago with Mr. Johnson?

15 A. Yes.

16 Q. Okay. Are your opinions in your report and  
17 your supplemental report based upon your decades of  
18 experience analyzing voter -- and studying voter  
19 behavior?

20 A. Yes.

21 Q. And perusing and researching within academic  
22 literature on the same issues?

23 A. Yeah, in general, part of how we form our  
24 judgments is based on, not only our own research, but  
25 trying to build on the breadth of other people's

1 research. Anytime I'm drawing a conclusion, that's  
2 why I'm also trying to cite academic sources and say  
3 arguments and logics that apply in one context  
4 explain why I think they may or may not also apply in  
5 another.

6 Q. Could there be any differences in the  
7 population of individuals who are registering in a  
8 non-federal election year and folks who are  
9 registering in a federal election year, like 2024 is?

10 A. Yeah, so I think this gets to part of what I  
11 was hoping to communicate to Mr. Johnson  
12 previously -- is, again, so much attention goes to  
13 the biannual federal election cycle, and there are  
14 some people for whom those -- that's when they vote,  
15 right? These are the big high stakes -- getting all  
16 the media coverage, all the amazing amounts of  
17 spending. Every other ad I see on the TV these days  
18 is for some kind of political candidate, and  
19 people -- quite a lot of people -- that's when they  
20 vote, and they don't necessarily vote in the more  
21 local election, or school boards elections, like  
22 people who don't have kids in the local school may  
23 not vote in the school board elections. So part of  
24 this -- looking at the whole cycle gets you a more  
25 complete picture of when people are voting, and



1 that's relevant for registration as well because, as  
2 I said, people are also registering often with this  
3 deadline in mind, so for a lot of Americans, by far,  
4 the most prominent of those deadlines will be in the  
5 fall of 2024, particularly in Montana where our  
6 primary is relatively late in the year, so it's very  
7 unlikely to be still competitive at that point. So  
8 again, this is why I was trying to say to Mr. Johnson  
9 that I think that, if you just look at one slice of  
10 that time period, that's not going give you a picture  
11 of what's actually going on with voter registration,  
12 and I think the full picture of what's going on with  
13 voter registration is what, seems to me, to be  
14 relevant in this case.

15 Q. And in your understanding, does HB 892  
16 create any new criminal liabilities related to voter  
17 registration behavior?

18 MR. THANE JOHNSON: Objection. Calls for a  
19 legal conclusion.

20 THE COURT: Sustained.

21 MS. HULING: No further questions, Your  
22 Honor.

23 THE COURT: Okay. Any redirect?

24 MR. THANE JOHNSON: No, Your Honor.

25 THE COURT: Can this witness be excused?

1 MS. HULING: Yes, Your Honor.

2 THE COURT: We'll take about a ten minute  
3 recess.

4

5 (Whereupon court was in recess from 3:28  
6 to 3:36.)

7

8 THE COURT: This is DV-23-1073, League of  
9 Women Voters v. Knudsen, et. al., and let the record  
10 reflect that counsel are present. So just as a  
11 preliminary matter, I was wondering, going forward,  
12 you know we're referring to this as HB 892, and it's  
13 now in statute at 13-35-210. Is there a distinction  
14 without a difference? Do we just want to be  
15 uniform -- refer to it as the code? Or do we want to  
16 go forward under HB 892?

17 Mr. Johnson, do you have any thoughts on  
18 that?

19 MR. HAYDEN JOHNSON: To the Court's  
20 preference there. We've done 892 -- fewer letters  
21 and it rolls off the tongue a little easier than the  
22 full code.

23 THE COURT: All right. But it is statute  
24 now, right? So I mean, I wouldn't be enjoining some  
25 sort of bill that hasn't come into law yet because it

1 is law.

2 MR. HAYDEN JOHNSON: That is correct, Your  
3 Honor. We tried to break out, in our papers, exactly  
4 the code cite that's being done. We're using the  
5 shorthand of a title that, you know, accurately  
6 describes what the --

7 THE COURT: What I would request, if you're  
8 going to give me proposed orders, or if we're going  
9 to do further briefing, let's just refer to it as a  
10 code cite, going forward, since that's where we're  
11 at, okay?

12 MR. HAYDEN JOHNSON: Noted, Your Honor.

13 THE COURT: Not necessarily for the hearing  
14 today, but -- because I know you're used to what  
15 you're saying, okay?

16 MR. THANE JOHNSON: Dually noted.

17 THE COURT: Thanks much. Mr. Johnson, do  
18 you want to call your next witness?

19 MR. HAYDEN JOHNSON: Yes, Your Honor. The  
20 Plaintiffs call Ms. Regina Plettenberg, and she's  
21 appearing remotely.

22

23

24

25

1 REGINA PLETTENBERG,  
2 called as a witness by the Plaintiffs, was first duly  
3 sworn, as hereinafter certified, examined, and  
4 testified as follows:

5

6 THE WITNESS: Regina Plettenberg. That's  
7 R-E-G-I-N-A, P-L-E-T-T-E-N-B-E-R-G.

8 THE COURT: All right. So Mr. Johnson, if  
9 you want to go ahead.

10 MR. HAYDEN JOHNSON: Thank you, Your Honor.

11

12

DIRECT EXAMINATION

13 BY MR. HAYDEN JOHNSON:

14 Q. Good afternoon, Ms. Plettenberg. Thank you  
15 for being here with us. Just so you know, I'm not  
16 able to see you on the video, so if you could just  
17 make sure that your answers are verbal instead of  
18 visual, that would be helpful. Thank you. So what  
19 is your current role in Ravalli County?

20 A. I'm the Ravalli County Clerk and Recorder  
21 Election Administrator.

22 Q. And you've been in that role for  
23 approximately how many years?

24 A. Since 2007. I've worked in the office since  
25 '98.

1 Q. Okay. And since '98, were some of your  
2 responsibilities also election administration then?

3 A. Yes, I worked in the election.

4 Q. Great. In a broad sense, what is your  
5 current work entail when it comes to voter  
6 registration?

7 A. Well, I'm in charge of making sure the  
8 registrations are processed; that -- you know, we do  
9 our list maintenance; we get ready for elections;  
10 just the full overview of the election process.

11 Q. Okay. And part of those responsibilities is  
12 making sure that Ravalli residents are able to get  
13 registered, if they're eligible, anyone ineligible is  
14 not registered, right?

15 A. Correct.

16 Q. And you also have a role on behalf of the  
17 Montana Association of Clerk and Recorders; is that  
18 right?

19 A. I do. I'm chair of our legislative  
20 committee for the association.

21 Q. Okay. So does that mean that you, sort of,  
22 represent the county association when you give  
23 testimony before the legislature?

24 A. I do give testimony, so do other election  
25 administrators, but primarily myself, and I do keep

1 an eye on the bills and send that out to the  
2 association so they can look through them and give me  
3 their comments.

4 Q. And in that capacity, you provided  
5 informational testimony to the legislature in the  
6 2023 session about HB 892 -- the law that we're  
7 discussing today -- right?

8 A. I did. On 3/29, I gave testimony in the  
9 House.

10 Q. Okay. And just to make sure --

11 A. In state administration committee.

12 Q. And that was March -- just to make sure  
13 we're on the same page, that was March 2023, during  
14 the session, right?

15 A. March -- yeah, March 29th.

16 Q. Okay. And let's take a look at Plaintiffs'  
17 Exhibit 8, which we've sent you in advance, via  
18 email. We can also pull it up on the screen here.  
19 This is an enrolled copy of HB 892. So I just want  
20 to make sure that we're on the same page of --  
21 provision of this law that we're talking about.

22 A. Yes.

23 Q. So do you see on the second page of the pdf,  
24 subsection 5, and sort of starts out, "A person or  
25 elector may not purposely remain registered to vote

1 in more than one place," and then, it continues on;  
2 do you see that provision?

3 A. I do.

4 Q. And if I refer to this provision as a  
5 deregistration requirement, you'll know I'm referring  
6 to that part, right?

7 A. Okay.

8 Q. Okay. And then, the next line in subsection  
9 5, starts, "A person or elector previously registered  
10 to vote another county or another state shall provide  
11 the previous registration information on the Montana  
12 voter registration application." So if I refer to  
13 that part as the omission provision, you'll know what  
14 I'm talking about there, right?

15 A. Okay. Yes.

16 Q. Okay. So you submitted a declaration in  
17 this case in support of Defendants; isn't that right?

18 A. I did.

19 Q. And if we take a look at Defendant's Exhibit  
20 B, which is also one sent you, that's the final  
21 signed copy of your declaration, right?

22 A. Correct. Yes.

23 Q. Okay. And are you aware that your fellow  
24 election administration in Lewis and Clark County,  
25 Mr. Fitzpatrick, is also a witness in this case,

1 right?

2 A. I've heard that, yes.

3 Q. And are you aware that he also submitted a  
4 declaration, like you submitted a declaration, right?

5 A. I -- yes. Yes.

6 Q. And that's Defendant's Exhibit C, also a  
7 document that you have?

8 A. Yes.

9 Q. So I wanted to ask you about the two  
10 declarations, and in one, Defendant's Exhibit C, in  
11 Mr. Fitzpatrick's declaration, on paragraph 15, it  
12 has this line that says, "I'm aware that HB 892 also  
13 effectively clarifies penalties for violating  
14 § 13-35-210 MCA; do you see that on Defendant's  
15 Exhibit C, paragraph 15?

16 A. I do.

17 Q. Now, your declaration does not include that  
18 paragraph. So I'm wondering, are you aware that HB  
19 892 increases the penalties for someone voting --  
20 voting twice -- voting illegally twice, right?

21 A. Yes, I'm aware of that.

22 Q. But the new criminal punishments that the  
23 law has go beyond just prohibitions on double voting,  
24 right?

25 A. Well, I understand them to just be for the



1 double voting.

2 Q. So the parts we just talked about in  
3 subsection 5 -- the deregistration requirement and  
4 the omission provision -- do you understand that HB  
5 892 makes those a crime -- violations of those  
6 provisions a crime as well, right?

7 MR. THANE JOHNSON: Objection. Asked and  
8 answered. She said that it was her understanding it  
9 was only double voting.

10 THE COURT: Overruled.

11 THE WITNESS: So my understanding -- should  
12 I answer? I'm sorry.

13 THE COURT: Yeah, you can go ahead.

14 THE WITNESS: My understanding is it  
15 wouldn't be where someone was just registered in a  
16 few places. That can happen for a multitude of  
17 reasons. It's just of someone votes -- purposely  
18 votes -- can vote in those two places in the same  
19 election.

20 BY MR. HAYDEN JOHNSON:

21 Q. I see. So if someone purposely votes in two  
22 elections, that's illegal, and in your view, should  
23 be illegal, right?

24 A. Yes, I believe that should be illegal.

25 Q. But if someone is registered in two places,

1 but doesn't vote in two elections, that shouldn't be  
2 illegal, right?

3 MR. THANE JOHNSON: Objection. I think it  
4 mischaracterizes the statute because that part says  
5 "purposely".

6 THE COURT: Right. And I don't care what  
7 her opinion is about what should and shouldn't be  
8 illegal, but she's the election administrator, so she  
9 can, at least, say what her understanding is of what  
10 is and isn't illegal.

11 MR. HAYDEN JOHNSON: I'll rephrase, Your  
12 Honor.

13 BY MR. HAYDEN JOHNSON:

14 Q. The deregistration requirement and the  
15 omission provision we discussed -- what happens, in  
16 your view, if someone does not comply with those  
17 provisions?

18 A. I believe if someone -- I mean we would not  
19 police that. So my office would not check to see if  
20 somebody is registered somewhere else. Quite  
21 frankly, I don't have the staff or the resources to  
22 do that. So it would only be if someone brought it  
23 to the county's attention that they know of someone  
24 voting in the same election in two different places  
25 that this would even be followed up on.

1 Q. But from your understanding, sort of setting  
2 aside the practical resources that your office has,  
3 if someone violates the deregistration requirement or  
4 the omission provision, have they committed a crime?

5 A. I do not believe so, no. Not that by  
6 itself, I would not say is a crime.

7 Q. Let's also take a look at -- on this plan --  
8 let's take a look at -- who provided you with your  
9 understanding of these provisions are not criminally  
10 enforced?

11 A. So after that first hearing that you had  
12 discussed earlier, I was not able to actually hear  
13 the beginning of that hearing. I believe I said that  
14 during my testimony with the sponsor's testimony, so  
15 I did follow up with the sponsor and with Mr. Corson,  
16 from the Secretary of State's office, to see what  
17 they felt our duty would be with the registration  
18 under this new proposed statute.

19 Q. Okay. And from that follow up, the duty  
20 conveyed to you is that these wouldn't be criminally  
21 enforced; you wouldn't have to make criminal  
22 referrals if you thought someone violated subsection  
23 5, right?

24 A. What was explained to me is we wouldn't  
25 change any of our -- the current practices we were

1 following before. That was how it was explained to  
2 me.

3 Q. So that includes if someone's filling out an  
4 application, and they omit that field -- they don't  
5 provide previous registration information on the  
6 state application -- you successfully process that  
7 application the same as you did before HB 892, right?

8 A. That's how it was explained to me, and  
9 that's how we have been doing it, yes.

10 Q. Okay. And if you get knowledge that someone  
11 is, you know, already remaining registered in a  
12 location, and registers to vote in Ravalli County,  
13 again, you don't do any sort of criminal referral in  
14 line with the deregistration requirement, right?

15 A. I would not do a criminal referral. We  
16 would reach out to the voter, but that's something we  
17 would have done before.

18 Q. Okay. And again, if you see that -- let's  
19 say, the state-wide voter registration system -- you  
20 see that someone's already registered to vote in,  
21 let's say in Gallatin County, and they register to  
22 vote in Ravalli County, you'll register them  
23 regardless of their pending -- their existing  
24 registration in Gallatin County, right?

25 A. Correct, that's how we did it before. Many

1 times people would not let us know, and we just can  
2 see it on the registration. They can't be registered  
3 in our systems in two places, and so we would update  
4 them.

5 Q. Okay. So let's take look at Plaintiffs'  
6 Exhibit 23, and you should also have access to these.  
7 This is a set of emails that you exchanged with other  
8 county officials about HB 892 in March 2023; do you  
9 see those?

10 A. Yes.

11 Q. And as you note on page 1 of those emails,  
12 these messages are subject to records request, right?

13 A. Correct.

14 Q. And if you look at the top of page 2, that's  
15 an email message from you to other county recipients,  
16 right?

17 A. Well, so on page 2, that's actually a  
18 response from Mr. Semerad responding -- my actual  
19 email does not have those comments. I just had --  
20 like, on HB 892, for example, I just had prohibit  
21 double voting, and those are Mr. Semerad's responses.

22 Q. So on Exhibit 23, the bottom -- toward the  
23 bottom of page 2, it says, "From Regina Plettenberg,"  
24 right?

25 A. Right.

1 Q. And then below that email are some comments  
2 about HB 892, correct?

3 A. Correct.

4 Q. And those comments are an email from you,  
5 correct?

6 A. No, the comments are not my comments. Those  
7 were Mr. Semerad's comments. He just put them down  
8 below what I sent out initially. My email did not  
9 say that.

10 Q. Okay. So you see the part in that email  
11 that says that these laws -- "HB 892 seems redundant  
12 from existing laws prohibiting voting twice, other  
13 than the increased penalty," correct?

14 A. Correct.

15 Q. And what does it mean to be redundant of the  
16 existing laws prohibiting voting twice at an  
17 increased penalty?

18 MR. THANE JOHNSON: Objection, Your Honor.  
19 Foundation. Hearsay. She did not author those  
20 comments. That's what she's been testifying to.

21 THE COURT: Overruled. If you know the  
22 answer, fine; if you don't, Ms. Plettenberg, you  
23 don't have to answer it.

24 THE WITNESS: Well, Your Honor, I would  
25 assume that he is talking about the federal laws

1 prohibiting double voting. That's how I took it.

2 BY MR. HAYDEN JOHNSON:

3 Q. So the second sentence there says, "The  
4 scary part is the dual voter registration portion  
5 that can get you fined \$5,000 and in jail for 18  
6 months." What do you understand to be the dual voter  
7 registration portion in that email that you received?

8 MR. THANE JOHNSON: May I just have a  
9 continuing objection? Thank you.

10 THE COURT: Sure.

11 THE WITNESS: Well, I would assume if  
12 somebody maybe forgot or did not tell us they were  
13 registered in another county or another state.

14 BY MR. HAYDEN JOHNSON:

15 Q. Ms. Piettenberg, someone being registered  
16 twice and someone voting twice are not the same  
17 thing, right?

18 A. I do not believe so, no.

19 Q. Someone voting twice is a rare type of  
20 actual voter fraud, right?

21 A. Yes, I believe so.

22 Q. But people moving between voting  
23 jurisdictions, that's pretty common voter behavior,  
24 right?

25 A. Yes.

1 Q. And when someone moves, it's not unusual  
2 that they'll be temporarily registered both in their  
3 old location and in their new location, say Ravalli  
4 County, right?

5 A. Correct.

6 Q. And that brief overlap is because the county  
7 administers elections, and there's not, like, a  
8 centralized system for voter registration in the  
9 United States, right?

10 A. Right.

11 Q. So a voter registering in a new place will  
12 not affirmatively cancel an old registration. In  
13 your experience, that doesn't mean a person's going  
14 to commit voter fraud, does it?

15 A. Absolutely not.

16 Q. And there are also systems your office uses  
17 to make sure that people who are temporarily  
18 registered in two places do not vote twice, right?

19 MR. THANE JOHNSON: Your Honor, I'm going to  
20 object as leading. I mean, she's just -- she's a  
21 county official. I've allowed it to go on, but I  
22 don't think he gets to lead this witness. She's not  
23 adversary.

24 MR. HAYDEN JOHNSON: Your Honor, Rule 611(c)  
25 is very clear that it's a witness identified with an



1 adverse party, and Ms. Plettenberg submitted a  
2 declaration that was supporting the Defendants  
3 opposition to our Plaintiffs' relief.

4 THE COURT: Overruled.

5 MR. HAYDEN JOHNSON: Would you mind reading  
6 back the question please?

7 THE COURT: Can you just ask the question  
8 again?

9 MR. HAYDEN JOHNSON: Sure.

10 BY MR. HAYDEN JOHNSON:

11 Q. So there are systems your office uses to  
12 make sure that people who are temporarily registered  
13 in two places do not vote twice, right?

14 A. Well, if it's within the state of Montana,  
15 we do have a state database. Otherwise we take the  
16 voter registration on its face. If they say they  
17 were registered somewhere else, we do enter that  
18 information in the system.

19 Q. So one of those state systems is the way you  
20 handle election day transfer registrants, right?

21 A. Yes.

22 Q. And an election day transfer registrant --  
23 just to make sure I've got it right -- is someone  
24 who has moved to a new county and tries to register  
25 and vote, during the late registration period,

1 despite having been registered somewhere else  
2 already, right?

3 A. Are you talking about within the state?

4 Q. Yes.

5 A. Yeah, so yes, I mean if someone is  
6 registered in another county and comes to our office  
7 on election day [inaudible] registration period, we  
8 can -- or we can see if they have a ballot that's  
9 been sent to them from another county.

10 THE COURT: Ms. Plettenberg, what was that  
11 acronym you just used? You said CICCY, or something  
12 like that.

13 THE WITNESS: I'm sorry. Say it again?

14 THE COURT: I thought you said, "We could  
15 look at," and then, you said something.

16 THE WITNESS: The state system -- the voter  
17 registration system.

18 THE COURT: So what's the actual acronym,  
19 just for the court reporter?

20 THE WITNESS: The state system is called  
21 Elect MT.

22 THE COURT: Okay. Go ahead. Sorry, I cut  
23 you off.

24 THE WITNESS: It's okay. I hope I remember  
25 where I was. We can just look to see if they were

1 registered or had a ballot out in another county, and  
2 if it has not been voted, we can work with that  
3 county to void that ballot, and get them registered,  
4 and issue a ballot in our county. I hope that  
5 answers your question, if I understood that  
6 correctly.

7 BY MR. HAYDEN JOHNSON:

8 Q. It does. And as I understand, there's  
9 another system that can be used where provisional  
10 ballots are given to transfer registrants; is that  
11 right?

12 A. Yeah, so on election day, if it's a county  
13 to county, or precinct to precinct move, those  
14 ballots remain provisional, until we confirm with the  
15 other county and our -- because we put precinct  
16 registers ahead of election day, and so those ballots  
17 would remain provisional until we can find the voter  
18 tried to vote in either county.

19 Q. So both of those systems that you just  
20 described, they're to make sure that, despite a voter  
21 being temporarily registered in two places, they  
22 don't actually cast a ballot in two places, right?

23 A. Correct. That works for the in-state --  
24 like I said -- in-state voters. We have that  
25 ability.

1 Q. So for voters in this situation where  
2 they're registering to vote in Ravalli County close  
3 to an election, the deregistration requirement says  
4 they have to first cancel their registration in a  
5 prior place, right?

6 A. Well, not -- I mean, not for the in-state.  
7 That's not how we handle it for the in-state voters.  
8 We never have handled it that way.

9 Q. Okay. And so this law has not changed your  
10 processing, in terms of making sure that someone is  
11 deregistered in a prior jurisdiction during a late  
12 registration period, right?

13 A. Correct, in-state.

14 Q. And have you received any statewide guidance  
15 that informs you to handle things that way?

16 A. We did. Just recently, we had our election  
17 training, and we were given that guidance, but like I  
18 said, that was what was communicated to me during  
19 sessions, so that is information I passed on to our  
20 group.

21 Q. So are you aware of any counties that are --  
22 strike that. You don't know if the way that you're  
23 processing things is the way that other counties are  
24 processing registrations, in terms of the  
25 deregistration requirement and omission provision,

1 right?

2 A. Well, actually, we -- like I said, we just  
3 attending training. There were 53 counties there,  
4 and during that part of our training, no counties  
5 seemed confused about that, or said, "Hey, we haven't  
6 been handling it that way," so I don't believe that  
7 any of the counties are doing anything differently.

8 Q. Ms. Plettenberg, you're not a prosecutor,  
9 right?

10 A. I'm sorry?

11 Q. You're not a prosecutor?

12 A. A prosecutor?

13 Q. Yes, like a county attorney that prosecutes  
14 criminal cases?

15 A. No.

16 Q. And there's 56 counties in Montana, right?

17 A. Correct.

18 Q. And each has their own prosecutorial  
19 authority, right?

20 A. I'm sorry. I'm not sure. That's not my  
21 area.

22 Q. So if a voter comes to you and asks, "Could  
23 I be prosecuted under this law? I got a main  
24 register in California, or Oregon, and I'm trying to  
25 register in Ravalli County," you couldn't guarantee

1 that they wouldn't be prosecuted, right?

2 MR. THANE JOHNSON: Objection. Call for a  
3 legal conclusion. Foundation.

4 THE COURT: Sustained.

5 BY MR. HAYDEN JOHNSON:

6 Q. Ms. Plettenberg, in your many years working  
7 as an election administrator, you've had a lot of  
8 face-to-face interaction with voters, right?

9 A. Yes.

10 Q. And that includes assisting them to register  
11 when they're having difficulty, right?

12 A. Yes.

13 Q. And you understand that there's civic  
14 organizations that also assist voters to register to  
15 vote, in your experience, right?

16 A. Yes.

17 Q. For a variety of reasons, voters may not be  
18 able to recall where or if they've been previously  
19 registered somewhere, right?

20 MR. THANE JOHNSON: Objection. Calls for  
21 speculation.

22 THE COURT: Overruled.

23 THE WITNESS: Yes, I would agree with that.

24 BY MR. HAYDEN JOHNSON:

25 Q. So it could be that they've been an inactive

1 voter, registered still, but inactive, and forgotten  
2 some of those details, right?

3 A. Yes.

4 Q. And sometimes elderly voters might not  
5 recall their previous information about where or if  
6 they've been registered, right?

7 A. Yes. Yes.

8 Q. And some states have automatic voter  
9 registration, so if they move to Montana, they might  
10 not know the exact details of their registration in  
11 one of those states, right?

12 A. Correct.

13 Q. Or if someone loses their right to vote  
14 because of a felony conviction in Montana because a  
15 felony conviction with incarceration -- they may have  
16 been registered before and don't know the status of  
17 that after they're released from incarceration,  
18 right?

19 A. Correct, yes.

20 Q. In your experience, some eligible voters can  
21 take some assistance and reassurance to become  
22 registered to vote, right?

23 A. I mean, most of our registrations, you know,  
24 except for late registration, really we don't get a  
25 lot of the in-person registration. Most of ours are

1 through the DMV, mail, and like you said, different  
2 groups that will mail in -- or bring in  
3 registrations, but sometimes, yeah, I mean, people  
4 will come in to get registered. Sometimes they need  
5 assistance. I'm not sure about reassurance. People  
6 usually know they want to get registered if they come  
7 in.

8 Q. Okay. Let's talk about the Plaintiff's  
9 Exhibit 32. This is the testimony you provided to  
10 the -- or this is a transcript of the House State  
11 Administrative Committee hearing from March 29th, and  
12 then, let's turn to page 6 of that document. On that  
13 page that's you introducing yourself as an  
14 informational witness during that hearing, right?

15 MR. THANE JOHNSON: We don't have Exhibit 32  
16 in there.

17 THE COURT: Where is it? What's it attached  
18 to?

19 MR. HAYDEN JOHNSON: Your Honor, this is --  
20 we cited the committee hearing testimony in our  
21 brief, but this is a transcript of that hearing. I'm  
22 happy to provide the Court with a version.

23 THE COURT: Well, Mr. Johnson was trying to  
24 find it. I didn't know if it was attached to a  
25 motion or a brief.



1 MR. THANE JOHNSON: It was not in the  
2 disclosures that they provided to us.

3 MR. HAYDEN JOHNSON: Respectfully,  
4 Mr. Johnson did the same thing on his cross with --

5 THE COURT: Do you have it now?

6 MR. THANE JOHNSON: Yes.

7 BY MR. HAYDEN JOHNSON:

8 Q. So to say the question again, that's you  
9 introducing yourself on page 6, right, Ms.  
10 Plettenberg?

11 A. Sorry. I'm just trying to find it.

12 Q. It's Exhibit 32. It should look like a --

13 A. I'm on 32 -- here we go. Sorry about that.  
14 Yes, that is me introducing myself.

15 Q. Great. And then, if you turn to page 11,  
16 you can see there Representative Cordon from here in  
17 Bozeman asks you about the parts of HB 892 that we're  
18 discussing today -- subsection 15; do you see that?

19 A. Yes.

20 Q. Where he asks, "Can you tell me if this  
21 subsection would increase the burden to vote on the  
22 voter," and he goes on to say, "On the clerk's office  
23 or both"; do you see that?

24 A. Yes.

25 Q. And you respond that those burdens that he

1 describes -- to quote you -- "Is kind of our  
2 concern"; is that right?

3 A. Yes.

4 Q. And so when this bill was being presented,  
5 you were concerned about the difficulties that this  
6 law might impose on voters and election officials,  
7 correct?

8 A. Yeah, so very often when a bill first gets  
9 introduced, and I mean, we do look, and that's why we  
10 listen to the hearings to try and figure out what the  
11 legislative intent is of the bill, and -- so, yeah,  
12 that's why I was listening in, just to see what the  
13 intent of this bill was.

14 Q. And beyond listening, you expressed concerns  
15 about the burdens it would have on voters and on  
16 election administrators, correct?

17 A. Yes. At that time, yes, that was just our  
18 initial reading of the bill, and as you read before,  
19 there's a penalty, and any time there's a penalty, we  
20 definitely want to learn more about the bill.

21 Q. And then, you elaborate in your response --  
22 you say, "If they don't put another state, we don't  
23 know. However, they don't put another county, we  
24 have a statewide voter database," right?

25 A. Correct.

1 Q. So for the first kind -- the inter-county  
2 movers -- you already have that information, so you  
3 don't need that information from the voter when  
4 they're applying to register in Ravalli County,  
5 right?

6 A. That's right.

7 Q. That was true of the old registration  
8 system, and that's true now after HB 892, right?

9 A. Yes.

10 Q. So when someone's applying to register, you  
11 can find their profile existing in the Elect MT  
12 system with something that's required on the form,  
13 something like full name, right?

14 A. Full name and date of birth, we do some --  
15 of course, we want to make sure we're matching the  
16 correct voter, so there's other things we look at.

17 Q. Sure, so full name, date of birth, ID  
18 number -- you could basically find someone when that  
19 information is provided, right?

20 A. Yes.

21 Q. And you can fully determine whether a person  
22 is eligible to vote in Ravalli County, without having  
23 their previous registration information, right?

24 A. Yeah, we can do that -- whether they're in  
25 state or out of state -- if they don't provide any --

1 and they provide all of the other necessarily  
2 information that we need, we can register them,  
3 whether they're from our state or from another state.

4 Q. And so then, I just want to ask you about  
5 something in your declaration, which is Exhibit B,  
6 and in paragraph 6, there, you say, "I'm aware that  
7 HB 892 codified Montana's long-standing requirement  
8 to supply previous registration information," right?

9 A. Yes.

10 Q. And so how do you understand "required" when  
11 you use the word requirement?

12 A. So in -- as long as I have been working the  
13 election's office, the forms have been the same, and  
14 they haven't changed the forms since [inaudible] went  
15 into effect. We've always asked for previous  
16 registration.

17 Q. I guess I'm trying to parse the difference  
18 between asked for registration information and  
19 required it. You just testified that you will  
20 process the application, regardless of whether that  
21 field is filled out, right?

22 A. Correct.

23 Q. And if you know that that field -- if you  
24 see that that field isn't filled out, but you have  
25 reason to think that it should have been filled out,

1 that someone was previously registered somewhere, you  
2 still don't do anything about that, right?

3 A. Well, I wouldn't have any way of knowing if  
4 they were registered from -- if they were registered  
5 out of state. I mean, we will always ask for that.  
6 In fact, when we ask people -- the fields that we  
7 want filled out, that's always been one of them  
8 because we want to keep, not just our rolls clean,  
9 but of course, rolls from other states, so that's  
10 been, like I said, a long-standing requirement.

11 Q. I guess what I'm getting at,  
12 Ms. Plettenberg, is that information is not required  
13 to become registered, and it's not required, in the  
14 sense that, if it's missing, you'll report that  
15 person for a criminal follow up, right?

16 A. Correct.

17 Q. And so there's no consequence to the voter  
18 in Ravalli County that omits that field, right?

19 A. Correct. Yes. No, we would never -- that's  
20 not ever something we would check up on, no.

21 Q. And for out of state, you say you can't  
22 check, right?

23 A. We -- right.

24 Q. And that's because you don't have access to  
25 any information from other states to which to check,

1 right?

2 A. Right, so unless it's, like, a challenge --  
3 same thing with challenge registrations, unless  
4 something's brought to our attention, or, like,  
5 somebody doesn't meet the residency requirement, we  
6 wouldn't know.

7 Q. Okay. Another process -- another part of  
8 your office's process for maintaining voter rolls is  
9 the NVRA's west maintenance process, right?

10 A. Yes.

11 Q. And that basically is, if someone sits out  
12 two federal elections, you send them a notice, and if  
13 they don't respond, you can start to initiate  
14 removing them from the rolls, right?

15 A. Right, so we -- couple different -- we have  
16 to do that annually, and we have a couple of  
17 different ways we do that, but, yes, we have to clean  
18 our rolls every year.

19 Q. Okay. And so that's -- there's also a  
20 process with USPS that, if they send you some  
21 information that someone's moved, you can also send  
22 the voter a notice confirming whether they've moved,  
23 so you initiate removing them from the rolls, right?

24 A. Right. Yeah, I think we're talking about  
25 the process of the 132220.

1 Q. Right. It's the national change of address  
2 list, right?

3 A. Yeah. Yes. So we do that. That's on the  
4 even years that we do that.

5 Q. And if a voter, before this law, just didn't  
6 respond to that notice, either the national change of  
7 address notice, or the sitting out two federal  
8 elections notice, nothing would -- the voter wouldn't  
9 be threatened with any criminal prosecution for not  
10 responding, right?

11 A. Right. No.

12 Q. But you couldn't guarantee that the voter's  
13 nonresponse to that notice couldn't be used as  
14 evidence that the deregistration requirement has been  
15 violated, right?

16 A. I wouldn't even put those two statutes  
17 together.

18 Q. You mentioned maintaining other state's  
19 voter rolls -- helping to maintain other state's  
20 voter rolls -- and I wanted to follow up on that. So  
21 when you receive previous registration information  
22 from an inter-state mover, and you put that in the  
23 system, you don't follow up to see whether another --  
24 what another state does or doesn't do with that  
25 information, right?

1           A.    Yeah.  If I'm understanding you correctly,  
2   so if it's an out of state voter that gives us their  
3   prior registration, maybe, in Washington, we put that  
4   in the system, and the Secretary of State sends that  
5   out to the state, but you're right, I don't follow up  
6   to make sure.  Is that the question?

7           Q.    Right.  And that person may well have  
8   already canceled their registration in the other  
9   state, for all you know, right?

10          A.    Right.

11          Q.    You don't have any way -- you don't  
12   currently have an easy way to check other state's  
13   registration databases?

14          A.    No, but what I meant by wanting to keep  
15   their records clean, we appreciate it when they send  
16   those to us, so that we can clean up our rolls, so I,  
17   like, do it for the other states as well.  I think  
18   every election administrator does.

19          Q.    But again, you don't check to see whether  
20   the provider's information gets used at all to  
21   maintain state -- other state's voter rolls, so  
22   you're just, kind of, assuming that it does, right?

23          A.    Yes.

24          Q.    Okay.  And then, looking at your  
25   declaration, again, Defendant's Exhibit B, it does



1 not claim that HB 892 does anything about  
2 establishing a voter's residency, right?

3 A. I don't think so.

4 MR. THANE JOHNSON: Objection. Call for a  
5 legal conclusion.

6 THE COURT: Overruled.

7 BY MR. HAYDEN JOHNSON:

8 Q. I'll just repeat the question. Your  
9 declaration is what I'm asking about. It doesn't  
10 claim that HB 892 is helping your office establish a  
11 voter's residency, right?

12 A. I mean, I'm responsible for the  
13 administration of all procedures relating to the  
14 registration [inaudible].

15 Q. I guess what I'm asking is when someone -- a  
16 voter moves to Ravalli County and applies to  
17 register, they give you their lawful residence in  
18 that county, right -- that's a required field on the  
19 form?

20 A. Correct, yes.

21 Q. And they do so under penalty of perjury in  
22 the application. They say, "I live at this address,  
23 and I'm affirming that under penalty of perjury,"  
24 right?

25 A. Right.

1 Q. And then, if they vote by mail, the voter,  
2 again, attests that their lawful residence -- where  
3 the ballot was sent -- that their lawful residence is  
4 in the county, under criminal penalty again, right?

5 A. Yeah, I mean, they're filling out a form.  
6 Their registration form is an affidavit.

7 Q. And I was asking specifically about a  
8 returned mail ballot.

9 A. Right. They're saying that -- yeah -- that  
10 that information is correct. They haven't voted in  
11 another election, yes.

12 Q. Right. And so in determining residency,  
13 where a voter used to be registered, or used to  
14 reside, is not really relevant for you to -- seeing  
15 if they've established residence in Ravalli County,  
16 right?

17 A. Right. I mean, everything on that  
18 registration form is an affidavit. I also don't go  
19 out to check to make sure that's where they're  
20 registered, but it's -- the form is stating that is  
21 where they live.

22 Q. Right. So you could take the form on face  
23 value of their residence, but you don't need to see  
24 where they used to be registered to make that  
25 determination, right?

1           A.    Right.  No, those are two separate things,  
2  but they're all part of this form.

3           THE COURT:  Mr. Johnson, how long is this  
4  going to take?  I set this for the afternoon, and  
5  we've got 4:15, and the State hasn't even been able  
6  to put their case on yet.

7           MR. HAYDEN JOHNSON:  Yeah, I understand,  
8  Your Honor.  You know, we had two very long voir  
9  dires and speaking objections, so we didn't  
10 account --

11          THE COURT:  Well, I wouldn't put this on  
12 Mr. Johnson.  You guys have done most of the evidence  
13 here.  You could have asked for more time, but you  
14 didn't.

15 BY MR. HAYDEN JOHNSON:

16          Q.    Ms. Plettenberg, are you aware that last  
17 year the attorney general said that in their efforts  
18 to investigate voter fraud, "We get stonewalled by  
19 the local election administrators."  Are you aware of  
20 that?

21          A.    I have not heard that.

22          MR. HAYDEN JOHNSON:  Can we pull up  
23 Plaintiff's Exhibit 39?

24 BY MR. HAYDEN JOHNSON:

25          Q.    If you turn to page 2 of that article,

1 Ms. Plettenberg, does that refresh your recollection?

2 A. I haven't heard this. I'm sorry.

3 Q. I guess the question I have is: Your office  
4 isn't stonewalling investigations of voter fraud,  
5 right?

6 A. No, never. I don't know of anyone who's  
7 done that. Like I said, I haven't heard about this.

8 Q. And your office --

9 A. I guess, I haven't read it. I guess, that's  
10 what I should say. I haven't read about this.

11 Q. Understood. And your office has every  
12 incentive to detect and prevent voter fraud, right?

13 A. Absolutely. I think everyone around the  
14 state -- we talk about that endlessly within our  
15 association.

16 Q. So all of the counties agree with that,  
17 right?

18 A. I believe so, yes. From everyone I've  
19 talked to, and I do talk to a lot of the clerks, I  
20 haven't heard of anyone -- and I'm sorry if that's  
21 how the attorney general feels.

22 MR. THANE JOHNSON: Your Honor, I'm going to  
23 object to any further part on this. She has no idea;  
24 she's never read it; never seen it.

25 THE COURT: All right. Well, I think we're

1 done here, right?

2 MR. HAYDEN JOHNSON: One more question, Your  
3 Honor.

4 THE COURT: Well, what's the question?

5 BY MR. HAYDEN JOHNSON:

6 Q. Ms. Plettenberg, bottom line is Montana's  
7 elections are safe, secure, and not afflicted by  
8 fraud, right?

9 MR. THANE JOHNSON: Objection. Foundation.  
10 I think she can testify as to Ravalli County.

11 THE COURT: You can talk about your  
12 experience, if you want, ma'am.

13 THE WITNESS: I believe -- like I say, I  
14 feel like we have a very good election process within  
15 the state and my county particularly, but I do work a  
16 lot with all of our election administrators, and I  
17 know they're all doing their best to follow state  
18 laws and prevent anything like that.

19 BY MR. HAYDEN JOHNSON:

20 Q. Thank you, Ms. Plettenberg.

21 THE COURT: All right. Ms. Plettenberg, I  
22 had a question before Mr. Johnson goes. You said  
23 something -- you said if your office gets -- and I  
24 just quote -- "All of the other information," you  
25 don't need the information in these three boxes about

1 previous registration; is that correct? So you get  
2 enough information with the other boxes, so that you  
3 can contact the prior jurisdiction, or the process  
4 gets, kind of, put through.

5 THE WITNESS: Yeah, Judge. I mean, we  
6 assume if they left it off it's because they're  
7 aren't -- either they weren't registered somewhere  
8 else, or they weren't aware they were registered  
9 somewhere else, so, no, we don't pull it up if that's  
10 not there. We just assume it means they weren't  
11 registered anywhere.

12 THE COURT: So I was just wondering, though,  
13 you know, this is information that talks about name,  
14 you know, date of birth, email address, things about  
15 last four digits of your social, residence. If you  
16 get all of that information, is that enough  
17 information to give previous jurisdictions and/or out  
18 of state jurisdictions notice that this person is  
19 registered in Montana in Ravalli County now, so that  
20 they will get removed, or not?

21 THE WITNESS: If we don't know where to send  
22 it, Your Honor, then, we don't send it to that  
23 location. But, yes, it's enough for them to get  
24 registered here, so if another jurisdiction calls --  
25 like another state -- and inquired, we could let them

1 know they are registered here.

2 THE COURT: Okay. Thanks for clarifying  
3 that.

4 Mr. Johnson?

5 MR. THANE JOHNSON: Briefly, Your Honor.

6

7

CROSS-EXAMINATION

8 BY MR. THANE JOHNSON:

9 Q. Would you agree that the Secretary of State  
10 handles the deregistration in Montana?

11 A. Yes, I mean, I would say that we handle the  
12 registering of electors and putting in that previous  
13 information, but it is the State's voter database, so  
14 everything is done through the State. I hope -- am I  
15 understanding that right?

16 Q. Sure. The burden's not on the voter, right,  
17 or the elector?

18 A. The burden is on the elector to fill out the  
19 application to the best of their ability and to give  
20 us the required fields that we need, and although,  
21 we -- previous registration is something we would  
22 assume they would give us, if they know about it, but  
23 again, all of that is an affidavit, so we assume that  
24 it's correct.

25 Q. So the burden is on the elector just to

1 provide the information. The Secretary of State does  
2 the deregistration, right?

3 A. Well, it is up to each county to enter that  
4 information, but it is all done through the State,  
5 yes.

6 Q. Thank you. Have you seen any decline in  
7 voter registration since the passage of House Bill  
8 892 in May?

9 MR. HAYDEN JOHNSON: Objection, Your Honor.  
10 Scope.

11 THE COURT: Overruled.

12 THE WITNESS: We have not -- I have not in  
13 my county, no.

14 BY MR. THANE JOHNSON:

15 Q. Have you heard any citizen's complaints  
16 regarding House Bill 892 since its passage?

17 A. No, I have not.

18 Q. You know, you expressed some concerns in May  
19 of 2023, regarding House Bill 892. Have your  
20 concerns been alleviated?

21 A. Yes, like I said, after getting  
22 clarification on the intent of the bill. We just  
23 remain -- our association remains neutral, and we --  
24 in fact, I don't even believe I know anyone weighing  
25 in on any kind of testimony in the senate.



1 MR. THANE JOHNSON: No further questions,  
2 Your Honor.

3 THE COURT: Okay. Any redirect?

4 MR. HAYDEN JOHNSON: Briefly, Your Honor.

5

6 REDIRECT EXAMINATION

7 BY MR. HAYDEN JOHNSON:

8 Q. Ms. Plettenberg, the concerns you had about  
9 the bill in March 2023, are you aware if the bill was  
10 amended to relieve those concerns?

11 A. Like I said, the concerns weren't where I  
12 would want to go in and oppose the bill. They were  
13 more just wanting to get clarification of the bill.

14 Q. We talked on direct about the burdens that  
15 you had concerns about on voters and election  
16 administrators. The bill was never amended, right?

17 A. Right, but that happens with many bills. I  
18 mean, we had a lot of bills where we just go in and  
19 get information, listen to testimony on it. It  
20 doesn't mean that we're going to actually oppose, or  
21 even ask for amendments on those bills, and this was  
22 one of those.

23 Q. Understood. And so your view of the bill is  
24 just based on what you've been told about the intent  
25 of the bill, right?

1           A.    Yes, on this bill.  But that happens with  
2 many bills.  That's why we go into the hearings and  
3 listen to what's on the record, so that we can figure  
4 out what the intent.

5           Q.    And if it turns out that the deregistration  
6 requirement and omission provision, that they did  
7 have criminal penalties, would you be concerned about  
8 that?

9           A.    Yeah, I mean, if we were given guidance to  
10 follow up and police, we wouldn't have the staff to  
11 do that, so yes, that would be a concern if that  
12 changed.

13          Q.    And beyond the burdens on your office, would  
14 you be concerned about the burdens on voters if it  
15 was criminally enforced?

16          A.    Yes, if it was criminally enforced.

17          Q.    Thank you.  Nothing further.

18                THE COURT:  Okay.  Can this witness be  
19 excused?

20                MR. THANE JOHNSON:  Yes.

21                MR. HAYDEN JOHNSON:  Yes.

22                THE COURT:  Anything else from the  
23 Plaintiff?  No?  Okay.

24                MR. THANE JOHNSON:  Your Honor, may I  
25 provide you with our exhibits?

1 THE COURT: Sure. You guys just admitted  
2 Exhibit 6, so if I can get 6 and get it to the clerk,  
3 then I can keep the record clean, and then,  
4 Ms. Huling, or somebody, could maybe grab this.

5 MR. HAYDEN JOHNSON: 6 is in the binder up  
6 there, Your Honor.

7 THE COURT: Right. But the only thing that  
8 is going to the clerk is 6, so i just want to make  
9 sure we don't leave it there at the end of the day,  
10 so if you call pull it out, and mark it, and then,  
11 give it to Tom.

12 MR. HAYDEN JOHNSON: Yes.

13 THE COURT: Ms. Lansing?

14 MS. LANSING: Good afternoon. The Defendant  
15 would like to call Dana Corson, who should be on  
16 Zoom.

17  
18 DANA CORSON,  
19 called as a witness by the Defendant, was first duly  
20 sworn, as hereinafter certified, examined, and  
21 testified as follows:

22

23 THE WITNESS: Dana Corson, D-A-N-A,  
24 C-O-R-S-O-N.

25 THE COURT: You can go ahead.

1 DIRECT EXAMINATION

2 BY MS. LANSING:

3 Q. Good afternoon, Mr. Corson. What is your  
4 occupation?

5 A. Presently, I'm retired.

6 Q. When did you retire?

7 A. At the end of December -- December 29 of  
8 2023.

9 Q. What did you do before you retired?

10 A. I was employed by the office of the Montana  
11 Secretary of State.

12 Q. What was your title there?

13 A. Deputy Chief Elections Officer and Director  
14 of Elections.

15 Q. In total, how long did you work for the  
16 Secretary of State?

17 A. Since about March of 2007, so 16-plus years.

18 Q. What were your duties as the Montana  
19 elections director?

20 A. So the role is the elections officer, so  
21 maintaining forms, administrative duties,  
22 advising/assisting/training the counties --

23 THE COURT: Mr. Corson, could you hold on?

24 Can you guys get settled down over there?

25 It's a bit distracting.

1 All right. Sir, can you start again? We  
2 had a bunch of people moving around to my right, and  
3 I wasn't able to pay attention.

4 THE WITNESS: So the role as a chief  
5 election officer is, you know, maintaining forms,  
6 administrative duties, advising/training counties,  
7 maintaining the necessary state-wide voter  
8 registration system, and any of the necessary records  
9 under statute.

10 BY MS. LANSING:

11 Q. So you may have touched on this briefly, but  
12 did those duties involve voter registration?

13 A. No, the process of voter registration itself  
14 is the responsibility of the county election  
15 administrators. We manage the voter registration  
16 system and make it available to all 56 counties.

17 Q. Are you familiar with HB 892?

18 A. Yes.

19 Q. How are you familiar with it?

20 A. I testified in the legislative committees,  
21 both in the House Administration and Senate Admin  
22 committees.

23 Q. Prior to the enactment of HB 892, did the  
24 State require persons registering to vote in Montana  
25 to provide their prior place of registration?

1 A. Yes.

2 Q. How long had that requirement been in  
3 existence?

4 A. For decades.

5 Q. What does Montana do with the prior place of  
6 registration information?

7 A. So when the election office received that  
8 piece of information, that's entered into the system,  
9 along with all of the other pertinent information  
10 necessary to register in the system. If it's a  
11 county, you know, in this state, they'll go ahead and  
12 move the registration to the new county. If it's  
13 from out of state, we provide a notice to the other  
14 jurisdiction letting them know that that person is  
15 registered to vote in Montana.

16 Q. And which election's office are you speaking  
17 of when you say the election's office will provide  
18 that notice?

19 A. So the notice that goes out, comes out of  
20 our office.

21 Q. The Secretary of State's office?

22 A. Present day, it goes out of there, yup.  
23 Prior to that, Montana Votes; prior to Montana Votes,  
24 it would have been a mail effort. Likewise, Montana  
25 receives notices from other states when they receive

1 a Montana voter trying to get registered in the new  
2 state.

3 Q. Are you aware of the town of Dodson,  
4 Montana?

5 A. Yes.

6 Q. Are you aware of a recent incident involving  
7 election integrity issues in Dodson, Montana?

8 A. Yes.

9 Q. What was that incident?

10 A. I believe it was the Dodson mayor race back  
11 in 2021, if memory serves me right, where two ladies  
12 from the Philippines, who were not US citizens,  
13 registered to vote in the mayor election, and the  
14 difference in the race for the final vote count was a  
15 difference of two, so it was significant.

16 Q. In the 2020 election, did you receive any  
17 evidence of persons attempting to vote twice in two  
18 different states?

19 A. Yes.

20 Q. What information did you discover?

21 A. The Public Interest Legal Foundation reached  
22 out to my office in Montana and advised that they  
23 have evidence of people from different states,  
24 including Montana residents, who voted --

25 MR. HANCOCK: Objection, Your Honor.

1 Hearsay.

2 THE COURT: Overruled.

3 BY MS. LANSING:

4 Q. Mr. Corson, if you could just start at the  
5 beginning again, prior to that objection. The  
6 question was what information did you discover?

7 A. The information comes from Public Interest  
8 Legal Foundation who let me know that we had people  
9 from -- I'll give you an example -- from California  
10 and Montana -- the same person voting in the same  
11 election.

12 Q. What did you do with that evidence?

13 A. So the first examination is, number one, is  
14 it true for the Montana side because I can see the  
15 Montana voting history, and I checked each and every  
16 one of those out, and found out that they did,  
17 indeed, vote in Montana, and then, I subsequently  
18 reached out to each of the states asking them to make  
19 sure that the person was identified properly and  
20 determine if they voted in the 2020 election in that  
21 state as well. As it turns out, the information from  
22 Public Interest Legal Foundation was accurate.

23 Q. What happened after you checked that and  
24 reached out to those states?

25 A. So after verifying all that, I reached out



1 to Montana MATIC -- so that's Montana Analytic  
2 Technical Information Center. It's run by the  
3 Department of Justice here in Montana.

4 Q. Do you know what happened after that  
5 referral?

6 A. Yeah, they went and referred to the FBI, who  
7 initiated an investigation.

8 Q. What's the status of that FBI investigation?

9 A. You know, I haven't heard if any of the  
10 cases have been concluded, or if any have resulted in  
11 a conviction. I assume they're either pending or  
12 didn't materialize. I don't know.

13 MR. HANCOCK: Your Honor, objection.  
14 Speculation.

15 THE COURT: Sustained. He doesn't know what  
16 happened.

17 MS. LANSING: I have no further questions.  
18 Thank you.

19 THE COURT: All right. Cross?  
20

21 CROSS-EXAMINATION

22 BY MR. HANCOCK:

23 Q. Good afternoon, Mr. Corson. Just for the  
24 record, I cannot see you on the Zoom screen, so I  
25 would encourage you to please give any verbal, and

1 don't give any nonverbal answers. I'm going ask you  
2 a few follow up questions about what you just said  
3 with Defendant's attorney, and what's stated in your  
4 declaration, and a few other documents. Mr. Corson,  
5 is it correct that you no longer work for the  
6 Secretary of State's office?

7 A. Correct.

8 Q. Are you here testifying today on behalf of  
9 the Secretary of State's office, nevertheless?

10 A. I'm sorry. Can you repeat the last part of  
11 your sentence?

12 Q. So are you testifying here today behalf of  
13 the Secretary of State office, nevertheless?

14 A. I'm here as a witness in the case with  
15 pertinent information to what happened in the past  
16 for the Defense.

17 Q. But to be clear, you're not able, here  
18 today, to speak on behalf of the Secretary of State's  
19 office with regard to its policies, or what it  
20 thinks, or whatever its doing at this present moment?

21 A. Having been gone for just about 30 days, I  
22 can speak to everything that happened before that.

23 Q. Just to make sure we're using the same  
24 terminology for the Court, you understand that there  
25 are two parts of HB 892 that are being challenged in

1 this case, correct?

2 A. Correct.

3 Q. And if I refer to the first provision -- the  
4 deregistration requirement -- you would understand  
5 what I'm talking about?

6 A. I'm sorry about the deregistration label. I  
7 don't see in a plain read of that for a requirement  
8 of a deregistration needs to occur first.

9 Q. Well, let's take a look at Plaintiffs'  
10 Exhibit 8, which is the involved bill text, if we  
11 could. If I could direct your attention please to  
12 subsection 5.

13 A. Okay. I'm there.

14 Q. So if I refer to this provision as the  
15 deregistration requirement, you'll know that this is  
16 the part of HB 892 that I'm referring to, correct?

17 A. Section 5?

18 Q. First sentence of section 5, yes.

19 A. And what's your question about it?

20 Q. The question is: If I refer to the  
21 deregistration requirement, you'll understand that  
22 I'm referring to the first sentence of section 5?

23 A. Correct.

24 Q. Okay. And if I refer to the omission  
25 provision, you'll understand that I'm referring to

1 the second sentence of section 5?

2 A. Okay. Correct.

3 Q. Now, no part of HB 892, which is in front of  
4 you, explains how a person can go about canceling a  
5 previous voter registration, does it?

6 MS. LANSING: Objection. Exceeds the scope  
7 of direct.

8 THE COURT: Overruled.

9 THE WITNESS: That's for me to answer?

10 THE COURT: You can go ahead and answer.

11 THE WITNESS: All right. The language in  
12 section 5 doesn't talk about canceling a  
13 registration, however, other parts of Title 13 do.

14 BY MR. HANCOCK:

15 Q. So my question was: No part of HB 892  
16 explains how a person can go about canceling a  
17 previous registration; is that right?

18 A. I would agree with you on that, with the  
19 understanding that how to cancel is handled elsewhere  
20 in statute.

21 Q. And there is no centralized process for  
22 voters to deregister in another state, is there?

23 A. Say that again there. I got a little break  
24 up on the audio.

25 Q. If a voter is registered in a state outside

1 of Montana, and they want to register in Montana,  
2 there is no national centralized process by which  
3 they can resort to deregister; is that right?

4 A. I would agree with that. That is correct.

5 Q. So a voter who wants to be removed from the  
6 voter rolls in another state would have to figure out  
7 how to contact that other jurisdiction to find out  
8 how to do so; is that correct?

9 A. Or you could rely on having filled out the  
10 form. If you were previously registered in  
11 California, that would not be the task of purposely  
12 remaining registered to vote in more than one place  
13 or state.

14 Q. Now, if a voter put the information on the  
15 form -- on part 9 of the form -- they would have no  
16 guarantee of actually being deregistered in another  
17 state; isn't that correct?

18 A. The typical process for -- I believe all of  
19 the states have a similar scheme for this -- when you  
20 ask to be canceled or unregistered, whatever you want  
21 to call it, there's going to be some confirmation  
22 mailings on that and some communications to make sure  
23 that the voter knows it's going to be canceled.

24 Q. Your office would not tell a voter, in that  
25 situation, that they had been deregistered from

1 another jurisdiction; isn't that right?

2 A. I'm sorry, that's a question for process  
3 on -- a question for the clerk to answer. The  
4 Secretary of State's office wouldn't, itself, have to  
5 answer that. It would be a question to the register  
6 of the county.

7 Q. So the Secretary of State's office would not  
8 do that?

9 A. Correct.

10 Q. The Secretary of State's office has not  
11 provided any guidance to voters on how they should go  
12 about seeking out deregistration in their prior state  
13 of residence; isn't that right?

14 MS. LANSING: Objection. Beyond the scope.

15 THE COURT: Overruled.

16 THE WITNESS: Correct on that.

17 BY MR. HANCOCK:

18 Q. Looking back at subsection 5, and the  
19 deregistration provision -- requirement and omission  
20 provision -- sorry, let's focus on the omission  
21 provision for a moment. The omission provision could  
22 apply to two different types of voters, couldn't it?  
23 Voters who move inter-county, and voters who move  
24 from another state?

25 A. Correct.

1 Q. And so the inter-county -- just so we're  
2 clear -- we mean someone who, for example, was, say,  
3 previously registered here in Bozeman, but then,  
4 moves to Helena and has to register there?

5 A. Correct.

6 Q. And these folks are sometimes called  
7 transfer registrants?

8 A. Correct.

9 Q. And then, the other category would be  
10 inter-state movers, and what we mean is there is  
11 someone who moves from another state, say Colorado,  
12 and then, wants to register in Montana?

13 A. Correct.

14 Q. The omission provision only applies to  
15 people who register to vote by filling out the  
16 Montana voter registration form; is that correct?

17 A. That exists on the Montana form and,  
18 correspondingly, in other states because we do receive  
19 forms from other states about somebody from Montana  
20 who's been registered in, say, Florida, for an  
21 example. I believe other states are using the same  
22 scheme as well.

23 Q. Well, I guess my question is that the  
24 provision -- HB 892 -- the omission provision -- only  
25 applies to a Montana voter registration application,

1 right? Like, if someone submitted a federal form  
2 application, HB 892 doesn't apply to that, right?

3 A. In terms of filling out the previous  
4 registration, based on the Montana voter registration  
5 application, yes.

6 Q. And folks who want to vote and register to  
7 vote in Montana, they can choose whether they want to  
8 register via the Montana form or the federal form;  
9 isn't that right?

10 A. That's correct.

11 Q. Let's take look at the Montana voter  
12 registration application, if we could. This is  
13 Plaintiffs' Exhibit 7. Are you able to see this  
14 document? Is it up there on the screen for you?

15 A. Yup, I see it.

16 Q. Okay. Great. Do you see, down in the  
17 bottom right hand corner of page 1, it states  
18 04/2021?

19 A. Let me adjust my Zoom. The very bottom is  
20 not showing.

21 Q. Is it very tiny. Apologies.

22 A. I see 4/2021, yeah.

23 Q. Okay. And is it your understanding that  
24 that indicates that this form was last updated in  
25 April 2021?



1 A. Correct.

2 Q. And you're not aware of any change in this  
3 form to account for the new requirement of HB 892; is  
4 that right?

5 A. No. There was no change necessary on the  
6 form.

7 Q. Okay. And you would, of course, be aware if  
8 there was any change to the form, right?

9 A. Correct, and you would have seen the version  
10 date, at the bottom, change.

11 Q. If a person's going to register to vote in  
12 Montana using this form, it's important that the  
13 person follows the form's instruction, right?

14 A. Yes.

15 Q. And so at the top of the form, immediately  
16 beneath where it says, "Montana voter registration  
17 application" --

18 THE COURT: All right. This form speaks for  
19 itself. It's quarter to 5:00. We're going to get  
20 this hearing done today, so you can move on.

21 MR. HANCOCK: Understood. Thank you, Your  
22 Honor.

23 BY MR. HANCOCK:

24 Q. Okay. Shifting gears, Mr. Corson. People  
25 aren't required to vote in Montana, correct?

1           A.    Again, the audio.  They are or are not  
2 required to vote?

3           Q.    Apologies.  Are not.

4           A.    It's a choice.  They're not required to  
5 vote.

6           Q.    And so it's a choice to register to vote,  
7 too, right?

8           A.    Correct.

9           Q.    And so a person could just decide not to  
10 register to vote, if they didn't want to, for  
11 whatever reason?

12          A.    That's correct

13          Q.    And so in any given time period, the State  
14 of Montana -- well, sorry.  Let me rephrase that.  A  
15 person who decides not to register to vote in  
16 Montana, they have no duty to report that to the  
17 State, do they?

18          A.    To report to the State if they chose not to  
19 register to vote?  Is that your question?

20          Q.    That's correct.  Correct.

21          A.    I don't know of any mechanism to even report  
22 that either.

23          Q.    So for any given time period, the State  
24 doesn't know how many Montanans have decided not to  
25 register to vote, even though they could have?

1           A.    That's not a precise number that we know --  
2   to our office, no.

3           Q.    Okay.  In your declaration, exhibit --  
4   Defendant's Exhibit H, you state that Montana's voter  
5   registration system shows 17,982 registrations as of  
6   December 5, 2023, with the registration date -- from  
7   the date HB 892 was signed into law to present; is  
8   that correct?

9           A.    Let me find that here.  Is that on page 1?  
10   Here is it here.  Number 15, is that what you're  
11   referring to?

12          Q.    That's correct, yeah.

13          A.    Okay.  Can you restate your question?

14          Q.    Sure.  Did I read that correctly?  Do you  
15   state, in that paragraph, generally, that there's  
16   17,982 registrations since HB 892 was enacted?

17          A.    That's correct.

18          Q.    And so given what we just discussed about  
19   the State not having any knowledge of who has decided  
20   not to register, that number could not say anything  
21   about how many people have declined to register,  
22   correct?

23          A.    Or that they've simply chosen not to  
24   register to vote.

25          Q.    Right.  So that 17,000-some odd figure says

1 nothing about the number of people who decided not to  
2 register in Montana, right?

3 A. Correct. These are only actions of  
4 registrations that were approved by the election  
5 offices.

6 Q. Mr. Corson, are you aware that the  
7 Defendants filed an affidavit by a person named Sadie  
8 Dallaserra in this case yesterday?

9 A. I haven't seen that, so I have to look at  
10 it.

11 Q. Okay. But are you aware of the filing?

12 MS. LANSING: Objection. Asked and answered.

13 THE COURT: Sustained.

14 MR. HANCOCK: Let's bring up that affidavit.

15 MS. LANSING: Objection. Foundation. He has  
16 no information about this. He already said.

17 THE COURT: All right. Why are we talking  
18 about this, if he doesn't know anything about it?

19 BY MR. HANCOCK:

20 Q. Mr. Corson, to your knowledge, is the 17,982  
21 figure in paragraph 15 of your declaration actually  
22 accurate?

23 A. That was an accurate number in my  
24 declaration.

25 Q. Is it true that your declaration does not

1 compare that number of registrations with any  
2 statistics for any registrations that occurred before  
3 HB 892 in a similar time period?

4 A. Say that one more time for me?

5 Q. Is it true that your declaration doesn't  
6 compare your 17,000 figure with any statistics for  
7 registrations that occurred before the passage of HB  
8 892?

9 A. I think my declaration was since May of  
10 2023. That was the numeric count of registrations.  
11 There was no comparison to prior years or anything  
12 else.

13 Q. Okay. Let's shift gears a little bit and  
14 talk about Exhibit P -- the [inaudible] document that  
15 you discussed on your direct testimony. Mr. Corson,  
16 you mentioned in your direct, you've worked -- until  
17 your retirement, you worked in the Secretary of  
18 State's office since 2007; is that right?

19 THE COURT: Exhibit P is filed under seal,  
20 right? I don't want it up on the screen. It's filed  
21 under seal. If you wanted to have him here  
22 personally, you could have brought him down here, but  
23 I'm not going to put it on the screen.

24 BY MR. HANCOCK:

25 Q. You worked in the Secretary of State's

1 office for 17 years; is that right?

2 A. Approximately 17 years.

3 Q. And so in that time, would it be true that  
4 the Secretary of State's office oversaw hundreds of  
5 elections in Montana?

6 A. That would be accurate, given all of the  
7 different types of elections.

8 Q. So it would be fair to say that millions of  
9 votes were cast in Montana elections while you were  
10 working at the Secretary of State's office?

11 A. Yes.

12 Q. Thank you, Mr. Corson. Just a few more  
13 questions. So you mentioned in your declaration,  
14 which is Exhibit H -- Defense Exhibit H -- Montana  
15 has a statewide system for tracking voter  
16 registrations, right?

17 A. Correct.

18 Q. This is called Elect MT?

19 A. Correct.

20 Q. It used to be called Montana Votes or MT  
21 Votes?

22 A. That's correct.

23 Q. And so an election official in Montana is  
24 able to go into this database and determine if any  
25 particular person is registered to vote in the state,

1 right?

2 A. That's correct, and the status of their  
3 particular voting history, too. If they're active,  
4 inactive, or whatever.

5 Q. And so a Montana election official who  
6 receives a Montana voter registration application  
7 that lacked any prior registration information, that  
8 official could simply look in the database and  
9 determine if the applicant is already registered  
10 somewhere in Montana?

11 A. It would be true for somebody that's  
12 currently found in the Montana system; it would not  
13 be true for an out of state person.

14 Q. And a county election official could  
15 actually use the Elect MT system to confirm whether  
16 someone had actually voted in a different Montana  
17 election; is that right?

18 A. That's correct. The clerk and recorder can  
19 see all of the voting history for that individual.

20 Q. So this statewide voter registration  
21 database can prevent instances of inter-county double  
22 voting, right?

23 A. That's by design, yes.

24 Q. Now, the statewide -- as you just  
25 mentioned -- the statewide registration database

1 can't tell you if the person is registered in another  
2 state, right?

3 A. That's correct.

4 Q. So when someone leaves part 9, on the  
5 Montana voter registration form, blank, an election  
6 official is not able to fact check whether that voter  
7 is actually registered in another state or not?

8 A. That's correct. They take it on its face  
9 value, based on the representation of the applicant.

10 Q. And so that is also true if someone does  
11 indicate, in section 9 of the form, that they were  
12 previously registered in another state? You can't  
13 fact check that either?

14 A. We would take that at face value and provide  
15 proper notification.

16 Q. Are you familiar with the electronic  
17 registration information center, commonly called  
18 ERIC?

19 MS. LANSING: Objection. Exceed the scope of  
20 direct.

21 THE COURT: Sustained.

22 MR. HANCOCK: No further questions, Your  
23 Honor.

24 BY MR. HANCOCK:

25 Q. Thank you, Mr. Corson.



1 THE COURT: Can I just ask a question? Are  
2 any of you guys Montana attorneys? Okay. We've got  
3 one. All right. At least we have one.

4 Go ahead. Did you have anything further?

5 MR. NOONAN: Judge, we have one more  
6 witness.

7 THE COURT: All right. Can this witness be  
8 excused?

9 Thank you, sir.

10 How long do you think you'll take?

11 MR. NOONAN: I just crossed out a ton of  
12 testimony. I'm going to speed this up as much as  
13 possible. Michael Noonan in for the State. State  
14 calls Connor Fitzpatrick.

15

16

CONNOR FITZPATRICK,

17 called as a witness by the Defendant, was first duly  
18 sworn, as hereinafter certified, examined, and  
19 testified as follows:

20

21

THE WITNESS: Connor Fitzpatrick,

22 C-O-N-N-O-R, F-I-T-Z-P-A-T-R-I-C-K, Lewis and Clark  
23 County Elections Division supervisor.

24

THE COURT: Mr. Noonan?

25

MR. NOONAN: Thank you, Your Honor.

1

DIRECT EXAMINATION

2 BY MR. NOONAN:

3 Q. May I call you Connor?

4 A. Please.

5 Q. Thank you, Connor. What is your occupation?

6 A. Lewis and Clark County Elections Division

7 Supervisor.

8 Q. And what are your duties as the Election

9 Division Supervisor?

10 A. The short answer is running around putting a  
11 plan together for each day, whether it's election day  
12 or registering voters on days between elections, and,  
13 kind of, anything in between there required by  
14 statute, especially, or customer service when people  
15 are in the office.

16 Q. Has the enactment of HB 892 changed the  
17 procedure for registering voters in your office?

18 A. It has not.

19 Q. Okay. Are you aware of any voter  
20 registration events occurring in Lewis and Clark  
21 County in the past week?

22 A. The past week, yes, one came to my attention  
23 a couple of days ago.

24 Q. Do you know who it was hosted by?

25 A. League of Women Voters. The Helena Chapter,

1 specifically, if I remember correctly.

2 Q. Now, could a person find information on this  
3 at helenaevents.com?

4 A. That's where I found it, so yes.

5 Q. Could you please turn to what's marked as  
6 State's Exhibit A? Might actually be the first page.

7 A. Helenaevents.com page?

8 Q. Yes, sir.

9 A. First one, right there. Perfect.

10 Q. What is that?

11 A. It looks like a community event for voter  
12 registration at the Lewis and Clark County Library  
13 put on by the League of Women Voters.

14 MR. NOONAN: State moves to admit Exhibit A.

15 THE COURT: All right. Any objection?

16 MR. HAYDEN JOHNSON: No objection.

17 THE COURT: State's A is admitted.

18

19 (Whereupon State's Exhibit A was  
20 admitted.)

21

22 BY MR. NOONAN:

23 Q. On page 1, after the word "description", can  
24 you please read the first two paragraphs?

25 A. "Avoid standing in line for hours on

1 election day to register to vote. Register to vote  
2 at the Lewis and Clark County Library. No ID is  
3 required, and registering only takes two minutes.  
4 During February, volunteers are at the Lewis and  
5 Clark Library every week to register people to vote  
6 from 6:00 to 7:00 p.m. Wednesday, and from 1:00 to  
7 2:00 p.m. Saturdays. Library is at 120 South Last  
8 Chance Gulch."

9 Q. And on page 2, the last line within that  
10 box, beginning with the words, "this public service,"  
11 could you read that line?

12 A. Yes. "This public service announcement is  
13 sponsored by the League of Women Voters of Helena and  
14 Montana Women Vote."

15 Q. Thank you. Are you aware of any voter  
16 registration events occurring in Lewis and Clark  
17 County in the immediate future?

18 A. Yes, I am.

19 Q. Could you please state what that is?

20 A. I was invited to a similar event, such as  
21 the one that we just described, being held at the  
22 Lewis and Clark Library on February 12th.

23 Q. Okay. Could you please turn to what has  
24 been marked as State's Exhibit D in that folder?

25 A. Yes.

1 Q. Do you have that in front of you?

2 A. Yes, I do.

3 Q. What is that document?

4 A. That is an email that was sent to me from  
5 Rebecca Johnson who is a wonderful individual who  
6 helps us through the League of Women Voters with  
7 registering folks to vote in our county.

8 Q. When did that email -- when was that email  
9 sent to you?

10 A. Wednesday, February 7, 2024, 10:47 a.m.,  
11 according to the timestamps on the email.

12 MR. NOONAN: State moves to admit Exhibit D.

13 THE COURT: Any objection?

14 MR. HAYDEN JOHNSON: Your Honor, we object.  
15 Rule of completeness. This isn't the complete email  
16 thread.

17 THE COURT: How so?

18 MR. HAYDEN JOHNSON: Rebecca Johnson is a  
19 member of our league. We have the full email thread,  
20 so if the State's going to seek admission of that, we  
21 would seek admission of the full email thread.

22 THE COURT: Do you have it with you?

23 MR. HAYDEN JOHNSON: Yes.

24 THE COURT: All right. Let's just do that.

25 Mr. Noonan, do you need to look at that?

1 MR. NOONAN: Please.

2 MR. HAYDEN JOHNSON: If I may explain, the  
3 black redaction there is the communication that our  
4 client had with us, so it's privileged. That's why  
5 we redacted it out.

6 MR. NOONAN: May I approach?

7 THE COURT: Sure.

8 Any objection?

9 MR. NOONAN: No objection.

10 THE COURT: So we'll have this marked as D,  
11 right?

12 MR. NOONAN: Yes, Your Honor, as in Delta.

13 THE COURT: Did you want to ask any more  
14 questions about that?

15 MR. NOONAN: Yes, if I may.

16 THE COURT: So D is admitted. No objection  
17 then?

18 MR. NOONAN: None from State on the  
19 completed.

20 MR. HAYDEN JOHNSON: No objection.

21 THE COURT: All right. So D is admitted.

22

23 (Whereupon State's Exhibit D was  
24 admitted.)

25

1 BY MR. NOONAN:

2 Q. Connor, in that email thread, were you  
3 personally invited to attend the event?

4 A. Yes, I was.

5 Q. What was the purpose of that?

6 A. The purpose of the event is registering  
7 voters in preparation for the upcoming elections this  
8 year, and I was invited to answer questions regarding  
9 voter registration, if there are any.

10 Q. Would you say you have a good relationship  
11 with various representatives from League of Women  
12 Voters?

13 A. Considering many of them are election judges  
14 for our county and have been for many years, I  
15 certainly feel that we have a wonderful relationship  
16 with them.

17 Q. Do you frequently speak with them during  
18 election year?

19 A. During election, yes, both in the capacity  
20 as they're election judges, but then, also, regarding  
21 questions related to the election or registering  
22 voters in the run up to election, due to late  
23 registration rules coming into play right before that  
24 election.

25 Q. Has anyone from League of Women Voters ever

1 expressed concerns about difficulties registering  
2 voters because of HB 892?

3 A. Not specifically because of HB 892. They  
4 have talked to me about, you know, where to find  
5 people -- you know, trying to generate ideas, but  
6 also, then, questions about the form itself and our  
7 processes. If you would like an example, I'd be more  
8 than happy to provide a few.

9 Q. Thank you.

10 MR. NOONAN: No further questions.

11 THE COURT: Mr. Johnson?

12 MR. HAYDEN JOHNSON: Briefly, Your Honor.

13 Thank you.

14

15 CROSS-EXAMINATION

16 BY MR. HAYDEN JOHNSON:

17 Q. Thank you, Mr. Fitzpatrick, and apologies  
18 for you having to be in the hall longer than expected  
19 here.

20 A. It's good to finally meet you in person,  
21 Mr. Johnson.

22 Q. Meet you in person as well, and thank you  
23 for your services on behalf of Lewis and Clark  
24 voters. So I wanted to first ask you about  
25 Defendant's Exhibit D that we were just talking



1 about.

2 A. Yup.

3 Q. So in that full email thread, if I could  
4 direct you to -- let's go to page 3.

5 A. Page with the stats, correct?

6 Q. Correct. What are those stats?

7 A. Those stats come from the Elect MT  
8 dashboard. So it, kind of, breaks it down based on  
9 active, canceled/inactive, provisional pending under  
10 age, merged records, and then, registrants by age.  
11 Now, you'll notice, in the lower corner of that  
12 registrants by age box, that is active and inactive  
13 records only, so take those numbers with that in  
14 mind.

15 Q. Understood. I appreciate the caveats. I  
16 want to focus on the left column there. It says,  
17 "Registration by status," and am I right, there's a  
18 little under 10,000 inactive voters, right?

19 A. Uh-huh.

20 Q. And then, now reflected in this data are the  
21 eligible voters in Lewis and Clark who are not  
22 registered in the system, right?

23 A. As long as we're defining eligible voters as  
24 individuals, who are 18 or older, who are not  
25 registered to vote in any way, shape, or form in

1 Elect MT, that is a correct statement, yes.

2 Q. Okay. So Ms. Johnson is emailing you here  
3 because -- you understand that she's emailing because  
4 she is wanting to figure out how to reach the  
5 unregistered and the inactive voters, right?

6 A. Yup.

7 Q. And you have an exchange with her saying,  
8 "Yes, we're trying to find those voters, too," right?

9 A. That would be fantastic to find those  
10 folks -- give them a chance to vote.

11 Q. So, you know, sometimes those folks, in that  
12 situation, need a little encouragement to get  
13 involved in the political process, right?

14 A. That is true. Depends on their own  
15 motivations, but that's a soap box I won't get into.

16 Q. Yeah, sounds good. You know, some  
17 encouragement, say, you can put us on Montana  
18 elections, it's easy to do so and get registered,  
19 right?

20 A. If you want to.

21 Q. Yeah. And some voters need some assistance  
22 to get registered, too, right?

23 A. Yup, folks with disabilities. Occasionally,  
24 from time to time, I suspect League of Women Voters  
25 runs into individuals who may not know how to write,

1 or have difficulties writing, so that's the immediate  
2 one that comes to mind for me. That's why they're  
3 there to help.

4 Q. Now, if voters -- League of Women Voters,  
5 sort of, plays that role in Helena and Lewis and  
6 Clark, right?

7 A. Yup, they do a lot of outreach that,  
8 honestly, I wish I could do, but, of course, based on  
9 budgetary constraints, staff constraints, etcetera,  
10 etcetera, we're unable to.

11 Q. Right. Civic organizations have, sort of,  
12 filled the gap to encourage people to get engaged,  
13 right?

14 A. Yup.

15 Q. So if voters thought that something that  
16 they could do in the registration process would  
17 expose them to criminal liability, do you think that  
18 would deter people from participating even further?

19 A. I would think that at least they would  
20 ask --

21 MR. NOONAN: Objection, Your Honor.  
22 Speculation.

23 THE COURT: Based on his experience, he can  
24 answer.

25

1 BY MR. HAYDEN JOHNSON:

2 Q. Based on your experience.

3 A. Based on my experience, we have had people  
4 come in and go, "Hey, what's this box 9 item,  
5 previous registration?" So I explain that to them,  
6 and every one of those people that have talked to our  
7 office about it have gone, "Oh, okay. That makes  
8 sense. That's good to know." They may or may not  
9 know, off the top of their head at that moment, okay,  
10 where was I last registered to vote? Politics is not  
11 the bread and butter for everyone. Elections is not  
12 the bread and butter for everyone. So we encourage  
13 them to put down what they do remember. If they  
14 don't remember anything, then, not applicable is a  
15 valid response as well.

16 Q. So if you -- when you're informing them, do  
17 you warn them that, if they don't put something in  
18 that field, but they have previous registration  
19 information, that they could be exposed to, sort of,  
20 criminal risk?

21 A. No, because we take the affidavit, at the  
22 bottom that they are affirming that everything is  
23 true and correct, at face value.

24 Q. And if you had to inform them that they have  
25 to put that information in, if they don't put it, if

1 there is information, they could be exposed to  
2 criminal risk, what do you think would happen?

3 MR. NOONAN: Objection, Your Honor.  
4 Foundation.

5 MR. HAYDEN JOHNSON: In your experience,  
6 Your Honor.

7 THE COURT: I'll allow it.  
8 Go ahead.

9 THE WITNESS: In my experience, it hasn't  
10 happened before.

11 THE COURT: That's all I need then.

12 THE WITNESS: Yeah, I was going to say it  
13 would be entirely --

14 THE COURT: Hold on. Hold on. That's all I  
15 need.

16 THE WITNESS: -- uncertain.

17 THE COURT: Go ahead, Mr. Johnson.

18 BY MR. HAYDEN JOHNSON:

19 Q. Mr. Fitzpatrick, you said in your  
20 declaration that previous registration information is  
21 required, right?

22 A. Yes, if applicable.

23 Q. Right. And if a voter omits that  
24 information on the form, you'll still be able to  
25 process that application without information there,

1 right?

2 A. Yes.

3 Q. And so you won't reject the application for  
4 omitting that field, right?

5 A. No, but the information that could end up in  
6 there is very helpful to us for a variety of reasons.

7 Q. Right. So it's requested, right?

8 A. Uh-huh.

9 Q. You would like the information?

10 A. Yes, please.

11 Q. But it's not required to become registered?

12 A. Not required to become registered. I  
13 believe the form reflects that as well.

14 Q. Agree. So let's take a look at Plaintiffs'  
15 Exhibit 10, which I believe you have up there. It  
16 should be in that --

17 A. We're on 10, correct?

18 Q. Yes. And if you turn to page 6 there.

19 MR. NOONAN: Judge, objection. Exceeds the  
20 scope of direct.

21 THE COURT: What are we even talking about  
22 here?

23 THE WITNESS: It looks like we've got an  
24 email chain regarding legislative --

25 THE COURT: Hold on.

1 MR. HAYDEN JOHNSON: 10 is an email chain  
2 about HB 892 and whether or not this information is  
3 required, so I think that was within the scope.

4 THE COURT: Okay. Well, he already took his  
5 position as to what it was, so I don't need to hear  
6 what the legislative history is. Sustained. That's  
7 what you're talking about, right?

8 MR. HAYDEN JOHNSON: It's not the  
9 legislative history, no, Your Honor. It's Mr.  
10 Fitzpatrick's prior statement -- prior and consistent  
11 statement about whether information is required.

12 THE COURT: Go ahead then.

13 BY MR. HAYDEN JOHNSON:

14 Q. All right. If you turn to page 6, there's  
15 an email from you?

16 A. That's right. It's buried in the middle of  
17 all of this because we had several bills.

18 Q. Right. And there's a line there about HB  
19 892, right?

20 A. Yup.

21 Q. And that's an email from you to the other  
22 county officials, right?

23 A. Yup, our working group on our thoughts about  
24 legislation.

25 Q. And the second sentence there, you say,

1 "Upon passage, this could also be looked at as a  
2 legal requirement for the voter to provide us their  
3 prior registration"; is that right?

4 A. Yup, should they have it.

5 Q. And is it a legal requirement for someone to  
6 provide their prior registration, in your view?

7 A. At this point, no, that's how I understood  
8 the law as it was suggested at the time of  
9 legislative session.

10 Q. Do you understand that failing to comply  
11 with this deregistration requirement and this  
12 omission provision is criminally prohibited?

13 A. Uh-huh.

14 THE COURT: Is that a yes?

15 THE WITNESS: Yes, that is a yes. Sorry. I  
16 apologize.

17 BY MR. HAYDEN JOHNSON:

18 Q. So if someone fails to deregister --  
19 remains -- purposely remains registered in another  
20 jurisdiction and registers in Lewis and Clark County,  
21 that's a criminal violation, right?

22 A. Emphasis on the --

23 MR. NOONAN: Objection, Judge. Calls for a  
24 legal conclusion.

25 THE COURT: I mean, the statute says it is,



1 so I don't really know why we need to beat a dead  
2 horse here.

3 BY MR. HAYDEN JOHNSON:

4 Q. Just to be clear, there could be  
5 circumstances where someone's response or nonresponse  
6 to field 9 could get you to get the county attorney  
7 involved, if you think there's something suspicious,  
8 right?

9 A. It would have to be something that the voter  
10 themself says to us. Similar to another case in  
11 Jefferson County where a person "wanted to test the  
12 system" -- signature requirement. That raised enough  
13 eyebrows, I suppose is the way to phrase it, in the  
14 Jefferson County election's office, that they  
15 contacted their county attorney about it, and  
16 considering the individual was also running for a  
17 legislative seat here in the state of Montana, made  
18 things a lot more interesting in that case, but we  
19 would have to have something similar happen in our  
20 office for us to contact county attorneys regarding  
21 this item.

22 Q. So then, in your judgement, raises your  
23 eyebrows, you might follow up for a criminal  
24 referral, right?

25 A. Yup, or something they said. Like if they

1 said, for example, or just blatantly not right, "I am  
2 also purposely registered to vote in the state of  
3 Washington," I would try to do a little bit of  
4 digging. Our county attorney, just like every county  
5 attorney, is a very busy individual, so I try to  
6 bring as many facts to the table as possible.

7 Q. You haven't received any guidance on when --  
8 what counts as an eyebrow raising things and what  
9 doesn't, right, from the State?

10 A. No, that would be something that -- based on  
11 our office, the clerk who's been in the business for  
12 17 years now, that would be something that we would  
13 have to have a discussion about and, kind of figure  
14 out for ourselves.

15 Q. Are you aware of the ERIC nonprofit that  
16 provided the inter-state voter registration  
17 information sharing system?

18 A. Yes, I am.

19 Q. So let's look at Exhibit 10 again, same  
20 page. Apologies. It's actually -- the second page  
21 of the document, there's an email from you, Monday,  
22 March 27th; do you see that?

23 MR. NOONAN: Objection. Exceeds scope of  
24 direct.

25 THE COURT: Sustained.

1 MR. HAYDEN JOHNSON: Nothing further, Your  
2 Honor.

3 BY MR. HAYDEN JOHNSON:

4 Q. Thank you, Mr. Fitzpatrick.

5 MR. HAYDEN JOHNSON: We do move Exhibit 10  
6 into evidence.

7 THE COURT: Any objection to the admission  
8 of 10, Mr. Noonan?

9 MR. NOONAN: Let me look for a second, Your  
10 Honor. No objection, Judge.

11 THE COURT: Okay. Thanks.

12 How long is this email chain here,  
13 Mr. Johnson?

14 MR. HAYDEN JOHNSON: It's six pages. I've  
15 got the full here for you, Your Honor.

16 THE COURT: Can you double check with Tom  
17 here so that I make sure I've got the right exhibits,  
18 but we can do that after, okay?

19 Anything else for Mr. Fitzpatrick?

20 MR. NOONAN: No, Your Honor.

21 THE COURT: Thank you, sir.

22 Any other witnesses for Defense?

23 MR. NOONAN: No, Your Honor.

24 THE COURT: Okay. So then, obviously, I'm  
25 going to take this matter under advisement. Do you

1 guys want to get me proposed orders, or how do you  
2 want to do this?

3 MR. HAYDEN JOHNSON: To the Court's  
4 preference, we're happy to do a proposed finding of  
5 facts and conclusions of law.

6 THE COURT: All right. How much -- I'll  
7 take them, so how much time do you guys want?

8 MR. THANE JOHNSON: 30 days.

9 THE COURT: Is that okay with -- 30 days is  
10 fine with me.

11 MS. HULING: We prefer to do it quicker.

12 THE COURT: I mean, everybody's busy, and  
13 you know, this case hasn't been moving along really  
14 super quick anyway, so I think we're okay. We'll  
15 just have them due on March 8th. It's a little under  
16 30 days.

17 MR. THANE JOHNSON: Good enough. Thank you.

18 MS. HULING: We were going to call a  
19 rebuttal witness.

20 THE COURT: I didn't realize. Sorry.

21 MS. HULING: Which was our expert witness  
22 here. We aren't going do it, but we would ask to  
23 move the rebuttal report in evidence.

24 THE COURT: Okay. And that's 26 --

25 MS. HULING: 24.

1 THE COURT: Mr. Johnson?

2 MR. THANE JOHNSON: That's fine.

3 THE COURT: All right. So then, 24 is in.  
4 Make sure Tom's got that.

5

6 (Whereupon Plaintiffs' Exhibit 24 was  
7 admitted.)

8

9 MR. HAYDEN JOHNSON: Your Honor, just one  
10 last thing, there are a number of items that we had  
11 exhibits that are judicially noticeable. We just  
12 move -- you know, file a notice of judicial notice.

13 THE COURT: Yeah, well, check with  
14 Mr. Johnson, and see if there's any objection, and  
15 then, if there isn't, then I can -- or if there is,  
16 then, I can figure it out. Anything else from the  
17 Plaintiffs?

18 MR. HAYDEN JOHNSON: Nothing further.

19 THE COURT: And I wasn't disparaging out of  
20 state counsel. I was just surprised there was so  
21 many people here from out of state, so I had to ask.

22 Anything else from defense?

23 MR. THANE JOHNSON: No, Your Honor.

24 THE COURT: All right. Thanks for everyone  
25 coming in.

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(Whereupon court was adjourned at 5:18.)

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REPORTER'S CERTIFICATE

I, Josey Loney, an Official Reporter,  
residing in the City of Bozeman, State of Montana,  
hereby certify:

That prior to being examined, the witnesses  
named in the foregoing proceeding were sworn to  
testify to the truth, the whole truth, and nothing  
but the truth.

I further certify that I am not in any way  
interested in the outcome of this action and that I  
am not related to any of the parties thereto.

Witness my hand this 16th day of February,  
2024.

*/s/Josey Loney*  
Josey Loney