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MONTANA FIRST JUDICIAL DISTRICT
COUNTY OF LEWIS AND CLARK
* * * * *

JAMES LARSON, DONALD)
JUDGE, JEAN PRICE,)
individual electors and)
MONTANA DEMOCRATIC)
PARTY,)
PLAINTIFFS,)
VS.)
STATE OF MONTANA, by and)
through its SECRETARY OF)
STATE, COREY STAPLETON,)
DEFENDANT,)
And)
THE MONTANA GREEN PARTY,)
INTERESTED)
PARTY.)
-----)

CAUSE NO. DDV 2018-295

TRANSCRIPT OF PROCEEDINGS

Before the Honorable James P. Reynolds, Judge Presiding

Date and time: Thursday, May 17, 2018
1:30 p.m.

Place: Lewis & Clark County
Courthouse
228 Broadway
Helena, MT 59601

VICKIE L. PRATT, CSR, RPR
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Montana Republican
Legislative Campaign
Committee

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1 Thursday, May 17, 2018, 1:30 p.m.

2

3 THE COURT: We are here in Cause
4 No. DDV 2018-295, James Larson, Don Judge, and others,
5 vs. State of Montana through the Secretary of State,
6 Corey Stapleton, and the Montana Green Party.

7 This is the time set for a continuation of
8 the order to show cause hearing that was commenced in
9 front of Judge Seeley on April 24th.

10 Where do we stand? Maybe you should
11 introduce yourselves to me.

12 MR. MELOY: I'm Mike Meloy for the
13 plaintiffs.

14 MR. HAMILTON: Kevin Hamilton for the
15 plaintiffs. With me, to my right, is Mr. Tischenko from
16 my office.

17 MR. RHOADES: Yes, Your Honor, Quentin
18 Rhoades on behalf of the Green Party.

19 MS. JONES: Emily Jones. I represent the
20 Montana Secretary of State.

21 MR. STAPLETON: Corey Stapleton, Secretary
22 of State.

23 THE COURT: Mr. Secretary.

24 MS. BRECK: Danielle Breck, Montana Green
25 Party coordinator.

1 THE COURT: Gee, I kind of picked this up
2 midway here. So where are we with regard to the process
3 today?

4 Mr. Hamilton?

5 MR. HAMILTON: Your Honor, the plan is to
6 put on a number of witnesses, as I'm sure you've
7 apprehended from the transcript. We presented four
8 witnesses, introduced 28 exhibits, all of which are in
9 the notebook on the witness stand. I think I provided
10 them to the Court as well.

11 We have one more witness. Mr. Trent Bolger
12 will be a relatively short witness. I anticipate no
13 more than 15 minutes with Mr. Bolger, and the plaintiffs
14 intend to rest.

15 THE COURT: Very well. And over here?

16 MS. JONES: Your Honor, the Secretary of
17 State has a couple of witnesses we would like to call
18 today. We have one rebuttal witness, an employee of the
19 Secretary of State's Office. We have Audrey McCue a
20 Lewis and Clark elections officer, Ken Milovich from the
21 Cascade County elections office, Dana Corson, also from
22 Montana Secretary of State's office.

23 THE COURT: Okay.

24 MR. RHOADES: Yes, Your Honor. We intend to
25 call one witness, Danielle Brent.

1 THE COURT: Very well.

2 There are some pending motions out here as
3 well. Do I need to resolve those before we move into
4 the testimony today?

5 MR. HAMILTON: I don't believe so, Your
6 Honor. I think we should -- I would submit that we move
7 forward to complete the testimony. The trial has been
8 continued. The hearing has been continued already.

9 MR. RHOADES: Your Honor, we don't disagree
10 that the hearing should go forward and the testimony to
11 be heard -- or could be heard. But we think that the
12 motion to dismiss needs to be ruled upon before a ruling
13 is made with regard to the temporary -- or the
14 preliminary injunction that's been requested.

15 THE COURT: All right.

16 MS. JONES: Your Honor, there are also two
17 parties who moved to intervene in this case. If the
18 Court desires to hear any argument from them, perhaps
19 those motions should be resolved before we begin.

20 THE COURT: So who is here on behalf of
21 those parties?

22 MR. KNUDSEN: Your Honor, Austin Knudsen
23 representing the Montana Republican Legislative Campaign
24 Committee. We're proposed intervener defendant.

25 MR. KELLY: Steven Kelly, pro se,

1 representing the voters of Montana and myself as a
2 voter.

3 THE COURT: All right.

4 MR. HAMILTON: If I might be heard on that,
5 Your Honor, both of these motions were made prior to the
6 commencement of this hearing. They -- both parties sat
7 in the courtroom and watched the proceedings and never
8 once sought argument on the motion. It seems odd and
9 disruptive at this point, mid-trial, after plaintiff has
10 almost completed the presentation, to take up the
11 intervention motion.

12 So I would submit that the parties have
13 either waived it or they're untimely on the merits. But
14 the parties have fully addressed those issues in the
15 papers before the Court.

16 THE COURT: I did see briefing with regard
17 to Mr. Knudsen's clients. I looked for things regarding
18 Mr. Kelly; I didn't find anything very specific. Maybe
19 I didn't go far back enough in the pleadings.

20 Here's where I think I'm going to go with
21 that. We are midway through the hearing, so I'm going
22 to deny the motion to intervene for both the Republican
23 Committee for whom Mr. Knudsen appears and Mr. Kelly.
24 We are mostly through this hearing, mostly through the
25 presentation of the plaintiffs' case. I do believe that

1 the interests being asserted by both of those parties,
2 those proposed intervenors, are being represented by the
3 parties in place.

4 And, again, I did review the briefing
5 Mr. Knudsen filed on your behalf. And I know you've
6 asserted that in fact your interests, in some cases, are
7 opposite the Green Party's interests, but the underlying
8 issue before the Court is whether the Green Party is
9 going to be on the ballot or not.

10 In that respect, your interests and their
11 interests do coincide. They want to be on the ballot
12 and you want them to be on ballot. I think they are
13 going to be able to represent your interests and have
14 them on the ballot.

15 I would grant you permission to file matters
16 as amicus, if you chose to do that on behalf of your
17 clients. I've done that in other cases where
18 intervention is kind of awkward or the reasons are not
19 quite appropriate, but I will allow you to participate
20 in the case as amicus.

21 And, Mr. Kelly, I did not see any filing on
22 your behalf. But you are here arguing the Green Party
23 ought to remain on the ballot as well, correct?

24 MR. KELLY: Correct, Your Honor.

25 THE COURT: All right. I am going to assert

1 that the Green Party here is going to assert your
2 interests and cover your interests as well. They want
3 to be on the ballot; you want them to be on the ballot.
4 They will be able to cover that with their
5 representation this morning.

6 MR. KELLY: There was one item about the
7 constitutional issue that the voters have their own
8 interest as independent electors. The Green Party is,
9 of course, a registered corporation with the state, as
10 with the Secretary of State. That's a separate entity.

11 I don't think there's actually adequate
12 representation of the individual electors, which is why
13 I asked the Court in my motion filed before the Green
14 Party had an attorney to consider equity, at least in
15 that determination on behalf of the voters.

16 THE COURT: Okay. Well, again, I think I'm
17 going to deny your motion to intervene. I will also
18 allow you to submit an amicus brief, if you wish, to do
19 that as well.

20 MR. KELLY: Thank you.

21 THE COURT: With those rulings in place,
22 we'll move forward with the presentation of the
23 testimony.

24 MR. HAMILTON: Thank you, Your Honor.

25 At this point the plaintiffs call Mr. Trent

1 Bolger.

2

3 T R E N T B O L G E R,

4 Called as a witness, having been duly sworn, testified
5 as follows:

6

7 DIRECT EXAMINATION

8

9 BY MR. HAMILTON:

10 Q. Good afternoon. Can you please state your name,
11 full name, for the record.

12 A. Trent Bolger.

13 Q. And can you spell your last name.

14 A. B O L G E R.

15 Q. Where do you live, Mr. Bolger?

16 A. I live in Helena, Montana.

17 Q. And where are you employed, sir?

18 A. I'm employed at the Montana Democratic Party.

19 Q. What is your position there?

20 A. I'm the chief financial officer.

21 Q. Are you familiar with the political party
22 qualification petition to certify the Green Party for
23 primary and general elections status?

24 A. I am.

25 Q. Now, if the Green Party qualifies for ballot

1 access, how is the Montana Democratic Party affected?

2 A. We would have to spend resources in numerous
3 ways. We would have to -- additional resources in
4 numerous ways. We would have to put more -- calibrate
5 our voter file differently. We would have to put more
6 resources on the ground to knock on different doors than
7 we normally would. We would have to put out more
8 expensive, more complicated polling. We would have
9 to -- we would have to hold more fundraisers, spend more
10 resources trying to gather more money to pay for all of
11 these things.

12 Just very numerous ways the Montana Democratic
13 Party would have to -- would have to adjust and be
14 harmed.

15 Q. Would it have an effect on advertising by the
16 party during the campaign?

17 A. Yes, it would. We would have to have additional
18 advertising, both to try and retain voters that we
19 normally would, but also to educate the voters about the
20 difference between the parties.

21 Q. Were you -- so let me switch gears here. Were
22 you involved in reviewing the petition forms filed by
23 the Green Party in this case?

24 A. Yes.

25 Q. Can you tell the Court about your involvement?

1 A. I -- I participated in signature review in
2 actually two counties, Lewis and Clark and Cascade
3 County.

4 Q. Were you the only person in those counties?

5 A. No. I -- other members of document -- the
6 document review team reviewed Lewis and Clark County.
7 And then an additional member went with me on three
8 occasions to the Cascade County elections office.

9 Q. And during the course of that review, did you
10 evaluate or review any of the petition signatures for
11 whether they matched the signatures in the voter
12 registration record?

13 A. I did.

14 Q. And how did you do that?

15 A. In Cascade County we were invited to view the
16 signatures on an electronic screen in the office. We
17 took Cascade County elections department up on that
18 offer.

19 So we went up there with the copies of the
20 petition -- the petition documents, the original
21 petition documents, and looked and verified the
22 signatures from the petitions to the signatures on the
23 voter registration file, which was an electronic
24 representation of that signature.

25 Q. Okay. And how about Lewis and Clark County?

1 Were you involved in reviewing signatures there?

2 A. Yes.

3 Q. And was it the same process?

4 A. It was a little bit different. Other members of
5 the document review team had completed what I would call
6 the three steps before I had. I went in just to insure
7 that -- that we were doing our due diligence.

8 Q. Did either Lewis and Clark or Cascade County
9 provide you with digital images of those signatures on
10 the registration card?

11 A. Yes. Lewis and Clark County provided us a
12 digital copy of the voter registration signatures
13 approximately a week after the Green Party petition was
14 certified by the Secretary of State.

15 Q. How about Cascade?

16 A. Cascade did not. That's why we had to go in
17 person to view the signatures.

18 Q. Did you request them?

19 A. Yes.

20 Q. Are you familiar with the Secretary's criteria --
21 the Secretary of State's criteria for evaluating
22 signatures?

23 A. Yes.

24 Q. And where did you find those, or how did you
25 become familiar with those?

1 A. I -- I became familiar with them -- I read two
2 documents on the Secretary of State's website. One was
3 concerning certifying petitions and petition gathering.
4 The other was concerning absentee verification
5 signatures.

6 Q. And you reviewed those prior to your examination
7 of the signatures on the political party petitions?

8 A. Yes, I did.

9 Q. If the Court wanted to review those presentations
10 and evaluate those standards, where would the Court
11 look?

12 A. They are attached to my affidavit as Exhibit C --
13 B and C, sorry.

14 Q. One is B and the other is C?

15 A. Correct.

16 Q. Is that your affidavit that you filed on
17 April 2nd in this matter?

18 A. Yes.

19 Q. Did you also look at the signatures that had
20 actually been rejected by the counties during
21 the counties' review process?

22 A. Yes. I looked at the signatures that had been
23 rejected by the -- by Lewis and Clark County.

24 Q. Why did you do that?

25 A. I did that to get an idea of -- to get a real

1 world representation of what counties accept or reject
2 based on -- based on the various criteria in the
3 Secretary of State's guidelines.

4 Q. Now, applying the Secretary's guidelines and
5 following the counties' examples of rejected signatures,
6 what was the result of your analysis?

7 A. In Cascade County I found 63.

8 MR. RHOADES: Your Honor, we would like to
9 object before he answers on the basis of -- that he's
10 not qualified to give the opinion he's about to give.
11 Thank you.

12 MR. HAMILTON: Your Honor, if I might
13 address that?

14 THE COURT: You may.

15 MR. HAMILTON: He's -- the Court has already
16 crossed this bridge at the first hearing. He's not
17 actually offering an opinion. He's simply identifying
18 the challenged signatures. They've all already been
19 admitted to the Court. They're in Exhibits 5, 6, and 7
20 for the Court to identify.

21 All I actually intend to offer here are --
22 to ask him is how many and which house districts.

23 THE COURT: I will overrule the objection.

24 I did read the transcript of the first
25 hearing and that appears to be Judge Seeley's approach

1 throughout as well. So I'll overrule the objection.

2 THE WITNESS: Could you re-ask the question?

3 BY MR. HAMILTON:

4 Q. Sure. What was -- following the Secretary's
5 guidelines and the counties' examples of applying those
6 guidelines in the real world, what was the result of
7 your analysis?

8 A. I identified 63 total signatures I believed to be
9 unmatched.

10 Q. How many of those were House District 19?

11 A. That was 13 in House District 19.

12 Q. How many were in House District 20?

13 A. Twenty.

14 Q. And how many were in House District 21?

15 A. Twenty-four.

16 Q. If the Court wanted to review those signatures
17 itself and compare the signature on the petition sheets
18 to the exemplar signatures from the registration card,
19 where would it find those?

20 A. It would be attached to the affidavit as Exhibit
21 A.

22 Q. Let me direct you to the binder in front of you,
23 your attention to Exhibit 5.

24 And, Your Honor, this exhibit was previously
25 admitted by the Court.

1 So my question to you, Mr. Bolger, are you
2 familiar with this exhibit?

3 A. Yes, I am.

4 Q. What is it?

5 A. It is the mismatched signatures from Cascade
6 County --

7 Q. These are the --

8 A. -- that I viewed.

9 Q. These are the signatures that you thought didn't
10 match.

11 A. That's correct.

12 Q. So just to assist the Court, if we look at this
13 page, there's three lines starting at the bottom.
14 Where -- what's the source of the information that's
15 shown on the bottom line?

16 A. The source of the information at the bottom third
17 of the exhibit is from the original petition
18 documentation itself.

19 Q. And it's simply been clipped here?

20 A. That is correct.

21 Q. And then the middle line, what's the source of
22 that information?

23 A. That information is the voter registration
24 signature found on the electronic voter file.

25 Q. And this came from the Secretary of State's

1 office?

2 A. Yes. Both of these -- those documents came from
3 the Secretary of State's office.

4 Q. And then what's on the top line?

5 A. The top line is another document that came from
6 the Secretary of State's office. It is information that
7 was found in what's called the Petition Signers Report.

8 Q. And who produced that?

9 A. The Secretary of State.

10 Q. And so -- so what's the purpose of compiling all
11 of this information on one page?

12 A. All three of these original documents are very,
13 very, very large and would be difficult to print out for
14 the Court's review.

15 The purpose of this document is to show all three
16 reference pieces of information in one place for each
17 voter.

18 Q. And Exhibit 5 is all the challenged signatures
19 from Cascade County; is that right?

20 A. That's correct.

21 Q. What are the headings on the top of each page?

22 A. On page 2?

23 Q. Sure.

24 A. Petition -- the petition entry is printed and the
25 reference signature, meaning the signature on file with

1 the county elections department on their voter
2 registration card, is in cursive or vice versa.

3 Q. Thank you.

4 Let me switch -- last topic, and I'll let you sit
5 down. Are you familiar with the Montana voter
6 registration database or file?

7 A. I am.

8 Q. And who maintains that?

9 A. The Montana Secretary of State.

10 Q. Is that an official government record?

11 A. It is.

12 Q. Is it an electronic or paper file copy?

13 A. I receive it in electronic form.

14 Q. How large is that?

15 A. It is more than 600,000 lines, millions of pieces
16 of data. It's very large, voluminous.

17 Q. Let me ask you this: Are you familiar with the
18 individual plaintiffs in this lawsuit: Don Judge, James
19 Larson, and Jean Price?

20 A. I am.

21 Q. Did you have occasion to look up their
22 registration status in the official Montana voter file?

23 A. I did.

24 Q. And did you print an extract relating to those
25 individual voters?

1 A. Yes.

2 MR. HAMILTON: Your Honor, I have marked the
3 exhibit Plaintiff's Exhibit 30.

4 May I approach?

5 THE COURT: You may.

6 BY MR. HAMILTON:

7 Q. Mr. Bolger, direct your attention to Exhibit 30
8 in the notebook in front of you.

9 A. I didn't realize it was in this one. Sorry.

10 Q. Can you identify this document?

11 A. Yes, I can.

12 Q. What is it?

13 A. It is an except from the voluminous voter file
14 that I pulled out of the three plaintiffs.

15 Q. Is it true and accurate to the best of your
16 knowledge?

17 A. It is.

18 MR. HAMILTON: Your Honor, I move admission
19 of Exhibit 30.

20 MR. RHOADES: No objection.

21 MS. JONES: No objection, Your Honor.

22 THE COURT: Exhibit 30 is admitted.

23

24 (Exhibit 30 was admitted into evidence.)

25

1 BY MR. HAMILTON:

2 Q. Mr. Bolger, what does Exhibit 30 show?

3 A. It shows that Mr. Judge, Mr. Larson, and
4 Representative Price are active and registered voters in
5 the state of Montana.

6 Q. And in what county is Mr. Judge registered to
7 vote?

8 A. Lewis and Clark County.

9 Q. And in what county is Mr. Larson registered to
10 vote?

11 A. Yellowstone.

12 Q. And in what county is Ms. Price registered to
13 vote?

14 A. She's registered in Cascade County.

15 MR. HAMILTON: Thank you. I have no further
16 questions, Your Honor.

17 THE COURT: Cross-examination?

18

19 CROSS-EXAMINATION

20

21 BY MS. JONES:

22 Q. Thank you. Good afternoon, Mr. Bolger. My name
23 is Emily Jones.

24 A. Good afternoon.

25 Q. Nice to see you.

1 Did any of the individual plaintiffs in this case
2 participate in the signature review process?

3 A. They participated in helping get the documents
4 for the signature review process.

5 Q. Specifically what did they do?

6 A. Mr. Judge obtained a lot of the documents from
7 the Secretary of State's office as well as the -- the
8 Lewis and Clark County elections office. Mr. Larson
9 asked -- put in a request for these same type of
10 documents at the Yellowstone County elections office.
11 And Ms. Price has been apprised of it the whole time.

12 Q. And the method of obtaining those documents was
13 through a public records request; is that correct?

14 A. That is correct.

15 Q. But did any of the individual plaintiffs actually
16 participate in the signature review process that you
17 previously described?

18 A. I can't speak to what -- I don't believe so, but
19 I can't speak to that.

20 Q. Not to your knowledge?

21 A. Not to my knowledge.

22 Q. You described that there were two documents on
23 the Secretary of State's website that you reviewed to
24 familiarize yourself with the criteria used by the
25 counties in signature verification, correct?

1 A. That is correct.

2 Q. What were those two documents?

3 A. One was the -- one was the petition -- the
4 petition review and the petition gathering document
5 slideshow. I believe it was a guidance for anybody who
6 had to either collect or process petitions.

7 And the other one was the absentee signature
8 verification. It appeared to be -- it appeared to be
9 focused toward county elections administrators, but --

10 Q. These were --

11 A. It's on the website so --

12 Q. These were PowerPoint presentations, you said?

13 A. Yes.

14 Q. Training materials?

15 A. Yes.

16 Q. Are you aware of whether there are different
17 rules in Montana for signature verification of absentee
18 ballots as opposed to political party access petitions?

19 A. I'm not aware.

20 Q. You're not aware?

21 A. I'm not aware if there's a difference.

22 Q. You don't know if the rules are the same or
23 different?

24 A. I'm not aware.

25 Q. Are you aware whether the rules are the same or

1 different for verifying signatures on ballot initiative
2 petitions versus ballot access petitions?

3 A. I am aware of that.

4 Q. What are -- are the rules the same or different?

5 A. The rules are different.

6 Q. Okay. How are they different?

7 A. The rules -- the rules for petitions -- there are
8 things that prohibit petitions for ballot initiatives or
9 constitutional initiatives that require citizens to be
10 gathering those rather than anybody from out of state.
11 There's slightly different rules for each.

12 Q. How about criteria for analyzing signatures,
13 signature genuineness? Are those the same or different?

14 A. I'm unaware.

15 Q. Did you review materials on the Secretary of
16 State's website that specifically addressed ballot
17 access petitions?

18 A. Yes.

19 Q. Which documents?

20 A. The -- the exhibit I had on Exhibit E, on my
21 affidavit.

22 Q. Okay. I understood your testimony to be that was
23 specifically with respect to ballot initiative
24 petitions. But are you saying the document you reviewed
25 specifically related to ballot access petitions?

1 A. Ballot -- political party ballot access
2 petitions?

3 Q. Correct.

4 A. Yes.

5 Q. Okay. Have you ever received any formal training
6 from the Montana Secretary of State in the signature
7 verification process for ballot access petitions?

8 A. No, I have not.

9 Q. Have you received any formal training from any
10 county official regarding signature verification for
11 ballot access petitions?

12 A. No, I have not.

13 Q. Have you received any training in handwriting
14 analysis?

15 A. No, I have not.

16 Q. Did you receive any training from your attorneys
17 in this case?

18 A. I received some guidance from our attorneys, but
19 I wouldn't call it training.

20 Q. What guidance did you receive from your
21 attorneys?

22 MR. HAMILTON: Object to the form of the
23 question, Your Honor. It calls for an invasion of the
24 attorney/client privilege.

25 MS. JONES: Well, Your Honor, if the -- if

1 the lawyers were training the signature reviewers in how
2 to review these signatures and the criteria on which to
3 do that, I think potentially the lawyers are going to be
4 witnesses here.

5 MR. HAMILTON: If I might respond, Your
6 Honor. We had this argument during the first hearing.
7 Previously the Court sustained the objection on the
8 grounds of privilege.

9 The fact that the lawyers provided guidance
10 is neither surprising nor does it make the lawyers into
11 witnesses anymore than a lawyer counseling any client
12 who's taking the stand to testify about matters.

13 Lawyers -- that's what lawyers do. They
14 give advice to clients during the course of things. So
15 I don't think that makes the lawyers witnesses, and
16 we -- so far we haven't been notified that any of them
17 are going to be called.

18 MS. JONES: Maybe I can ask my question in a
19 way that --

20 THE COURT: Rephrase the question.

21 BY MS. JONES:

22 Q. Mr. Bolger, did your lawyers give you any
23 training or guidance on the criteria to use for
24 reviewing the signatures in analyzing whether they
25 should be accepted or rejected?

1 A. They gave me guidance as to how to categorize any
2 possible mismatched signatures.

3 Q. What was that guidance?

4 A. It was which line, which category to classify any
5 mismatched signatures.

6 Q. And how did you know what categories to use?

7 A. Well, they correspond with the Secretary of
8 State's guidance on party petition signature mismatches.

9 Q. And did your lawyers provide you any criteria as
10 well to use in reviewing those signatures?

11 A. Just the guidance from the Secretary of State.

12 Q. Do you know whether if any of your attorneys has
13 had any training or experience in signature verification
14 in Montana?

15 A. I -- I couldn't speak to that.

16 Q. Okay. Other than this signature review process,
17 have you ever analyzed signatures to determine signature
18 genuineness on ballot access petitions?

19 A. I have not.

20 Q. This is your first time?

21 A. That is correct.

22 Q. How long have you worked in Democratic politics
23 in Montana?

24 A. In Montana? Professionally 10 years. I
25 volunteered for two years before that.

1 Q. Okay. Any other work in Democratic politics?

2 A. Yeah, I worked in Wyoming on two congressional
3 races for two cycles before that.

4 Q. How many total years have you worked in politics
5 for the -- on the Democrat side of things?

6 A. Fourteen, 15 years, probably, actually.

7 Q. Okay. You get paid to carry out the mission and
8 goals of the Montana Democratic Party; is that correct?

9 A. That's correct.

10 Q. The Democratic Party's goal in every election is
11 to get Democrats elected, true?

12 A. That is correct.

13 Q. You admit you're not a neutral party here.

14 A. That's correct.

15 Q. Okay. Not a -- you're partisan, fair?

16 A. That would be not 100 percent true, but it
17 wouldn't be a stretch.

18 Q. What's not true?

19 A. I've voted for people that are to the left of the
20 Democratic party and for people to the right of the
21 Democratic Party stance. So -- but in general, yes.

22 Q. But your goal in this case is to insure the Green
23 Party doesn't gain ballot access, true?

24 A. Well, the goal in this case, for me, is to insure
25 that the rules and laws as pertaining to our elections

1 has been followed. Not that -- not that the Green Party
2 be kicked off. It's more that we follow the laws and
3 rules that we have established.

4 Q. And would you agree with me that it's up to the
5 elected county officials and their staff and the elected
6 Secretary of State to insure those laws are followed as
7 opposed to a political party?

8 A. In my opinion the voters put in place and
9 lawmakers put in place a release valve to insure that
10 the electors can be involved in that, and that is a
11 signature review process and challenging signatures.

12 Q. Okay. And how familiar are you with the process
13 for challenging signatures?

14 A. I just know that -- I'm aware that there is one.

15 Q. In the statute?

16 A. Yeah.

17 Q. Has that been explained to you?

18 A. Yeah.

19 Q. Have you read it?

20 A. Yes.

21 Q. What does it say?

22 A. It says that any registered elector can challenge
23 a signature on a ballot.

24 Q. There's a deadline for doing that, isn't there?

25 A. I believe so, yes.

1 Q. And what is that deadline?

2 A. I don't -- I don't know.

3 Q. Isn't it true that the legal review team,
4 including yourself, was trying to find defects with
5 signatures that had been accepted that you felt should
6 have been rejected?

7 A. It was -- that's not entirely true. We reviewed
8 the signatures to insure that they matched, and some did
9 not. There were a lot that did.

10 Q. Did you find any rejected signatures that you
11 felt should have been accepted?

12 A. No, I believe all those cases were pretty clear.

13 Q. Isn't it true that you specifically targeted
14 house districts where the Green Party had qualified by
15 narrow margins?

16 A. On our first level review I had no knowledge of
17 what house districts any of these signatures were in.

18 Q. Okay. Can you please take a look at Exhibit 24.

19 A. (Witness complies.)

20 Q. Do you know Julie Laliberte?

21 A. I do.

22 Q. Did you work with her on the legal review team?

23 A. I did.

24 Q. Have you read her affidavit that was submitted in
25 this case?

1 A. Not for a while.

2 Q. Do you want to take some time to review it now?

3 A. Sure.

4 Q. I'll give you that, if you'd like it.

5 A. Thank you.

6 MR. HAMILTON: Your Honor, with all due
7 respect, it's a 10-page affidavit. If there's some part
8 of it that's relevant rather than take the time to have
9 Mr. Bolger read 10 pages, perhaps she could direct him.

10 MS. JONES: I'm talking about page 12,
11 Mr. Bolger.

12 THE COURT: Any particular paragraph?

13 MS. JONES: We're going to be looking at the
14 table spreadsheet on page 2, Exhibit A to the Laliberte
15 affidavit.

16 THE WITNESS: Okay. I'm here.

17 BY MS. JONES:

18 Q. That table represents "signatures accepted and
19 required by house district," correct?

20 A. That's what it appears to be, yes.

21 Q. Okay. And if you look at the table, it shows a
22 total number of signatures accepted by the Secretary of
23 State, the total number required by statute for the
24 Green Party to qualify, whether that signature
25 requirement was met, and the margin by which the Green

1 Party qualified for ballot.

2 Have I accurately stated that?

3 A. That is correct.

4 Q. Okay. In this case the legal review team
5 targeted districts where the margin for qualification
6 was 11 signatures or fewer; is that correct?

7 A. I don't know what they targeted or not. I was
8 sent to go look at signatures. I had a list of
9 signatures to look at, and I looked at them.

10 Q. The Montana Democratic Party did not target any
11 house districts in Missoula County, correct?

12 MR. HAMILTON: Objection. Lack of
13 foundation, Your Honor.

14 BY MS. JONES:

15 Q. Trent, did you review any signatures from
16 Missoula County?

17 A. No.

18 Q. To your knowledge did anyone on the legal review
19 team review any signatures from Missoula County?

20 A. I'm not aware if they did.

21 Q. Isn't it true that the narrowest margin in
22 Missoula County house districts was 33 votes -- or 33
23 signatures, excuse me?

24 A. I'm not aware of that margin, no.

25 Q. Did you look at any signatures in any house

1 district except for those being challenged in this case?

2 A. I looked at signatures from Lewis and Clark
3 County that were rejected, that were not necessarily in
4 any house district.

5 Q. You didn't find any you felt should have been
6 accepted?

7 A. No.

8 Q. Isn't it true that the Green Party did not
9 qualify in House District 19?

10 A. Well, that's -- they did not under -- in my
11 opinion they did not get the number of signatures
12 required, yes.

13 Q. Well, the Secretary of State had already found
14 that they were short one signature in House District 19,
15 correct?

16 A. That is correct.

17 Q. Okay. So that house district really isn't at
18 issue here?

19 A. No, we -- we must have looked at one that we
20 didn't need to.

21 Q. Did you personally review any statutes or rules,
22 other than the training PowerPoint that we've already
23 discussed, that apply to signature verification for
24 ballot access petitions?

25 A. I did not.

1 Q. What -- well, what Montana standards or rules
2 require that signatures on ballot access petitions be in
3 cursive?

4 A. That's covered in the Secretary of State's
5 information.

6 Q. And was the specific rule that you're relying on
7 cited in that information?

8 A. No, the Secretary of State didn't cite anything.

9 Q. But that's -- your testimony is that's your
10 source for where that rule came from?

11 A. It's a public document. I would assume that that
12 would be true and accurate.

13 Q. Well, I'm asking what you saw, what you read.

14 A. Yeah.

15 Q. Would that -- and your understanding of what the
16 rule is.

17 A. My understanding is that the Secretary of State
18 said that -- the Secretary of State put out a public
19 document that said that if a printed name is in the
20 signature field and there's no signature, then that
21 should be rejected.

22 Q. Okay. And did you also find that -- the rule in
23 that same document that requires a signature to -- to
24 not use initials?

25 A. Is there a way I could refer to my affidavit?

1 Q. Absolutely. Remind me which exhibit you're
2 looking at, Mr. Bolger.

3 A. I believe my affidavit is 23.

4 These are not in the exhibits. I don't recall,
5 is the best way to answer your question.

6 Q. Okay. How about your alleged requirement that
7 the signature contain both a first and a last name,
8 where does that rule come from?

9 A. That comes from the Secretary of State's
10 document.

11 Q. Okay. How about requirement that the signature
12 be legible, where does that come from?

13 A. That comes from the signature being able to be
14 matched requirement on the Secretary of State's
15 information.

16 Q. So if the signature is illegible but the printed
17 name address is legible, the phone number is legible,
18 should the signature still be rejected?

19 A. If it does not match the voter registration card.

20 Q. But as far as the ability to read the signature,
21 in any event, whether it's a match or -- if it is a
22 match, should it be rejected simply because it's
23 illegible?

24 A. Ms. Jones, I went through a tremendous amount of
25 signatures and did not reject -- I did not reject a

1 bunch of them. And I will have to tell you, there's
2 some really terrible handwriting out there, and those
3 weren't challenged in any way.

4 Just because it was illegible does not mean that
5 it did not match the illegible signature on the voter
6 registration card.

7 Q. Okay. And I'm just trying to find out, again,
8 the criteria you used, what was going through your mind,
9 when you did this review.

10 Where is the rule contained that the signature
11 must have a valid date on the petition?

12 A. I do not know that.

13 Q. Okay. And what rule requires the voter to
14 initial next to the date if they cross it out or have
15 altered it?

16 A. I do not know that.

17 For the record, I don't believe I identified any
18 of the last two categories.

19 Q. We'd have to look at your affidavit to be sure.

20 A. Yeah.

21 Q. You talked a little bit about the injury that the
22 Montana Democratic Party is alleging in this case if the
23 Green Party gains ballot access.

24 Were you present for the testimony of Mr. Dick?

25 A. Yes.

1 Q. And did you hear Mr. Dick testify that in every
2 election strategy changes depending on the outcome of
3 any given primary? Do you recall that testimony?

4 A. I believe that's somewhat of a
5 mischaracterization of Mr. Dick.

6 Q. My question was: Do you agree or disagree?

7 A. But I also disagree with Mr. Dick.

8 Q. Okay. And are you involved in strategy planning
9 for the Montana Democratic Party?

10 A. I am.

11 Q. And what -- what role do you develop strategy for
12 the Montana Democratic Party?

13 A. I'm the chief financial officer. So anything
14 generally that costs money, I'm usually involved in.
15 And that includes a vast amount of political strategy.
16 That includes polling, advertising, media placement,
17 staff, you know, educating voters, renting offices.
18 Just numerous amounts of things.

19 Q. But do you do more than just pay for those
20 things?

21 A. Yes.

22 Q. You're involved in the decisionmaking process?

23 A. Yes.

24 Q. Now, you testified that some of the things you
25 would need to do if the Green Party gains ballot access

1 would be to calibrate -- and forgive me if I misstate
2 this; I was writing notes hurriedly -- calibrate the
3 voter file. Can you explain what that is?

4 A. Calibrate our internal voter file differently.

5 In past elections there is a known quantity. In
6 most races it's a Republican and a Democratic -- a
7 Republican and a Democratic candidate, in some cases a
8 Libertarian candidate. And we know what those known
9 quantities are.

10 We can make assumptions based on past elections
11 as to what voters will decide or what percentage their
12 decision may go. And that allows us to design a target
13 universe for people we need to talk to, to convince to
14 vote for our candidate.

15 Q. So if the Green Party gains ballot access, won't
16 you learn more information about voters and what their
17 persuasions are?

18 A. We might. We would have to spend more money
19 doing so.

20 We would have to target a different ideological
21 area of the universe than we usually do. Which actually
22 means we would have to target two separate universes in
23 order to -- so the farther left ideological universe and
24 the center to center right universe. We would have to,
25 essentially, open up two fronts of persuasion.

1 Q. But it sounds to me like you're saying you're
2 going to gain more specific information about voter
3 persuasion; isn't that a benefit to you?

4 A. It's a harm because we did not plan for that.
5 And we would have -- we would be required to expend
6 money to account for it.

7 Q. It's a harm because you would be required to
8 spend money that you weren't planning on?

9 A. That's correct.

10 Q. Okay. And I guess that's the same for knocking
11 on different doors because now you've identified more
12 specifically which voters you can target so you would
13 have to knock on those doors.

14 A. We would have to knock on more doors, yes, which
15 would mean more volunteers, more staff, more literature,
16 more cost.

17 Q. How much more?

18 A. It could easily double our what's called
19 persuasion budget.

20 Q. Have you analyzed it?

21 A. Not as of yet, no.

22 Q. What's the number?

23 A. Millions.

24 Q. How many million? What's the specific number?

25 A. As I said, I haven't analyzed that yet.

1 Q. You don't know as you sit here today, do you?

2 A. Well, I know it's going to cost us money.

3 Q. You don't know how much.

4 A. I have an idea.

5 Q. How much?

6 A. Millions.

7 Q. Is your strategy going to be the same if
8 Mr. Downing wins the primary, Republican primary, as
9 opposed to Mr. Fagg?

10 A. It may be slightly different, but it's -- in
11 terms of cost, it will probably be pretty close. The
12 strategy may be different, but the cost will be -- will
13 be pretty close to the same.

14 Q. What's the cost going to be?

15 A. On all sides, for the senate race, everything
16 included, probably \$100 million.

17 Q. "Probably"? Or is that the number?

18 A. That's what's been quoted.

19 Q. Is that what you -- is that -- is that the number
20 you've analyzed and come up with --

21 A. No.

22 Q. -- in your work?

23 A. No. That's the number that --

24 Q. Someone told you?

25 A. -- that someone came up with, yes.

1 THE COURT: I'm sorry. You said that's the
2 number that -- who gave that?

3 THE WITNESS: The reporters, sir.

4 BY MS. JONES:

5 Q. Did you say "reporters"?

6 A. Yes.

7 Q. You mean the press?

8 A. The press, yes.

9 MS. JONES: I have no further questions at
10 this time. Thank you.

11 THE COURT: Mr. Rhoades?

12

13 CROSS-EXAMINATION

14

15 BY MR. RHOADES:

16 Q. Mr. Bolger, my name is Quentin Rhoades. I
17 represent the Green Party.

18 A. Great. How are you?

19 Q. Just fine. Thank you.

20 I thought I would ask you a few questions about
21 what you referred to as your persuasion budget. What is
22 a "persuasion budget"?

23 A. The persuasion budget is, in campaigns, in terms
24 of field work and advertising work, is a term we use
25 that is -- that goes toward voters that we need to

1 persuade to vote for our candidates rather than voters
2 that we know are going to vote for our candidate base --

3 Q. Okay.

4 A. -- Democratic.

5 The known universe, for example, is an inverse
6 universe of the persuadable universe.

7 Q. So it's -- in other words it's a group of people
8 who would consider voting for your party but they are
9 also considering other parties?

10 A. That's correct.

11 Q. And so if the Green Party is on the ballot, the
12 budget that you'll have to spend in order to reach out
13 to those voters that are subject to persuasion will
14 double, correct?

15 A. It could double, yes.

16 Q. Okay. And you said that will cost you millions
17 of dollars to reach out to persuade those folks,
18 correct?

19 A. It could.

20 Q. All right. That means the Green Party has
21 substantial support among the electorate, correct?

22 A. I don't know. I don't know what actual support
23 the Green Party has.

24 Q. Well, why would you need to spend millions of
25 dollars to potential Green Party voters if they

1 didn't -- if the Green Party have substantial support in
2 the electorate [sic]?

3 A. With voters possibly voting for the Green Party,
4 that means that our efforts to persuade moderate voters
5 and even moderate-right voters would have to intensify.
6 Which getting a Republican to vote for a Democrat is a
7 lot more difficult to do.

8 We will probably not be able to retain all Green
9 Party voters, no matter how much money we spend on them.
10 So we will have to go to the only place we can, which is
11 the center and the center-right --

12 Q. Right.

13 A. -- set of voters.

14 Q. And that effort, because of the Green Party
15 support, could double if they are on the ballot in the
16 fall, correct?

17 A. It could.

18 Q. Okay. You made a remark regarding House District
19 19, if my notes are correct. House District 19 was one
20 short -- one signature short for Green Party
21 qualification; is that correct?

22 A. That appears to be correct, yes.

23 Q. And then you said you folks did look at House
24 District 19; is that correct?

25 A. Yes.

1 Q. And you mentioned offhandedly in your testimony
2 that you looked at one you didn't need to, in referring
3 to House District 19.

4 A. Yeah, as far as for this court case, that's
5 correct.

6 Q. Explain what you meant by "we didn't need to look
7 at House District 19"?

8 A. In order to verify those signatures, that
9 threshold hadn't been met for that house district.

10 Q. So what was the need that you didn't have to
11 fulfill, then?

12 A. It was to find signatures that did not match.

13 Q. So that is the mission?

14 A. That was not the mission. That was the outcome.

15 Q. You said something that I was impressed with.
16 You said you weren't here to try to get the Green Party
17 off the ballot necessarily, but you just wanted to make
18 sure that the rules and laws are followed, correct?

19 A. That's correct.

20 Q. Okay. And you said that you looked at some
21 signatures that had been rejected; is that correct?

22 A. Yes.

23 Q. And you looked at those in Cascade County?

24 A. I looked at the signatures that had been rejected
25 in Lewis and Clark County.

1 Q. But when you were looking at signatures that had
2 been accepted that you wanted to reject, that was
3 Cascade County, correct?

4 A. The signatures that I looked at in Cascade County
5 were ones that were accepted.

6 Q. Right. And you were looking to find some that
7 should be rejected; that was your mission.

8 A. No, that was the outcome. That wasn't the
9 mission. The outcome was that there were some
10 signatures that didn't match.

11 Q. Now, with -- do you know how many signatures were
12 rejected by county officials in Cascade County?

13 A. I have a rough idea.

14 Q. What is that?

15 A. In percentage terms, it was 0.22 percent.

16 Q. About a quarter of them, at least a fifth?

17 A. Somewhere under -- around 500, I believe.

18 Q. Okay. And so in -- to insure that the rules and
19 laws were followed in the rejection of those signatures,
20 what did you do?

21 A. I -- I didn't look at those.

22 Q. You didn't look at them at all, did you?

23 A. No.

24 Q. Because if the clerks had made mistakes, then you
25 might have had to add signatures back into the count on

1 ones that had been rejected, correct?

2 A. I just didn't have the resources to look at all
3 of the significant during --

4 Q. Well, it's true you would not have wanted to see
5 that result; isn't that true?

6 A. Possibly. I mean, there could have been
7 signatures that did not match or that, you know, gave me
8 more insight as to the ones that were accepted that did
9 not match.

10 Q. In other words, there could have been rejected
11 signatures that should have been accepted, right?

12 A. It's possible.

13 Q. And that's the opposite of what you wanted to
14 find, correct?

15 A. That's not the opposite. You keep trying to say
16 this is my mission. My mission was to insure that the
17 integrity in the elections was upheld.

18 Q. And to have done that you needed to do two
19 things, right? Review the signatures that had been
20 accepted, that should -- that should have been rejected,
21 and you would have had to look at the ones that were
22 rejected to see which had been accepted. That would
23 have been the fair thing to do, correct?

24 A. That could have been somebody else's thing to do,
25 yes.

1 Q. All right. So in the end, candidly, you really
2 wanted to get the Green Party off the ballot because it
3 will make your job easier in the fall, correct?

4 A. Well, I think that there's a pretty significant
5 harm to our democracy if the rules are not followed
6 pertaining to our elections.

7 I really do believe in the democratic system. If
8 people lose faith in the fact our elections aren't being
9 done on the level, there's real problems with that, sir.

10 Q. But despite that belief, you only reviewed house
11 districts that were close, and you only reviewed
12 signatures to find ones to reject, correct?

13 A. With the limited resources that I had, yes.

14 Q. And if that succeeds, the voters of Montana will
15 have fewer choices for progressive candidates rather
16 than more, correct?

17 A. They would have fewer choices because the Green
18 Party didn't qualify the number of signatures required
19 to.

20 MR. RHOADES: Thank you. That's all I have.

21

22 REDIRECT EXAMINATION

23

24 BY MR. HAMILTON:

25 Q. Just a couple of questions, Your Honor.

1 Mr. Bolger, you were asked about whether there
2 were different -- whether you knew whether there was a
3 different set of rules for signature checking for
4 political party petitions versus initiative petitions or
5 referendum petitions.

6 A. That's correct.

7 Q. Did you ask the Secretary of State to produce
8 records relating to signature verification?

9 A. Yes, we did.

10 Q. And did they produce any training materials or
11 other guidelines for signature checking that suggested
12 there was a difference for signature checking between
13 political party qualification petitions and initiative
14 petitions?

15 A. Not through a public record request. Just what
16 we found on their public website.

17 Q. And what you found on the public website were
18 these two slideshows that are attached here to the
19 declaration; is that correct?

20 A. That's correct.

21 Q. And those certainly don't suggest a difference in
22 signature checking standards between initiative or
23 political party qualification petitions, do they?

24 A. Not signature checking.

25 Q. All right. You were also asked about what source

1 requires a signature to be in cursive, what source
2 requires the signature not use initials, all that. Do
3 you recall that line of questioning?

4 A. Yes.

5 Q. Are you familiar with the signature matching
6 requirement?

7 A. Yes.

8 Q. And what is that requirement?

9 A. The signature matching requirement is on the
10 actual petition for signature gathering. And it says
11 that it needs to be substantially the same -- signed in
12 substantially the same manner as on your voter
13 registration.

14 Q. So let's take a quick look at that. It's
15 Exhibit 2 in the notebook in front of you.

16 A. (Witness complies.)

17 Q. Do you have it there?

18 A. Yes.

19 Q. Direct your attention to page 3.

20 A. Okay.

21 Q. This is an example of the political party
22 qualification petition; is that right?

23 A. Yes.

24 Q. Do you see the bold print, all caps, the word
25 "warning"?

1 A. Yes.

2 Q. And is -- the second full sentence says, "Each
3 person is required to sign the person's name and list
4 the person's address and telephone number in
5 substantially the same manner as on the person's voter
6 registration card or the signature will not be counted."

7 Is that what you were referring to?

8 A. Yes.

9 Q. And if one signature on the voter registration
10 card is in cursive and the political petition signature
11 is in capital printed letters, is that signed in
12 substantially the same manner as the person's voter
13 registration card?

14 A. That would not be.

15 Q. And if a person uses initials but on the voter
16 registration card there's a full name handwritten, is
17 that in substantially the same manner as the person's
18 voter registration card?

19 A. No, it would not be.

20 Q. And how about if one is in illegible cursive and
21 the other is a printed name; is that in the same manner?

22 A. That's not the same manner.

23 MR. HAMILTON: Thank you. No further
24 questions.

25 MS. JONES: May I recross?

1 THE COURT: You may. Pretty narrow.

2 But before you do, I have a question. I
3 don't have -- am I supposed to have a binder of exhibits
4 for my review?

5 MR. HAMILTON: Yes. Your Honor.

6 THE COURT: Was that provided to
7 Judge Seeley?

8 MR. HAMILTON: It was.

9 THE COURT: I don't have that.

10 MR. HAMILTON: We have a copy that I'm happy
11 to provide.

12 May I approach, Your Honor?

13 THE COURT: Yes.

14

15 RECROSS-EXAMINATION

16

17 BY MS. JONES:

18 Q. Mr. Bolger, do you know whether this language on
19 this petition form from the Secretary of State's office
20 has the effect of law?

21 MR. HAMILTON: Objection. Calls for a legal
22 conclusion.

23 THE COURT: That sounds pretty close to a
24 legal conclusion to me. Sustained.

25 BY MS. JONES:

1 Q. Mr. Bolger, do you know whether the petition
2 language on this petition is trumped by statute?

3 MR. HAMILTON: Same objection, Your Honor.

4 THE COURT: Sustained.

5 BY MS. JONES:

6 Q. Mr. Bolger, can you please take a look at
7 Exhibit 5. These are all -- these are the voter
8 signatures in Cascade County that you reviewed, correct?

9 A. That is correct.

10 Q. How many signatures -- if you look at page 2 of
11 Exhibit 5, how many signatures does Kristi Walker have
12 on file in Cascade County?

13 A. From this document, you couldn't tell.

14 Q. Do you know?

15 A. I do know that I viewed all signatures that were
16 on file with Cascade County.

17 Q. But you haven't included all those in Exhibit 5,
18 have you?

19 A. No.

20 MS. JONES: Thank you.

21 THE COURT: Anything further?

22 MR. HAMILTON: One question.

23 THE COURT: One question.

24

25

RE-REDIRECT EXAMINATION

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BY MR. HAMILTON:

Q. Why aren't they included in this file?

A. The Secretary of State has not turned them over to us.

MR. HAMILTON: Thank you.

THE COURT: You may step down.

MR. HAMILTON: Plaintiffs rest.

THE COURT: All right. Who wants to go first?

MS. JONES: Thank you, Your Honor. I would like to call Alan Miller.

A L A N M I L L E R,

Called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. JONES:

Q. Good afternoon.

A. Good afternoon.

Q. Can you please state your full name for the record.

1 A. Yes. Alan Miller, A L A N, M I L L E R.

2 Q. And, Mr. Miller, where are you employed?

3 A. At the Secretary of State's office.

4 Q. What is your position at the Secretary of State's
5 office?

6 A. I am an elections specialist.

7 Q. And how long have you been in that position?

8 A. Since late July of 2001.

9 Q. And what are your job duties as election
10 specialist with the Montana Secretary of State?

11 A. They are quite varied. I work with county
12 election administrators to train them on the laws and
13 statutes and rules and procedures of elections so --
14 that can relate to voter registration, absentee voting,
15 ballot issue petitions, things like that.

16 Q. Do you also train county officials in signature
17 verification?

18 A. Yes.

19 Q. You heard Mr. Bolger testify that he had reviewed
20 two PowerPoint presentations on the Montana Secretary of
21 State's website. Did you hear that testimony?

22 A. Yes.

23 Q. Does that represent the sum total of training
24 that the Secretary's office has provided to the counties
25 on signature verification?

1 A. No.

2 Q. How often are county staff trained on signature
3 verification?

4 A. Generally every two years at our workshop we
5 provide training on absentee signature verification and
6 then also petition signature verification. Sometimes
7 we'll provide the petition signature verification
8 through an e-mail. We provide that periodically
9 throughout the year.

10 As ballot issues qualify, we resend the e-mail.
11 That includes a link to the training for petitions.

12 Q. How many trainings -- signature verification
13 trainings have you participated in since 2001?

14 A. In terms of formal training that I've actually
15 presented at trainings at, probably three to five in
16 that time.

17 Q. Okay. Are those mandatory trainings?

18 A. In order to be certified as a county election
19 administrator, through my understanding, an election
20 administrator either attends that training or reviews
21 the training and signs off that they've reviewed all the
22 training if not able to actually attend the training.

23 Q. What's your understanding with respect to the
24 Secretary of State's obligations with respect to
25 reviewing petition signatures on a ballot access

1 petition?

2 A. We don't review signatures per se. We don't
3 check to see if the signatures match the voter
4 registration records.

5 Q. Why is that?

6 A. That's the statutory duty of the county election
7 administrator, as I understand it.

8 Q. What is the Secretary of State's statutory duty
9 as you understand it?

10 A. We review the petitions when we receive them for
11 certain items, and more informally. But we don't check
12 them for -- for the signature match. We look for items
13 that are -- that are major nonclerical, nontechnical
14 items.

15 Q. You're not required to review the signatures to
16 see if they are a match; is that true?

17 A. That's my understanding, yes.

18 Q. And to your knowledge did the Secretary of
19 State's office perform its statutory duties with respect
20 to the Green Party petition?

21 A. Yes, I believe so.

22 Q. Going back to the training of the county
23 officials. You said you've participated in three to
24 five of those trainings yourself.

25 A. Uh-huh.

1 Q. Is that a "yes"?

2 A. Yes.

3 Q. And what standard do you train county officials
4 to use when verifying petition signatures?

5 A. I should say at the outset that the county
6 election officials check thousands, tens of thousands,
7 hundreds of thousands of signatures overall, you know,
8 as a group. And so we don't present ourselves or
9 consider ourselves as expert in signature verification.
10 So that the training that we provide is to supplement
11 their own knowledge, training, their own experience with
12 checking signatures.

13 Q. So if these county official are reviewing
14 thousands of signatures or tens of hundreds of thousands
15 of signatures every election cycle, is it fair to say
16 they become expert in signature verification over time?

17 MR. HAMILTON: Objection. Leading.

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: I believe in terms of their
20 ability as compared to ours to check a signature, they
21 are very highly capable of doing so, yes.

22 BY MS. JONES:

23 Q. Has the Secretary of State's office, in your
24 tenure since 2001, ever trained county clerks that if
25 capital letters do not match, the signatures must be

1 automatically rejected?

2 A. No.

3 Q. What about other characteristics like letters
4 tailing off alike?

5 A. No.

6 Q. What about the spacing?

7 A. No.

8 Q. How about whether beginnings or endings of
9 signatures match?

10 A. No, these are not items that we would consider
11 for automatic disqualification of a signature.

12 Q. Is there -- are there any criteria that
13 automatically disqualifies a signature, to your
14 knowledge?

15 A. That's a good question. I don't know offhand,
16 but I can't -- I can't think of any offhand.

17 Q. With respect to the training you provide the
18 county officials, if these criteria that we've been
19 discussing aren't automatic disqualifiers, what do you
20 train the counties to do if they see a discrepancy?

21 A. So the type of items that you mentioned, like
22 tails and the start and the end of the signature, those
23 are items that are generally used to help to confirm a
24 signature. So if there's seven different
25 characteristics and the county looks at the signature

1 and they can see, you know, at once that it appears to
2 match the signature on file, maybe they don't need to
3 look at those other seven characteristics, plus or minus
4 characteristics.

5 But if they think, well, these are different,
6 they seem to be a little different. Maybe the pen
7 pressure is different. Then those characteristics that
8 we list in our training are items that the county might
9 look at to help to confirm the signature rather than to
10 summarily disqualify that signature.

11 And so if there are multiple items that don't
12 match, or none of those items match, then that might be
13 a reason to disqualify the signature. But we don't
14 train counties that a single one of those items taken
15 alone would alone disqualify a signature.

16 Q. Who makes the ultimate determination?

17 A. The county election administrator.

18 Q. Your office doesn't second-guess that discretion?

19 A. That is correct.

20 Q. To your knowledge does the Montana Secretary of
21 State's office require that dates that are crossed out
22 or altered by a voter be initial by the voter?

23 A. No.

24 Q. Is there any basis for rejecting signatures that
25 have that idiosyncrasy?

1 A. That specific idiosyncrasy, no. I -- that
2 wouldn't be a reason that we would -- that we would
3 reject from our side of it or we would advise the county
4 election official to reject it, if as you say, a
5 signature or date was crossed out, for example.

6 Q. Okay. How about petition entries with nothing
7 printed in the printed name space?

8 A. The requirement for a printed name has not always
9 been a requirement. It was something that was added
10 some years ago to the statute. And my understanding of
11 that, the addition of that, is that it was intended to
12 assist with identifying that signer.

13 So, for example, if a person had a scrawling
14 signature and the address that might be challenging to
15 read and there was nothing else like a printed name, it
16 might be difficult for the county election official to
17 be able to find that record in the voter registration
18 system to see if the person was registered.

19 So -- so that -- my understanding of that field
20 has been that that is -- is supposed to assist the
21 county election administrator in determining the
22 identity; that an absence of information in that field,
23 that printed name field, would not disqualify the
24 signature as long as the county election administrator
25 or official was able to determine the identity and

1 confirm registration and check the signature of the
2 voter using other means.

3 Q. Okay. Can you take a look in that exhibit
4 notebook sitting right there in front of you,
5 Mr. Miller, and Exhibit 2.

6 A. (Witness complies.)

7 Q. We were previously looking at page 3 of
8 Exhibit 2.

9 A. Okay.

10 Q. Do you recognize that document?

11 A. I'm not familiar with all of the documents, but
12 it -- you know, it appears to be legitimate.

13 Q. As far as you are aware, is this a fair and
14 accurate representation of a political party
15 qualification petition form that the Secretary of
16 State's office would issue?

17 A. Yes.

18 Q. And did you hear Mr. Bolger's testimony with
19 respect to that warning language there in sort of the
20 middle to the top of the page?

21 A. Yes.

22 Q. Now, do you know how that warning language came
23 to be on the form?

24 A. It -- that's a -- I believe it predated my
25 arrival at the Secretary of State's office. But it's

1 generally the same language that would appear on a
2 ballot issue petition, that warning language would.

3 Q. Okay. Now, you've already testified previously
4 the Secretary's office doesn't engage in the acceptance
5 or rejection of petition signatures, correct?

6 A. That's correct.

7 Q. So if a voter didn't follow instructions on the
8 warning, the Secretary of State's office wouldn't do
9 anything about that, correct?

10 A. Yeah, that's correct.

11 Q. In other words, it's left to the county officials
12 to determine --

13 A. Yeah.

14 Q. -- whether those requirements had been met.

15 A. Uh-huh.

16 Q. Is that "yes"?

17 A. Yes.

18 Q. All right.

19 A. Yes.

20 Q. That's okay. And if a county official in his or
21 her determination, based on all the information
22 available to that county official, determined that a
23 signature was genuine, even if it didn't specifically
24 comply with that warning statement, would the
25 Secretary's office do anything about that?

1 A. No.

2 Q. It's up to the county official to determine the
3 genuineness of the signature, correct?

4 A. That's our understanding, based on the statutes,
5 yes.

6 Q. And is this warning -- if a voter violates the
7 warning, is that automatic grounds for rejection of a
8 signature?

9 A. Not in -- not in our understanding due to other
10 laws.

11 Q. Okay. Where are those laws found, if you know?

12 A. If you don't mind, I can -- I have the law book
13 here.

14 Q. Great.

15 A. So 13-27-103. Would you like me to --

16 Q. You don't need to read it.

17 A. Okay.

18 Q. Do whatever you want, but what I'm trying to get
19 at --

20 A. Yeah.

21 Q. -- essentially, it's the statute that governs the
22 criteria that county officials use; is that correct?

23 A. Yes.

24 Q. And --

25 A. So the --

1 Q. Okay.

2 A. The warning would not be the only item that a
3 county election official would use as their standard for
4 whether or not to count a signature.

5 Q. The county official would be governed by the
6 statute that the legislature has enacted?

7 A. Yes.

8 Q. And to your knowledge, does the form that's
9 issued by the Secretary of State's office have the
10 effect of law?

11 MR. HAMILTON: Objection. Calls for a legal
12 opinion from a lay witness.

13 THE COURT: Sustained.

14 BY MS. JONES:

15 Q. And, Alan, to your knowledge, which would govern,
16 the statutes set forth by the legislature or a form
17 issued by the Montana Secretary of State?

18 MR. HAMILTON: Same objection.

19 THE COURT: Sustained.

20 MS. JONES: No further questions at this
21 time.

22 THE COURT: Mr. Rhoades, I'll let you go
23 next.

24 MR. RHOADES: I have no questions.

25

CROSS-EXAMINATION

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BY MR. HAMILTON:

Q. Good afternoon, Mr. Miller.

A. Good afternoon.

Q. Thanks for being here.

You're an election specialist with the Montana Secretary of State; did I hear that correct?

A. That's correct.

Q. And if I understood your testimony, the Secretary of State doesn't review petition signatures itself, right?

A. No, we don't look at the signature to see if it matches the one on file, no.

Q. So the answer --

A. So, yes, we don't do that.

Q. The Secretary of State in this case didn't review any of the signatures that are at issue before this Court?

A. That's correct.

Q. The Secretary of State never compared any of the petition signatures to the voter registration cards that are on file, correct?

A. That's correct.

Q. So you certainly can't testify as you stand here

1 today that these either matched or didn't match because
2 you never looked at them in the normal course of the
3 operations of your office, correct?

4 MS. JONES: Your Honor, I'm going to object
5 as outside the scope of direct.

6 THE COURT: Overruled. The reason for that
7 is that you inquired about his process, whether he
8 reviewed it or not.

9 THE WITNESS: Would you mind restating that
10 or --

11 BY MR. HAMILTON:

12 Q. You certainly can't testify about the challenged
13 signatures here, whether they match or didn't match
14 because you never -- you never did that analysis
15 yourself.

16 A. That's correct.

17 Q. Because it's not part of your job.

18 A. That's correct.

19 Q. All right. Let's look at Exhibit 2. I think you
20 were shown that just a moment ago.

21 Do you have it there in front of you, Exhibit 2?

22 A. Yeah.

23 Q. And page 3. It's the political party
24 qualification petition. She was just asking you about
25 that.

1 You're familiar with the form?

2 A. Yes.

3 Q. And I believe you said that form predated your
4 arrival.

5 A. Yeah, in some form I have worked on this form
6 over the years. But, yes.

7 Q. And you worked on it to improve it or make it a
8 more appropriate document for the voter when they are
9 circulating these sorts of things?

10 A. We've tried, yes.

11 Q. But you didn't change the warning.

12 A. That's correct.

13 Q. The warning has stayed the same since before you
14 started.

15 A. That's most likely correct.

16 Q. How long ago what that?

17 A. 2001.

18 Q. 2001. So for 17 years, at least, this language,
19 this warning has stayed exactly the same.

20 A. Let me clarify that. The warning -- I can't
21 testify for certain even that the warning hasn't changed
22 at all. It may have changed as a result of legislative
23 changes, but not substantially.

24 Q. And you certainly haven't done any changes since
25 the 17 years you've been there.

1 A. Not other than if this was a law change.

2 Q. Okay. As long as you've been there it's always
3 said that each person is required to sign the person's
4 name and list the person's address or telephone number
5 in substantially the same manner as on the person's
6 voter registration card, correct?

7 A. Yes. The only item that I'm not certain when it
8 was added was the word "telephone number." But, yes,
9 that's essentially correct.

10 Q. Sure. But the point is the signatures have to
11 match. That's the -- that's the point, correct?

12 A. Yes. And to tell the whole truth, this would not
13 be the only item that is used as a verification standard
14 for the signatures. In looking at the statute, there
15 are additional qualifying --

16 Q. Well, I'm sure. Like, the voter has to be
17 registered, right?

18 A. Yeah, but --

19 Q. Has to be a registered voter in Montana to sign
20 one of the ballots.

21 A. Yes. And there are other -- there are
22 other standards specified for how the county election
23 official can count a signature or not count a signature
24 that are at the very least in addition to this language.

25 Q. Okay. Fair enough. And it tells -- the language

1 right here on this warning box tells the signer if they
2 don't sign the petition in substantially the same manner
3 as the voter registration card, right. It tells you the
4 consequences?

5 A. It warns the signer but --

6 Q. And --

7 A. -- there are other laws that actually provide a
8 standard --

9 Q. Sure.

10 A. -- that --

11 Q. Maybe --

12 MS. JONES: Can the witness finish the
13 answer?

14 THE COURT: Just wait. We have a court
15 reporter here as well.

16 MR. HAMILTON: Sorry.

17 THE WITNESS: I was just saying that this is
18 not all the language for whether or not a signature is
19 counted. This is what appears in front of the signer,
20 but this is not the entirety of the statute and this is
21 not the only item that -- that specifies whether a
22 county election official can accept a signature or not.

23 BY MR. HAMILTON:

24 Q. Of course lawyers will argue and provide the
25 Court with guidance on that, and the Court will

1 ultimately make a decision about the law.

2 But my question is: Your form, the form the
3 Secretary of State's office has adopted, this is -- it
4 tells the voter what happens if the voter doesn't sign
5 in substantially the same manner as on the person's
6 voter registration card. It tells what the consequences
7 are.

8 MS. JONES: Objection. Asked and answered.

9 THE COURT: Sustained.

10 BY MR. HAMILTON:

11 Q. What it says is if you don't sign substantially
12 in the same manner, the signature will not be counted;
13 is that correct?

14 A. Yes.

15 Q. There's not a word on that form about any other
16 signatures that the county might possess.

17 A. That's correct. And, again, to provide the --

18 MR. HAMILTON: Your Honor, I move to strike
19 the answer.

20 THE WITNESS: Okay.

21 MR. HAMILTON: He answered the question.

22 THE WITNESS: I want to be sure to tell the
23 whole truth.

24 THE COURT: You will be subject to redirect.

25 THE WITNESS: Okay.

1 THE COURT: You have answered his question.

2 BY MR. HAMILTON:

3 Q. Mr. Miller, maintaining in integrity of the
4 petition gathering process is an important goal of the
5 Secretary of State office, correct?

6 A. Yes.

7 Q. And you understand the purpose of checking
8 petition signatures is to insure that only lawfully
9 registered Montana signers sign the petition, correct?
10 That's one of the purposes?

11 A. Yes.

12 Q. And the county helps to provide that check by
13 evaluating the signatures on the petition and comparing
14 them to the registration card, right?

15 A. To the voter registration records.

16 Q. Okay. Now, these petition sheets, when they are
17 submitted to the county, they are attached to an
18 affidavit of the petition gatherer, correct?

19 A. Yes.

20 Q. You've seen those before?

21 A. Yes.

22 Q. And the person who collected the signatures, that
23 person has to sign an affidavit under penalty of
24 perjury, right?

25 MS. JONES: Your Honor, again, object as

1 outside the scope of direct.

2 THE COURT: This is wandering pretty far
3 afield. I will sustain that.

4 BY MR. HAMILTON:

5 Q. There are -- when a person signs the political
6 party petition, they are not required to show a voter
7 registration card, are they?

8 A. No.

9 Q. They are not required to show identification?

10 A. No.

11 Q. The way that Montana insures lawfully registered
12 Montana voters sign the petition is to check the
13 signature against the registration card?

14 A. Against the voter registration records.

15 Q. Okay.

16 A. No. No, not just the voter registration card.

17 Q. Let's take a look back at Exhibit 2. That's the
18 form we've just been looking at.

19 The language is "in substantially the same manner
20 as on the person's voter registration card."

21 Do you see that?

22 A. Yes.

23 Q. Okay.

24 A. Also the law says under --

25 Q. I'm sorry, sir. You've answered my question.

1 Let me --

2 A. Yes.

3 Q. -- ask you --

4 A. That would only be partially true.

5 Q. So when you said yes, you meant that's only
6 partially true?

7 A. That would only be true that that language
8 specifically states that. But there's other language
9 that provides a different standard.

10 Q. Okay. Well, we're looking at the political party
11 qualification petition, Exhibit 2. Do you have it there
12 in front of you?

13 A. Uh-huh.

14 Q. I notice that you're looking at a different book.
15 What is that in front of you?

16 A. That's the statutes for --

17 Q. That's the law?

18 A. Yes.

19 Q. Okay. Why don't you put that away, because we'll
20 be talking about the law in the briefing before the
21 Court. Okay?

22 A. All right.

23 Q. So I'm asking about what the Secretary's form
24 says, Exhibit 2. And it refers to the voter
25 registration card. It doesn't say anything about files

1 or other records that counties might have on file, does
2 it?

3 A. That's correct. The warning is not a complete
4 statement of all the standards that a signature has.

5 Q. It's only this -- it's only the statement that's
6 provided by the Secretary of State to the individual
7 voters as they're signing it.

8 A. Yes.

9 Q. And that document says "voter registration card,"
10 singular.

11 A. Yes.

12 Q. Thank you.

13 Part of the reason to check signatures is because
14 we don't require voter identification or voters to
15 produce registration cards. So the only check against
16 fraud, or one of the only checks against fraud is to
17 insure the signatures match, correct?

18 A. Yes.

19 Q. You would be concerned if there were evidence
20 that a false signature gatherer affidavit had been
21 submitted in connection with a political party
22 qualification petition, wouldn't you?

23 MS. JONES: Your Honor, again, I object.
24 Outside the scope of direct.

25 THE COURT: I don't recall any questions

1 with regard to the voter petition gatherer's signature
2 form being asked, so I'll sustain the objection.

3 BY MR. HAMILTON:

4 Q. We've had some questions back and forth about the
5 training materials and slide show. I would like to
6 direct your attention to Exhibit 35.

7 MR. HAMILTON: Your Honor, may I approach?

8 THE COURT: You may.

9 BY MR. HAMILTON:

10 Q. Do you have that document in front of you, sir?

11 A. I do.

12 Q. Are you familiar with this document?

13 A. Yes.

14 Q. You've seen it before?

15 A. Yes.

16 Q. What is it?

17 A. It's titled "Signature Gathering in Montana and
18 Your Rights and Responsibilities."

19 Q. Is it fair to say -- first of all, did you author
20 this document?

21 A. I would say I coauthored this document.

22 Q. And is it an official document? You didn't do
23 this on your side job; you did this as part of your job
24 with the Secretary of State's office?

25 A. That's correct.

1 MR. HAMILTON: Move admission of Exhibit 35.

2 MR. RHOADES: Um --

3 THE COURT: Objections?

4 MR. RHOADES: No thanks, Your Honor. I
5 apologize.

6 THE COURT: No objection?

7 MS. JONES: No objection.

8 THE COURT: 35 is admitted.

9

10 (Exhibit 35 was admitted into evidence.)

11

12 BY MR. HAMILTON:

13 Q. Thank you, Your Honor.

14 If I could direct your attention to page 4. And
15 the page numbers here are on the upper left-hand corner
16 of the document.

17 THE COURT: We've been at this for about an
18 hour and a half. Let's take a short break.

19 MR. HAMILTON: All right.

20

21 (A break was taken.)

22

23 THE COURT: You may resume.

24 BY MR. HAMILTON:

25 Q. Thank you, Your Honor.

1 Mr. Miller, you're familiar with this
2 presentation. I think you said you coauthored it.

3 A. Yes.

4 Q. And it generally covers signature gathering in
5 Montana.

6 A. Yes, it's kind of a best practices guide to
7 signature gathering.

8 Q. And this presentation is specifically designed to
9 address initiatives and initiative referendums, correct?

10 A. Yes.

11 Q. It doesn't directly address political party
12 petition gathering?

13 A. That's correct.

14 Q. Your office doesn't produce something similar,
15 like to this, that directly covers signature gatherers
16 for party petitions, does it?

17 A. That's correct.

18 Q. Okay. Let's look at page 21, if you would.
19 Again, the page numbers are kind of small on the upper
20 left-hand corner.

21 A. (Witness complies.)

22 Q. The heading on the top of the page is, "What Are
23 the Responsibilities of Signature Gatherers."

24 Your Honor, I provided a copy on the bench.

25 THE COURT: There it is. Is there any

1 objection to this?

2 MR. HAMILTON: I think it's been admitted.

3 THE COURT: Has it been?

4 MR. HAMILTON: If it hasn't, I move for
5 admission of Exhibit 35.

6 MR. RHOADES: No objection.

7 MS. JONES: Your Honor, I will object to
8 this on the grounds of relevance because we've already
9 established that the document doesn't apply to party
10 petitions. So I'm going to object on the grounds of
11 relevance. The document itself specifically says it
12 doesn't apply to the type of petition at issue in this
13 case.

14 THE COURT: I'll overrule that.

15 MR. HAMILTON: Thank you, Your Honor.

16 BY MR. HAMILTON:

17 Q. You're at page 21?

18 A. I believe so. I wasn't able to find the page
19 number.

20 Q. Just to the left of the seal of the state of
21 Montana.

22 A. I see.

23 Q. It says -- the title on the page is, "What Are
24 Responsibilities of Signature Gatherers." Are you
25 there?

1 A. Yes.

2 Q. And it says that -- there's two bullet points
3 here. The first is, "It is essential that you follow
4 state laws when you circulate a petition or the
5 signatures that you work to collect could be rejected."
6 Did I read that correctly?

7 MS. JONES: Your Honor --

8 THE WITNESS: Yes.

9 MS. JONES: -- I object. This is outside
10 the scope of direct. The Court has already sustained
11 this objection.

12 MR. HAMILTON: I don't believe so. We're
13 talking -- we actually addressed the issue of the
14 training materials and the process he's been -- he
15 trained -- he testified that he trained the county
16 clerks on how to do this process. So I think it's fair
17 to use the materials that are provided by the Secretary
18 of State as best practices in signature gathering.

19 THE COURT: Well, as I understand it, the
20 previous testimony wasn't about signature gathering; it
21 was about signature verification.

22 MR. HAMILTON: And, Your Honor, with respect
23 to this document, on -- there are several bullet points
24 here that address the initialing of date changes and
25 printed last names and initials and whether those should

1 be accepted or rejected. That is the best practices and
2 those were issues covered by Ms. Jones during her
3 direct. That's -- this just tends to impeach the
4 witness, and that's what we're intending to use it for.

5 MS. JONES: Your Honor, these questions
6 related are responsibilities of signature gatherers and
7 that's outside the scope of direct.

8 MR. HAMILTON: This page is, Your Honor.
9 I --

10 MS. JONES: That's my objection.

11 THE COURT: I'm having difficulty finding
12 the page numbers as well.

13 MR. HAMILTON: Just to the left of the seal.

14 THE COURT: I see.

15 MR. HAMILTON: I can withdraw the question
16 and move on to a different part of this document that
17 directly addresses the questions addressed in --

18 THE COURT: Why don't we do that.

19 MR. HAMILTON: Is the document admitted,
20 Your Honor?

21 THE COURT: I'll admit it subject to further
22 objection, depending what we're talking about.

23

24 (Exhibit 35 was previously admitted into evidence.)

25

1 BY MR. HAMILTON:

2 Q. Look at page 20. If I could direct your
3 attention to that, sir.

4 A. (Witness complies.)

5 Q. The second bullet point specifically says -- asks
6 the signature gatherers "To check to insure that the
7 signers provide the correct date. If they do not, have
8 the signer change the date and have the signer initial
9 it."

10 Do you see that?

11 MS. JONES: Your Honor, I again object.
12 This relates to the responsibilities of the signature
13 gatherers. This is not relevant, and it is outside the
14 scope of direct.

15 THE COURT: I disagree that it's outside the
16 scope of direct. We did have testimony about the
17 process of whether -- you asked questions about whether
18 someone initialed or did not initial a change in the
19 date. So I think this is relevant.

20 MS. JONES: Respectfully, to make my record,
21 that was with respect to the responsibility with the
22 county clerks, not responsibility of the signature
23 gatherers.

24 THE COURT: I understand. But to the degree
25 this is an issue with regard to the verification of

1 signatures, I'll allow it.

2 So I'll have you re-ask the question.

3 BY MR. HAMILTON:

4 Q. Sure. The question -- the second bullet point
5 says, "Check to insure that the signers provide the
6 correct date. If they do not, have the signer change
7 the date and have the signer initial it."

8 Did I read that correctly?

9 A. Yes.

10 Q. Okay. And the initialing requirement is designed
11 to prevent fraud; isn't that true?

12 A. I would not characterize it as an initialing
13 requirement.

14 Q. Okay. Well, the language directing the signature
15 gatherer is to have the signature -- to have the signer
16 change the date and have the signer initial it. The
17 reason that you do that is to prevent dates from being
18 changed after the fact by other people; isn't that true?

19 A. I wouldn't say it was directing the signature
20 gatherers to do that. I would say it would be along the
21 lines of a recommendation, not a requirement or
22 direction.

23 Q. Okay. So the recommendation listed in the second
24 bullet point on this page under "the responsibilities of
25 signature gatherers" the recommendation is to have the

1 signer change the date and have the signer sign it,
2 right?

3 A. That is -- that's correct.

4 Q. And that's to prevent other people, after the
5 fact, from changing the dates. That's why you have
6 somebody sign something. It's the same reason that you
7 have -- when you change something on a check, you
8 initial the change.

9 A. That's one possible reason.

10 Q. Okay. That is --

11 A. That is --

12 Q. -- one of the reasons --

13 A. Not the only --

14 Q. -- for this recommendation.

15 A. Yes, but that's not only reason.

16 Q. Okay. And that principle applies to political
17 party petitions, just like it applies to initiative
18 petitions; isn't that true?

19 A. As we've discussed, this is a guidance for ballot
20 issues. We don't have a similar -- a similar
21 guidance --

22 Q. That's not my question.

23 A. -- for political parties.

24 Q. But my question for you is: That same principle
25 that when somebody change -- writes in a date, if they

1 put in the wrong date, they should initial the change.
2 That's equally applicable regardless of what kind of
3 petition; isn't that true?

4 A. I wouldn't call it a principle. Again, I would
5 call it a recommendation.

6 Q. Okay.

7 A. But I wouldn't dispute that it could be applied
8 as well to other types of signature gathering.

9 Q. Let's look at page 22, two pages down. The box
10 right at the top.

11 It's the same recommendation: Make sure the
12 signer puts the correct date. If not, ask the signer to
13 correct the date and ask the signer to initial the
14 change.

15 MS. JONES: Your Honor, sorry. I'll renew
16 my objection again because we're talking about a
17 different page. But this relates to the requirements
18 for signature gatherers. It has nothing to do with the
19 duty of the county clerks.

20 THE COURT: Overruled.

21 BY MR. HAMILTON:

22 Q. The same recommendation appears on page 22 of
23 Exhibit 35; isn't that true?

24 A. It's not the exact same language, no.

25 Q. But the point is the same. They make a change to

1 the date, they should initial it; isn't that true?

2 A. It's recommended that -- that they ask the signer
3 to initial a change. But there are also times where the
4 signer themselves will change it, and so a change on the
5 date could also be because the signer chose to change it
6 themselves instead of being asked to initial the change.

7 Q. I guess my question is a lot simpler than that.

8 A. Okay.

9 Q. We just looked at what you termed a
10 "recommendation" a couple pages earlier.

11 A. Uh-huh.

12 Q. That same recommendation, or something very
13 similar appears on this page.

14 A. Yes.

15 Q. Okay. Thanks.

16 On this page 22, Exhibit 35, in the lower
17 right-hand corner, do you see that bubble?

18 A. Yes.

19 Q. And it says, "The printed last name and initials
20 should be legible." Do you see that?

21 A. Yes.

22 Q. And the reason that it should be legible is so
23 that the county can look up the voter and confirm the
24 status.

25 A. So likely they will be able to identify that

1 signer, yes.

2 Q. Because if it's not legible, you can't read the
3 name, and it's impossible to verify.

4 A. That's not true. If the printed last name is not
5 there or is illegible there's still a method for the
6 county election official to be able to check the
7 signature in verifying that signature.

8 Q. Like by looking up and using the address?

9 A. Using the address or looking at the signature, if
10 it's easy enough to see who that person is.

11 Q. Sure. If the signature itself is illegible as
12 well and you can't find the -- there's more than one
13 registered voter at the address, it's going to be
14 difficult to confirm.

15 A. Yes. It would be -- make it more difficult but
16 not impossible.

17 Q. Confirming the status of the voter is important
18 to the verification of the signatures in a political
19 party petition process, isn't it?

20 A. Yes.

21 MR. HAMILTON: Thank you. No further
22 questions, Your Honor.

23 THE COURT: Redirect?
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REDIRECT EXAMINATION

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BY MS. JONES:

Q. Mr. Miller, according to the training provided by the Secretary of State's office, is a date that is corrected or crossed out but not initialed by the voter grounds for rejection of the voter's signature?

A. No.

Q. Can you turn back to Exhibit 2, please.

A. (Witness complies.)

Q. I'm looking at page 3. Again, this is the political party qualification petition form issue by the Secretary of State's office. We've had a lot of testimony about the warning that appears on this page.

Is this warning to the voter the standard on which the Secretary of State's office uses to train county clerks for signature verification?

A. No.

Q. Where would we find those standards?

A. In the statutes.

Q. And in that book Mr. Hamilton told you to put away?

A. Yes.

MS. JONES: Thank you very much.

THE COURT: You may step down.

1 MS. JONES: Yes, you're excused.

2 Your Honor, our next witness is

3 Audrey McCue.

4

5 A U D R E Y M C C U E,

6 Called as a witness, having been duly sworn, testified

7 as follows:

8

9 DIRECT EXAMINATION

10

11 BY MS. JONES:

12 Q. Good afternoon, Ms. McCue.

13 A. Afternoon.

14 Q. Would you please state your name for the record.

15 A. Audrey McCue, A U D R E Y, M C C U E.

16 Q. And Audrey, you're a little soft spoken, so I'm
17 going to ask you to please project a little bit, if you
18 could, for mostly the court reporter's benefit, but
19 everybody I'm sure is interested in your testimony.

20 Where are you employed?

21 A. I'm employed by Lewis and Clark County in the
22 elections division.

23 Q. And what is your position with Lewis and Clark
24 County?

25 A. I'm the election supervisor.

1 Q. Sorry. I'm going to ask you to you speak up,
2 please --

3 A. Yeah.

4 Q. -- if you could.

5 How long have you been an election supervisor for
6 Lewis and Clark County?

7 A. I started in January of 2014.

8 Q. And where did you work before that?

9 A. Before that I worked at the Secretary of State's
10 office.

11 Q. When was your job at the Secretary of State's
12 office?

13 A. I was hired in January of 2012 as an election
14 assistant at the Secretary of State's office. In 2013 I
15 worked in several different capacities.

16 Q. Okay. With respect to elections?

17 A. At the beginning of 2013 I tracked legislation,
18 so I worked with all the different departments in the
19 Secretary of State's office, and then I worked in the
20 notary division.

21 Q. What are your current job duties at Lewis and
22 Clark County?

23 A. Currently I supervise all aspects of elections
24 conducted by Lewis and Clark, including processing voter
25 registration forms, maintaining voter registration

1 records, and conducting elections.

2 Q. And is one of your job duties signature
3 verification in elections?

4 A. Yes.

5 Q. Under what circumstances would you need to verify
6 a voter's signature?

7 A. We verify signatures on petitions, many different
8 types of petitions, also on absentee and mail-in
9 ballots.

10 Q. And is the process for signature verification for
11 all those different types the same?

12 A. Yes. So we're trained on how to conduct
13 different processes and then we have training
14 specifically on verifying signatures.

15 Q. Okay. But in terms of the way that your office
16 processes and verifies those signatures, is that the
17 same regardless if it's an absentee ballot or a
18 political party qualification petition?

19 A. It's mostly the same. When we're processing
20 ballots we have a second step of review on any rejected
21 signature since it's a ballot we're looking at
22 rejecting. But in terms of actually comparing a
23 signature to the signature on voter records, it's the
24 same process.

25 Q. And can you please describe that -- before we get

1 into that, let's talk about your training with respect
2 to signature verification. Have you received training?

3 A. Yes.

4 Q. And when have you received training on signature
5 verification?

6 A. There's required training for election
7 administrators every 2 years, usually in February of
8 even numbered years. It's required for the election
9 administrator or I think Mr. Miller said they can
10 certify that they did the training on their own.

11 I'm not the election administrator so I'm not
12 required to go. However my county does require my
13 position attend that training as part of my job
14 description.

15 So in 2014 I attended that training and in 2016
16 and 2018.

17 Q. And when did that training occur in 2018?

18 A. It was February 12th, 13th, and 14th, I believe.

19 Q. So just a few weeks before your office received
20 the Green Party petition?

21 A. Yes.

22 Q. And did you say you've been through signature
23 verification training at least three times?

24 A. At least three times. When I worked at the
25 Secretary of State's office I also attended as Secretary

1 of State's staff person several trainings including one
2 for new election administrators. And I can't say for
3 sure, but I think that typically includes signature
4 verification training as well.

5 Q. And how many times have you participated in
6 signature verification?

7 A. I don't know how to quantify that. Every
8 petition that we processed in our county I usually end
9 up helping to verify some of those signatures. And then
10 every election we conduct there's signatures that are
11 verified.

12 Q. And that wouldn't just be every four years, would
13 it?

14 A. No. So that would be -- last Tuesday we had a
15 school election, so we verified tens of thousands of
16 signatures for that election. We have at least two
17 elections a year where we verify signatures.

18 Q. Now, given your experience and training, in your
19 opinion, can signature verification be done without
20 training?

21 MR. HAMILTON: Object to the form of the
22 question, Your Honor. She's not an expert. She hasn't
23 been qualified. It's opinion from a lay witness.

24 THE COURT: Try that again. I'll sustain
25 the objection. Just establish foundation.

1 BY MS. JONES:

2 Q. You know what? I think I'm going to move on.
3 That's okay.

4 Can you please describe the process by which
5 ballot access petitions are verified in Lewis and Clark
6 County?

7 A. Yes. So we -- when we receive a petition, we
8 have a new policy in our county of documenting the day
9 we receive the petition and the number of petition
10 sheets we receive and who's submitted those petitions.

11 Then we begin processing the petitions. We do
12 that in the Montana Votes database. This is our record
13 of all registered voters, and it's also our election
14 management program.

15 So when we process petitions in the Montana Votes
16 database, we are basically creating an electronic record
17 of those petitions. So I think this has been referred
18 in earlier testimony to Petition Signers Report.

19 So we will take a petition, and if there are --
20 we call sheets attached to an affidavit one submittal of
21 a petition. So we process one submittal at a time. One
22 staff person processes that submittal.

23 So they will enter into the Montana Votes
24 database that they have a submittal, who the signature
25 gatherer was for that submittal and how many sheets of

1 petition there were, and also how many lines of space
2 for people to sign on each sheet of that petition.

3 So first you just set up that petition. The next
4 step is reviewing the signatures. So if you can,
5 imagine, since we've set up the petition and the lines,
6 we basically have a search screen where we can search
7 based on the last name, first name, address, or phone
8 number. And then the search results will show a
9 signature and key voter registration, such as name,
10 address, might also have date of birth and voter status
11 there.

12 So we would take our first submittal, first
13 sheet, look at line 1. Based on what's provided by the
14 signer on line 1, we search to see if there's a voter
15 registration record for that person.

16 We have the ability to search based on complete
17 information or partial information. So if I can tell
18 that the last name starts with M C and the first name
19 start with A, I can conduct a search for anybody who's
20 registered to vote and has the last name that starts
21 with M C and a first name that starts with A.

22 I also have the ability to search only within my
23 county or across the whole state, to determine if
24 there's a record for that person.

25 And then from there we have the ability to view

1 additional details for that voter's records, so we could
2 look at previous addresses for that voter, other phone
3 numbers that may not appear immediately on first screen
4 but might be able to view on a form. We can view all
5 the forms that have been scanned in for that voter from
6 that screen.

7 Q. Is Montana Votes a statewide database?

8 A. Montana Votes is a statewide database maintained
9 by the state. County users have the ability to create
10 records and alter records in that database.

11 Q. But only within your county, correct?

12 A. Correct. I can't change a record for a voter in
13 another county.

14 Q. As far as you're aware, what access does Montana
15 Secretary of State have to Montana Votes?

16 A. My understanding is the state has read-only
17 access to Montana Votes. The election administrators
18 and clerk and recorders are the official keepers of the
19 voter registration records.

20 Q. Now, you described quite a process you go through
21 in terms of identifying voters in Montana Votes -- of
22 Montana Votes for purposes of signature verification.
23 What training, if any, does your staff receive on this
24 process?

25 A. When we have new staff we will review these steps

1 with them. So we will take a petition and go through
2 several examples together. Then we'll have the new
3 staff person process their own petition, review it that
4 they have done it correctly, and then they are trained
5 to process more petitions.

6 We also provide them with copies of the signature
7 verification training and train them specifically on
8 verifying signatures.

9 With any new staff with petitions and with
10 ballots, we train them that they have to have a second
11 opinion on rejected signatures, at least at first from
12 one of the permanent staff who has more experience.

13 Q. Okay. And what is the reason for that training?

14 A. The reason we train at any time is to make sure
15 staff are following the policies and doing their job
16 correctly.

17 Q. Based on your experience and training, what are
18 the standards that you use when determining whether to
19 accept or reject a petition signature?

20 A. So our training on verifying signatures talks
21 about broad characteristics for comparing signatures and
22 also local characteristics --

23 MR. HAMILTON: Objection, Your Honor. The
24 witness appears to be reading from a document. If she
25 is, I would ask that counsel be provided a copy of it.

1 THE COURT: Do you have something you are
2 reading from?

3 THE WITNESS: This is my notes for the
4 hearing that have been -- having many duties, so I just
5 took notes since I knew I would be asked.

6 THE COURT: Do you want a copy of that?

7 MR. HAMILTON: Please.

8 THE COURT: Just one page.

9 THE WITNESS: Yes. Sorry.

10 THE COURT: We will take a short break and
11 get a copy of that. Make more than one copy.

12 MS. JONES: I don't have one, either.

13 THE COURT: Make four copies.

14 THE WITNESS: Do you want all my notes,
15 then?

16 THE COURT: Well, if you're going to refer
17 to them, he's going to ask for them. Turn them over
18 until you refer to them.

19 What else do you have?

20 THE WITNESS: I think we've covered these,
21 and this didn't come up.

22 THE COURT: She will be right back.

23 MR. HAMILTON: May I review the other
24 materials on the bench?

25 MS. JONES: May I review them in case

1 there's any attorney/client work product?

2 THE WITNESS: This is my affidavit. This is
3 a copy of the statute on petition processing, and this
4 is a copy of the signature training.

5 THE COURT: What did you want to review?

6 MR. HAMILTON: All three of the documents.

7 THE COURT: Counsel, come up, and we will
8 review them.

9 THE WITNESS: I have also the exhibits.

10 THE COURT: Okay.

11 You just referred to the affidavit?

12 MR. HAMILTON: Right. Obviously if she
13 needs to refresh her recollection, I think it's fine
14 that she tell counsel she needs to refresh her
15 recollection and then review the affidavit. But she
16 ought to be going through that process.

17 The statute -- I'm not sure why she needs to
18 have these in front of her.

19 If counsel want to make them an exhibit and
20 ask her questions about them, that's fine, but I don't
21 think she should be referring to them.

22 The "Colorado Signature Verification Guide"
23 I'm not quite sure why we've got that here. But it's
24 from a different state. It's not -- it's not Montana.
25 I don't think she should have that.

1 THE WITNESS: Your Honor, I can put
2 everything away. I usually, when I answer questions, I
3 have my computer where I can refer to my resources, so
4 it's a security blanket. But I can --

5 THE COURT: You're going to turn them over,
6 and if somebody needs to ask you a question that
7 requires you to refer to them, you can ask if you can
8 refer to them, okay? We'll leave them right here for
9 right now.

10 MR. HAMILTON: Thank you, Your Honor.

11 MS. JONES: Thank you, Your Honor.

12 THE COURT: You may proceed. We are still
13 waiting for some other copies. You may proceed with
14 regard to this set of questions.

15 BY MS. JONES:

16 Q. Audrey, in your experience and training, what are
17 the standards you use when determining whether to accept
18 or reject a petition signature?

19 A. So when we are verifying any signature, we're
20 trained on broad characteristics and also on local
21 characteristics.

22 Broad characteristics I would describe as things
23 that you can see at first glance. So if you think of a
24 petition, not as letters spelled out on somebody's name
25 but as a signature image -- so from a quick glance you

1 can determine broad characteristics.

2 I think some of these are what has been called
3 out in these hearings -- this is my note referring to
4 the type of writing I think in the exhibits. This is
5 call cursive versus print. Speeds of writing, which
6 exhibits --

7 MR. HAMILTON: Your Honor, again, excuse me
8 for interrupting. Your Honor, I object. The witness
9 has now pulled out a document that hasn't been
10 identified, is not an exhibit.

11 THE WITNESS: This is notes.

12 THE COURT: This is the note that was
13 distributed.

14 MR. HAMILTON: Okay. It's not clear to me
15 what she's reading from when she pulls it out. It
16 hasn't been marked as an exhibit.

17 THE COURT: You're introducing this?

18 MS. JONES: I'm not, Your Honor, no.

19 THE COURT: So --

20 MR. HAMILTON: Then I'd ask the witness to
21 turn it face down, and if she needs to --

22 THE WITNESS: I'm sorry. I didn't
23 understand.

24 BY MS. JONES:

25 Q. Audrey, did you bring notes with you today to

1 testify at this hearing?

2 A. Yes.

3 Q. Is it helpful for you in your testimony to refer
4 to those notes?

5 A. It is helpful to refer to these, yes.

6 Q. Now, have all counsel been provided copies of
7 these notes that you've brought with you?

8 A. I think there were a couple that they took copies
9 of, but the others we put face down.

10 Q. The one you were just looking at is the one that
11 we were just given; is that correct?

12 A. Yes.

13 Q. And are these notes that you wrote?

14 A. These are notes I typed.

15 Q. Okay. In preparation for the hearing today?

16 A. Yes.

17 MS. JONES: Okay. Well, if -- Your Honor, I
18 guess I would go ahead and ask this be marked as
19 Secretary of State's Exhibit A and be admitted.

20 MR. HAMILTON: I object, Your Honor. It's a
21 hearsay document prepared, she just established, for the
22 litigation. It's not a government record.

23 It's -- you know, the plaintiffs have been
24 requesting training materials for weeks. We never
25 received this or anything like this. It's just a

1 script -- you know, I don't blame her -- I'm not saying
2 she did anything wrong in preparing herself. She should
3 be applauded for that. But not for bringing a script in
4 to be testifying from.

5 THE COURT: I don't think we need to
6 introduce it as an exhibit. It is hearsay. It's
7 generally up to the Court.

8 So she can refer to it, like we've done
9 before. She can refer to it. If she gets to a point
10 where she needs to refer to something, she can ask to
11 refer to it and you can ask her to establish what she's
12 referring to and how that might help.

13 MS. JONES: Thank you very much. I
14 appreciate that.

15 THE COURT: Before we proceed, here are
16 copies of the other notes that were -- did you make the
17 Court a copy? All right.

18 BY MS. JONES:

19 Q. Audrey, I would just ask you, as I'm asking you
20 questions, if it's helpful for you in your testimony to
21 refer to your notes, will you just let me know that, let
22 me know which notes you are referring to so we can make
23 sure we're looking at the same thing?

24 A. Yes.

25 Q. So we're talking about the standards that you use

1 in determining whether to accept or reject a signature.
2 You were testifying about broad and local
3 characteristics.

4 A. Yes. So we first look at broad characteristics.
5 And usually if you can determine a broad characteristics
6 match, it's easy to accept that signature and move on.
7 If broad characteristics don't match, you can do a more
8 careful analysis of the some local characteristics.

9 Our training is that if the characteristics don't
10 initially match but you can explain the differences,
11 through looking at those characteristics or something
12 else, such as the petition is signed outside on a
13 clipboard, where a registration form is usually signed
14 on the counter in an office, then you can accept the
15 signature based on those.

16 We're trained you would only reject a signature
17 if a number of these characteristics don't match and you
18 can't reasonably explain why the person's signature may
19 have changed.

20 Our training is also that if a signature is
21 questioned, that doesn't automatically cause you to
22 reject it. It may cause you to do further research,
23 which would involve looking at additional voter
24 registration records on file for that person.

25 MR. HAMILTON: Objection. Move to strike.

1 This question is about whether the county does or
2 doesn't use additional signature images for -- and the
3 validation process was raised during the last hearing.
4 It's been a point of contention throughout this. Those
5 records were never produced prior to the last hearing.
6 They are not available to the Court, and they are not
7 before the Court in evidence.

8 And we would object -- we had Mr. Dick
9 testify at the last hearing. He was asked, did you
10 examine other signatures that are provided, and
11 Ms. Jones objected and the objection was sustained. And
12 that Mr. Dick was not allowed to testify that, yeah, he
13 looked at other signatures provided by the counties and
14 concluded that none of those matched either. He wasn't
15 allowed to do that.

16 So for this witness to now say, yeah, we
17 look at other signatures is -- it's the flip side of
18 that same issue.

19 THE COURT: It's my recollection as well
20 that there was quite a bit of discussion at the last
21 hearing over whether there's a form that referred to or
22 were there multiple forms that were referred to.

23 MS. JONES: Yes, Your Honor, Mr. Hamilton is
24 right. This has been a bone of contention since the
25 case began.

1 Judge Seeley, after the plaintiffs -- the
2 day that they filed their original complaint issued the
3 order to show cause. And in that order it required the
4 Secretary of State's office to produce all the voter
5 signature files that the counties use in reviewing these
6 petitions signatures.

7 The problem with that, as Ms. McCue just
8 testified, is that the Secretary of State did not have
9 access to those documents.

10 Since that time we have worked with our tech
11 support in order to gain access to those documents,
12 which we just obtained yesterday. And as a matter of
13 fact, we gave a thumb drive of all the voter signature
14 files maintained by the counties to Mr. Meloy yesterday.
15 I have given a copy of all of those to all counsel here
16 today. I have a copy for the Court, and I have a copy
17 for the clerk.

18 These are the subject of a pending motion to
19 file under seal because they contain social security
20 numbers and birthdays of voters, and therefore should
21 not be publicly disclosed under the Montana Rules of
22 Civil Procedure.

23 But Judge Seeley was well aware that we were
24 working on obtaining these documents in order to
25 comply with her court order as fast as we could.

1 And we now have them. And it's very
2 important that the Court have access to this
3 information, if the Court is inclined to undertake
4 review of these signatures. Otherwise the Court will
5 not have all the information available to it that the
6 counties actually used in verifying these petition
7 signatures.

8 MR. HAMILTON: Your Honor, this was the
9 subject of not one but two court orders from Judge
10 Seeley. One was on April 2nd and the other after a
11 telephone -- April 2 the Court ordered the Secretary to
12 produce all the signature files.

13 Weeks went by. Nothing happened. We spoke
14 with Ms. Jones and ultimately requested a telephonic
15 conference with the Court.

16 In that telephonic conference with the
17 Court, the Court issued a second order that the
18 documents -- that the signature files be produced. And
19 if they -- if the Secretary intended to argue or refer
20 to them during the hearing, that they would be produced
21 as soon as possible before the hearing. And they were
22 never produced.

23 Plaintiffs have put on their entire case
24 without the documents being produced until last night.
25 They are -- these are enormous files. Over -- how many?

1 Over 25,000 separate PDFs in those files handed to us on
2 the eve of this hearing.

3 So the documents have never been produced
4 despite two court orders, despite the hearing starting.
5 The only reason we didn't conclude on the 24th is
6 because we ran out of time.

7 So I think it is inappropriate for this
8 witness to be allowed to answer questions if the
9 plaintiffs witnesses were not.

10 MR. STAPLETON: Oh.

11 MR. HAMILTON: And if I might, Your Honor,
12 we have a -- we've prepared a brief because we
13 anticipated this issue would come up. I would like to
14 hand it to the Court.

15 MS. JONES: I haven't seen a copy of the
16 brief so I'm obviously not prepared to address it. I
17 object.

18 THE COURT: Well, that's what is going on
19 here all the way down the line, right? They get
20 these -- I don't know, 25,000, is what they say.

21 MS. JONES: Yes, it is. It is 25,000 PDF
22 documents.

23 THE COURT: So they get that after they have
24 presented the majority of their case, and there was an
25 objection to them testifying about reviews that they

1 made, to the extent that they could, of the documents.
2 You have objected to it. Judge Seeley sustained it.

3 MS. JONES: I objected because they didn't
4 produce the documents they allegedly reviewed. It's the
5 same objection that Mr. Hamilton is trying to -- but I
6 can't --

7 THE COURT: But your objection was sustained
8 because you didn't have it and he's making the same
9 objection, that they didn't have this information. So
10 how am I supposed deal with that?

11 MS. JONES: But the county clerks had this
12 information in reviewing the signatures. Mr. Hamilton
13 is trying to put this Court in the position of only
14 reviewing the signatures that he wants this Court to
15 review so that the signatures that he's challenging will
16 be thrown out by the Court so the Green Party will not
17 have access.

18 That is not an accurate representation of
19 the facts that actually happened here when the counties
20 were reviewing these signatures.

21 And, Your Honor, respectfully, I don't think
22 the parties should be prejudiced by not producing
23 documents that were not in their possession. We have
24 been working since the very beginning of this case to
25 obtain the documents. It required a \$3,000 tech support

1 solution to gain access to these files by the Secretary
2 of State. That's tax payer dollars, Your Honor.

3 And we now have that, and Judge Seeley was
4 well aware that it was going to take time in order to
5 obtain these documents, which is why in her second order
6 she asked us to produce them as soon as we obtained
7 them. And that's exactly what we did, Your Honor. The
8 day we got them, we gave them to Mr. Hamilton.

9 MR. HAMILTON: Your Honor, the Court
10 actually denied counsel's effort to delay the hearing.
11 If these were --

12 MS. JONES: Your Honor --

13 MR. HAMILTON: -- if these were critical --

14 THE COURT: Wait. Wait.

15 MR. HAMILTON: If these were critical for
16 the presentation of the state's case, they could have,
17 and in fact did, make that argument to the Court. The
18 Court denied -- counsel said it is going to take six
19 weeks. Counsel said it was going to cost \$3,000 or some
20 amount of money to produce them.

21 The Court went ahead and proceeded with the
22 argument and then with the hearing. And then in the
23 middle of the hearing, when we tried to elicit from
24 Mr. Dick that he in fact looked at some of these
25 signatures, she shut us down over with Ms. Jones's --

1 with Ms. Jones's objection.

2 So I think what is sauce for the goose is
3 sauce for the gander. That's the rules of this --
4 that's the law of the case, actually, of this hearing so
5 far. And I don't think this witness should be allowed
6 to testify what the others did not.

7 MS. JONES: Again, Your Honor, we can't be
8 prejudiced by not producing documents that we didn't
9 have.

10 It is the defendants -- it is -- excuse me.
11 It is the plaintiffs all along who have been pushing
12 this case, rushing this case, stating that a ruling has
13 to be timely made in this case. And in fact attempting
14 to thwart our efforts to get the Court and the parties
15 all the relevant information in this case.

16 How can we prejudice by -- be prejudiced by
17 the fact we couldn't get it? We --

18 THE COURT: How can they be prejudiced by
19 the fact, when we are halfway done with the hearing?

20 MS. JONES: I have no objection to
21 continuing this hearing to another time if it means
22 admitting this documents, because this is what the
23 clerks actually used during this process.

24 THE COURT: Well --

25 MS. JONES: Can the Court reasonably make a

1 decision in this case without having access to all the
2 information that the county clerks did when they engaged
3 in the very process that is being challenge?

4 THE COURT: What is on the -- tell me what's
5 on this.

6 MS. JONES: This is the -- the entire voter
7 record file, signature file, for every person who signed
8 the Green Party petition.

9 THE COURT: What does that include?

10 MS. JONES: It would include voter
11 registration cards, motor vehicle files, every signature
12 that is in Montana Votes, and every record that's in
13 Montana Votes for every individual who signed the Green
14 Party petition.

15 THE COURT: Why is that relevant to the
16 case?

17 MS. JONES: Because --

18 THE COURT: That I would look at other
19 signatures that might have been gathered through other
20 processes?

21 The statute 13-27-103 only talks about the
22 form. Your signature has to be substantially the same
23 manner as on the voter registration form. It doesn't
24 talk about "forms", it does talk about other documents
25 that might be reviewed.

1 MS. JONES: Well, respectfully, Your Honor,
2 we submit that that statute doesn't actually apply
3 because it specifically applies to ballot -- or --
4 sorry, ballot initiative petition.

5 THE COURT: Okay.

6 MS. JONES: So the statute that's really
7 relevant here, Your Honor, is -- I believe it's
8 13-27-306 -- or -- sorry, I don't have it in front of
9 me. I briefed this issue.

10 But essentially, Your Honor, the statute
11 that -- the standard that applies here is genuineness.
12 And the county clerks, as the Montana Supreme Court has
13 recognized, have the discretion to determine whether
14 signatures are genuine.

15 And Ms. McCue is here to testify today that
16 in making that determination on whether a petition
17 signature is genuine, the county clerks are trained to
18 use and in fact do use all the information for a voter
19 in Montana Votes if they have a question as to the
20 validity of the signature.

21 So, for example, if Emily Jones's signature
22 doesn't appear to be a match to the first record on
23 file, the clerks will go back and look at other
24 signatures to see if Emily Jones's signature has changed
25 over time or there's some other reason that can explain

1 why this signature may have a discrepancy.

2 And based on their discretion and all the
3 information available to them, they then make the
4 decision whether to accept or reject the signature.

5 The plaintiffs in this case have only used
6 signatures from a report that is generated by Montana
7 Votes that only shows one signature of a voter, even if
8 that voter has multiple signatures on file with the
9 county.

10 This thumb drive contains all of those
11 signatures, for every person who signed the Green Party
12 petition. This is all the information that the counties
13 would have had available to them when they went through
14 the process of verifying the Green Party petition.

15 If plaintiffs are going to ask this Court to
16 substitute their judgment or the Court's judgment for
17 that of the county clerks, at least the Court should
18 have all of the information that the counties had.

19 THE COURT: But, again -- you know, coming
20 into this after the first hearing is a little difficult.
21 I'm reading the cold words on a page.

22 But there was a lot of discussion about this
23 kind of testimony at the last hearing, and Judge Seeley,
24 based on your objections, did not allow that testimony
25 to proceed.

1 So now we come in at this stage, and they
2 are done; they've rested. And so you come in now with
3 27,000, 25,000 PDFs to add as new evidence and how --
4 you talk about prejudice to you, but how about prejudice
5 to the plaintiffs here?

6 MS. JONES: Well, then, Your Honor, I would
7 respectfully request that we have more time to continue
8 this hearing so we can go through these documents.

9 The position that my client has been put in
10 is the plaintiffs filed a complaint for injunctive
11 relief and requested a show cause hearing. We had no
12 opportunity to respond. The hearing was set on a date
13 that we had no opportunity to weigh in on. We did raise
14 this issue with Judge Seeley prior to that hearing date
15 and let her know -- I think it was at least a week
16 before the hearing -- that the Court would not have all
17 the information available to it that it needed to rule
18 in this case and that we couldn't get it for six weeks.

19 So the Court was well aware of that issue
20 before the hearing. And now that we have this
21 information, Your Honor, I don't think two or three
22 weeks' delay -- the parties -- the plaintiffs claim this
23 case needs to be decided before August. I don't think
24 two or three weeks' delay is going to make much of a
25 difference in terms of that if we need additional time

1 to look at these documents so the Court -- how can the
2 Court make a decision in this case with only part of the
3 information? The Court has to have all the information.

4 And although it is -- I recognize it's a
5 huge inconvenience to myself and to the parties and to
6 the Court, the Court should err on the side of allowing
7 all the available information in. And that was only
8 obtained by me, by Mr. Hamilton, by my client, and any
9 other counsel in this case yesterday.

10 MR. HAMILTON: Your Honor, in fact, I agree
11 with part of what she just said. Judge Seeley knew in
12 advance of the hearing that the state's position was
13 that there were these other records that were out there.
14 They knew that it was going to take weeks and weeks.
15 They knew the state wanted to delay the hearing. And
16 she rejected that motion, and she allowed the hearing to
17 proceed. And then she sustained the objection.

18 It's clear what her view was, that the law
19 requires, like the Secretary's own form says,
20 substantially similar to the registration card. The
21 registration card is the document that was produced.
22 And it wasn't just produced out of thin air. It was
23 produced from the Secretary of State, and only after we
24 had convened that telephonic conference with the Court
25 in order to get the Court's assistance in requiring the

1 production of those records.

2 We took those, we consolidated them together
3 in the exhibits that are before the Court today to --
4 precisely to avoid this 25,000 image problem so we could
5 take each one of our -- of the signatures that we've
6 challenged on the petitions and put it right next to the
7 comparer so that the Court had the information
8 available. Not for us to substitute judgment but to
9 provide the Court with a basis to be able to do that.

10 The idea that now somehow we're going to
11 take these 25,000 exhibits that never were produced,
12 that never -- that the Court was well aware existed but
13 concluded, A, they are not relevant; and, B, they -- if
14 you want to cite them, then bring them forward.

15 I mean, our view is these signatures don't
16 match. It doesn't matter. And the only relevance
17 comparator is the registration card. Just like the
18 Secretary says in the form. That's the comparator.
19 That's what's before the Court. That's what's been
20 admitted.

21 THE COURT: This statute that talks about
22 challenges to signatures goes beyond that, right? It
23 doesn't just say that voter registration card.

24 MR. HAMILTON: Well, the statute authorizes
25 the Secretary to adopt -- to adopt standards and

1 promulgated forms. And that's the form that was adopted
2 by the Court -- by the Secretary of State.

3 But the problem that we have here, Your
4 Honor, is that the decision was addressed. This issue
5 was addressed prior to -- and if I might, we did prepare
6 a brief on this, and we're happy to provide it. But I
7 can tell you what it says.

8 The Court addressed this issue because it
9 was raised by Ms. Jones. I'm having a little bit of
10 déjà vu because it's the same argument we've been
11 hearing for the last six weeks. We don't have the
12 documents, we can't get the documents, they are too
13 expensive, we're going to have to redact them. And
14 apparently now they are not going to be redacted.

15 MS. JONES: In the interest of time, Your
16 Honor. That's why we made a motion to file the
17 documents under seal so that we could produce them.

18 THE COURT: All right. All right. I am
19 only saying this once, and I'm just going to say it one
20 time. When I am speaking to one party, I don't want the
21 other party to interrupt. I will give you a chance to
22 respond.

23 MS. JONES: I apologize.

24 MR. HAMILTON: So if that were the -- if
25 that were the expedient thing, that we could produce

1 these documents and file them under seal, then why
2 weren't they produced in response to the April 2nd order
3 or the April -- whatever the later telephonic conference
4 order was? They weren't. They were held back. They
5 were produced only at the very last minute, which was
6 last night after the plaintiffs had already produced
7 their case.

8 You know, if you were writing on a blank
9 slate, you would rule differently. But I think at this
10 point, given Judge Seeley's rulings, given where we are
11 in the procedural posture of the case, I think that as a
12 practical matter it's simply -- unless we're going start
13 all over again, which I certainly hope we wouldn't, we
14 need to do this. We need to resolve this now as a
15 result of the elections deadline. The suggestion that
16 we could delay this hearing for several additional weeks
17 is --

18 THE COURT: Her suggestion is to delay it
19 for two or three weeks.

20 MR. HAMILTON: Yes, two or three weeks.

21 Your Honor, when this is over, whoever
22 prevails or does not prevail is going to appeal this to
23 the supreme court.

24 THE COURT: Absolutely. So we're not going
25 to get a decision out of here, in all likelihood before

1 -- you know, the ballots have already gone out.

2 MR. HAMILTON: The primary ballots, that's
3 right.

4 THE COURT: They have gone out. So nothing
5 I'm going to do is going to withdraw those or do
6 anything with those, right?

7 MR. HAMILTON: Well, no. I think, Your
8 Honor, your injunctive relief would prevent the
9 Secretary of State and the counties from counting the
10 Green Party candidates to the extent that they were
11 reporting or certifying the results of the primary
12 elections. So that's No. 1.

13 No. 2, you're going to be -- your decision
14 is going to control the preparation of the ballots for
15 the general election.

16 THE COURT: I understand that. But that
17 does give us some time to operate in here. But I am
18 trying to think how we go back and undo some of what was
19 done, if that's the process we have to go through.

20 Mr. Dick was prohibited from testifying
21 regarding the other matters that he reviewed; is that
22 right?

23 MR. HAMILTON: That's right.

24 THE COURT: I can't remember if there were
25 other people.

1 MR. HAMILTON: Well, it affected the
2 presentation of the case. Every one of the exhibits
3 that's in front of Your Honor, Exhibits 1 through 28,
4 were prepared at great expense to consolidate all of
5 those materials and provide them to the Court as
6 summaries of voluminous records.

7 These materials were never produced. It
8 was -- it was incumbent upon the state to produce
9 materials if they thought they were relevant to the --
10 to this hearing prior to the commencement of the
11 hearing.

12 They knew this issue was there. Judge
13 Seeley knew this issue was there. And we proceeded and
14 put on the entire case. Counsel -- counsel's objections
15 were overruled and that's the reason we are where we are
16 today.

17 So to reopen and delay this further, even if
18 it's two or three weeks, doesn't solve the problem,
19 because then you have the issue -- you know, what
20 you're -- we've already relied on the decisions that
21 Judge Seeley has already made. The parties have already
22 moved forward.

23 MR. RHOADES: Your Honor, may I be heard?

24 THE COURT: You may.

25 MR. RHOADES: Thank you, Judge.

1 Your Honor, my recollection is that
2 Judge Seeley made her ruling based on the fact that she
3 wasn't going to consider any evidence about signatures
4 that she was not able to review herself.

5 And at that time when that objection was
6 made, she would not have been able to review what is on
7 this disk herself, and that basis of her ruling, if I
8 recall correctly.

9 Now, this evidence was given to the
10 plaintiffs yesterday. Their case in chief was still
11 open. They had an opportunity at that point to recall
12 any of their witnesses, including Mr. Dick, whose
13 testimony might have been affected by the ruling made by
14 Judge Seeley. Because now they had the evidence and
15 they could have had him testify about what he saw and
16 the Court would be able to review it itself.

17 And they had that opportunity. They knew
18 that issue was there. They even prepared a brief for
19 it, to have it ready for today. And then when they got
20 that documentation, they chose not to go back to
21 Mr. Dick and say, well, we've got this documentation;
22 we're going to have this testimony now. They chose not
23 to do that with the other witnesses, and they chose not
24 to do that with their final witness.

25 So consequently they did have that

1 opportunity. They're complaining that they didn't have
2 an opportunity, but that's just not true. They did have
3 the opportunity. They had these documents before their
4 case in chief closed, and they could have presented it
5 to the Court if they wanted to.

6 MR. HAMILTON: Your Honor, those materials
7 were produced last night at about 4:30 in the afternoon.
8 That's when we received this 25,000 PDF. If we wanted
9 to print them, it would have taken all evening just to
10 try to print them, trying to understand what was on this
11 flash drive.

12 We had no time. And moreover, simply the
13 fact that counsel has provided us with this when she
14 indicated yesterday that she was only going to introduce
15 one exhibit, and it wasn't this flash drive.

16 So we've never been on notice that she
17 intended to offer these as an exhibit, and she's still
18 not.

19 So why on earth would we think that we could
20 recall Mr. Dick and ask him questions that the Court has
21 already sustained? I dare say, I would never brave that
22 inconsistency with a ruling the Court has already made.
23 I think it would be completely improper.

24 The Court ruled for the reasons that she
25 said on the record. You know, there's a transcript of

1 this when she sustained -- when she sustained the ruling
2 and the extensive argument over it.

3 I think having this issue arise beforehand
4 with the Secretary, knowing full well that these records
5 existed and their position with respect to them, they
6 brought that to the Court's attention, the Court
7 overruled that objection and said this hearing is going
8 to go forward, and we did go forward.

9 The last minute production of these
10 documents should not be allowed in the middle of the
11 hearing.

12 MS. JONES: May I respond?

13 THE COURT: You may.

14 MS. JONES: Mr. Hamilton has continuously
15 intimated that a constitutionally elected public
16 official has improperly withheld documents from this
17 case. He continues to intimate that we somehow had
18 access to these but then chose to produce them only on
19 the eve of this continued show cause hearing.

20 And, Your Honor, I categorically reject any
21 accusation that my client has done anything improper
22 here. It has been clear since before this case was
23 filed when Mr. Larson or Mr. Judge came into
24 Mr. Stapleton's office with a public records request
25 asking for these document and it was clearly explained

1 to him, before the filing of the complaint, that the
2 Secretary of State did not have access to them. They
3 were maintained at the county level.

4 We've been forced to obtain documents that
5 we never had access to at great expense to the taxpayers
6 in order to get in front of the Court the full picture
7 which the Montana Democratic Party is hiding.

8 It is not that we have withheld documents
9 that we had access to all the time. And the record
10 needs to be clear on that respect, Your Honor.

11 And I would submit, it wasn't incumbent upon
12 the Secretary to produce documents that he had never had
13 in his possession. It was incumbent on the plaintiffs
14 to be in full possession of the facts and the evidence
15 before filing their complaint under Rule 11.

16 And further, Your Honor, with respect to the
17 issue on delay, I think delaying this matter two or
18 three weeks would be one much less prejudicial to the
19 plaintiffs than addressing this issue on appeal in front
20 of the Montana Supreme Court.

21 MR. HAMILTON: Your Honor, the documents,
22 this -- first of all, I don't charge the Secretary with
23 misconduct at all. The Secretary, I doubt, was involved
24 in the decisions here.

25 But if the counsel thought that --

1 MS. JONES: No, he was --

2 MR. HAMILTON: If counsel thought that the
3 Secretary was being ordered to produce documents not in
4 his possession on April 2nd, then counsel should have
5 raised that issue immediately with the Court, and
6 didn't.

7 The Secretary is the chief elections
8 officer. Somehow between then and now, the Secretary's
9 managed to get copies of these documents.

10 We would have been happy to try this case
11 one way or the other. The Democrats -- the plaintiffs
12 are not trying to hide anything. We just want a fair
13 playing field. We've been asking since April 2nd for a
14 copy of the materials from the county, from the
15 Secretary, through a public records act request, through
16 orders of the court, through multiple orders of the
17 court.

18 And the answer was no on April 2nd or 3rd.
19 It was no on April 4th or 5th. In was no all the way
20 through April. It was no all the way through May. It
21 was no all the way through plaintiffs' case until last
22 night, when suddenly the world shifted and the documents
23 that weren't available suddenly became available.
24 Documents that had to be redacted suddenly didn't need
25 to be redacted and could be filed under seal.

1 Your Honor, they played -- they played their
2 cards the way they wanted to play them. And that's
3 fine. I'm happy to try the case that way. I'm happy to
4 try the case with all these records in there. But I
5 don't think that counsel should get it both ways, having
6 chosen to refrain from responding to the Court's
7 April 2nd order or the order later in the month and
8 having chosen to proceed with the trial on the first day
9 of the hearing on April 24th. We would have concluded
10 the hearing that day but for the fact that we ran out of
11 time.

12 To now come in and suddenly drop 25,000
13 documents into this Court's lap I think should not come
14 to this and should not lead to a delay in the hearing.

15 This is an emergency injunction. It does
16 relate to an election that is imminent. And we are
17 nearly out of time.

18 I mean, as a result -- I should say, as a
19 result of the delay, occasioned by both the Green Party
20 and the Secretary improperly removing this case to
21 federal court on the eve -- on the very day of the last
22 hearing, and then the Green Party filing a motion for
23 substitution to remove the judge.

24 The result of those two procedural moves on
25 the very date this hearing was supposed to recommence,

1 after both counsel had agreed that that was an
2 appropriate date to happen resulted in the very
3 two-to-3-week delay that we're talking about here.

4 So a further delay I think is just
5 absolutely unwarranted and uncalled for. It's been --
6 that's been the strategy, quite clearly all along, to
7 try to slow this down as much as they possibly can.

8 THE COURT: All right. So what is the
9 Secretary's intent with regard to the materials? Are
10 you intending to introduce that as an exhibit into the
11 case?

12 Is she going to testify -- is it your intent
13 to have her testify about her referring to documents
14 that are on that thumb drive?

15 MS. JONES: Your Honor, my intent is to
16 comply with Judge Seeley's order requiring us to turn
17 these over to the Court and the other parties. That's
18 my intent.

19 THE COURT: So where --

20 MS. JONES: I do think the Court needs to
21 have these documents available to it if the Court is
22 inclined to undertake a review of these signatures as
23 the plaintiffs are asking.

24 To be honest, Your Honor, I also did not
25 have time to review these documents myself. I just got

1 them today, in fact, because they couldn't be sent to me
2 down in Billings yesterday.

3 I do want these documents to be a part of
4 the record in the case. They are the key to the case.
5 And so however I need to do that to get those in is what
6 I intend to do.

7 But I'm not prepared to -- to open these up
8 and talk about them at this hearing, No. 1, because they
9 contain social security numbers and dates of birth of
10 voters and have not been redacted.

11 The reason for filing the motion to file
12 these documents under seal was so that we didn't have to
13 take additional time to go through 25,000 PDFs and
14 redact out the social security numbers and dates of
15 birth.

16 I just thought we could simply file the
17 documents under seal, the Judge -- the Court would then
18 have the complete documents available to them. All
19 counsel have the documents, and as long as they are not
20 publicly filed, I think we are in compliance with the
21 Montana Rules of Civil Procedure.

22 MR. HAMILTON: I don't think that's
23 appropriate, Your Honor --

24 THE COURT: Wait. Let me talk to her.

25 So again, back to what do you intend to ask

1 this witness today with regard to those documents?
2 Judge Seeley said she was not willing to have anybody
3 testify to having reviewed documents that she herself
4 did not have access to; roughly that's the reason for
5 her ruling, right?

6 So where are we different today with this?
7 I don't have access to those.

8 MS. JONES: Yes, this is your copy, Your
9 Honor.

10 THE COURT: Well, I understand. But it's --
11 am I going to have access to 25,000 documents? It seems
12 like it's your responsibility -- isn't it your
13 responsibility to extract what's relevant out of that?
14 We don't have 25,000 challenged signatures here, right?

15 MS. JONES: I can certainly do that, but I
16 just got them yesterday as well.

17 THE COURT: So this is the time set for this
18 hearing. So how are we going to go forward with that?
19 Are you going to ask this witness what about Joe Blow,
20 you know, he was challenged.

21 MS. JONES: Yes, I do have a question in
22 that respect in my outline. And I think the original
23 objection was drawn because Ms. McCue was just about to
24 testify about all the information that is available to
25 the counties in reviewing the petition signatures.

1 THE COURT: So we're back to the part where
2 you -- I'm not going to look through 25,000 signatures
3 that are not challenged. I'm interested in the number
4 of signatures that are challenged. And I'm not even
5 sure how far down that road I'm going to go.

6 But isn't that where we are with this? So
7 you start asking her, what did you review with regard
8 to -- I'll pick somebody here -- with regard to her
9 signature. She said, well, I reviewed this and I went
10 and looked at this record and this record and this
11 record. I don't have those here. I don't have those
12 here as an exhibit to review, right?

13 MS. JONES: Correct, Your Honor. And --

14 THE COURT: So how are we going to go
15 forward here today?

16 MS. JONES: Again, this is a result of the
17 constraint of time because my client was never -- was
18 not originally in possession of these documents.

19 I would submit that in order for this case
20 to be adjudicated on the merits, that process needs to
21 happen, and I think we should agree on a timeframe for
22 doing that that both satisfies the plaintiffs' request
23 that this case be expeditiously decided while allowing
24 the important evidence to be before the Court, Your
25 Honor.

1 Because the Democratic Party is only
2 painting part of the picture. They've only submitted
3 one signature file in all of their exhibits, even though
4 multiple signature files exist and were reviewed by the
5 counties.

6 And, you know, we are happy to undertake
7 that process and distill that for the Court in order to
8 expedite the process.

9 Again, we categorically reject
10 Mr. Hamilton's claim of improper delay. The Secretary
11 of State has done nothing to improperly delay this case.
12 We could not produce the documents we did not have. But
13 they are the key to the case. The counties are not
14 parties and the counties were in possession of these
15 documents.

16 Again, we've had to implement an expensive
17 tech solution in order to be able to get them.

18 But the counties looked at multiple voter
19 signature files when reviewing this Green Party
20 petition, and they're statutorily vested with the
21 discretion to make a determination to accept or reject a
22 signature based on all that information.

23 If the Court only looks at one signature but
24 Ms. McCue had five signatures for that same voter, how
25 can the Court make a determine on whether the signature

1 should have been accepted or rejected?

2 MR. HAMILTON: Your Honor, I feel your pain.
3 The production of 25,000 records in the middle of
4 this -- I mean, they are not in front of you. And I
5 think that is exactly the reason why Judge Seeley
6 refused to allow my witness to testify about materials
7 that weren't in front of her.

8 So the burden -- we understand the
9 plaintiffs have the burden of proving their case, and
10 it's the reason why we went to all the effort to create
11 the exhibits that are in front of you, to collate all
12 the materials and put them onto one page so it's easy.
13 You can go through and compare the comparisons. And we
14 use the documents produced by the Secretary of State in
15 response to the court order.

16 You know, the fact that these 25,000
17 documents are now produced -- they are not in front of
18 you. This witness isn't going to say, you know, with
19 respect to Jim Jones, this is the signature that I
20 compared it to.

21 And that, I submit, is the burden of proof.

22 THE COURT: She is going to do that. They
23 are prepared to go.

24 MS. JONES: Yes, we are.

25 MR. HAMILTON: But they don't have the

1 documents in front of them. They're not even offering
2 them as an exhibit. We have the magic flash drive that
3 has 25,000 exhibits and somehow, you know, this witness
4 isn't going to pop them into a nonexistent laptop and
5 then project them up to the screen. We're not going to
6 offer them into evidence. She's not prepared to do
7 that. They are not in front of you.

8 So instead, we're right back exactly where
9 we were on April 24th, at the last hearing before
10 Judge Seeley where Theodore Dick was saying, I looked at
11 the material that was produced by Cascade County or
12 Yellowstone or Lewis and Clark County on the screen and
13 I compared them to the petition signatures, and I didn't
14 think any of them matched.

15 And she said, oh, no, you're not doing that
16 because you don't have those documents in front of -- I
17 don't have those documents and you don't have those
18 documents here for the Court, so you can't do that.

19 And that's fine, Your Honor. I understand
20 that ruling. Our burden is to come forward and produce
21 our case. And that's what we did.

22 Their burden -- if they think that those
23 signatures match some other signature, fine. Then
24 produce it. That's the way -- that's the way it works.
25 And they were ordered -- not only requested multiple

1 times but ordered by the Court to produce them, and they
2 never did, let alone make it -- distill it into a form
3 that is admissible and that's practically useable for
4 the Court.

5 So for them to now complain that -- that we
6 somehow need a continuance, that Judge Seeley denied, in
7 order to produce records that never have been produced
8 before, I think is completely inconsistent with what's
9 gone on and really unfair to not only the plaintiffs but
10 to this Court and to the voters of the state, to the
11 process.

12 These materials were relevant, they should
13 have been produced a long time ago, and they weren't.

14 THE COURT: My understanding, again -- and
15 coming into this in the middle is a little awkward. But
16 my understanding is Judge Seeley ordered those documents
17 to be produced. It was represented the Secretary of
18 State does not maintain those documents; they are
19 maintained by the counties. And it would take them
20 about six weeks to get the information together.

21 We are about six weeks past that timeframe.
22 April 2nd is about six weeks.

23 MR. HAMILTON: The representation of six
24 weeks was made on April 24th.

25 THE COURT: So you're faster.

1 MS. JONES: Thank you.

2 THE COURT: So Judge Seeley did not say
3 that's out forever. She's just saying I don't have it,
4 get it together and produce it and we'll deal with it
5 that way. Isn't that the playing field we're on right
6 now?

7 MR. HAMILTON: I don't think that's what she
8 said on April 24th. That's what she said about a week
9 before the hearing in the telephonic conference:
10 Produce them as soon as they are available.

11 THE COURT: But, again, she's not saying
12 we're all done; no more discovery, no more exchange of
13 information. We're all done. We're going to go forward
14 with what we have. She's telling them, get the
15 information together.

16 And they may not have done that. And now
17 don't we have to take that into account in order to get
18 down to the base of the case? If in fact -- and I don't
19 know. I don't know how this all plays out in the end,
20 but if in fact the statute authorizes them to review not
21 just voter registration forms but other registration
22 forms that are available to the county, don't they have
23 some opportunity to present that other evidence to show
24 what they did in fact review?

25 MR. HAMILTON: Well, two responses: First,

1 I don't believe the predicate is correct. I don't
2 believe that the statute authorizes the counties to use
3 change of address forms, driver's license signatures.

4 THE COURT: I don't know. I'm just looking
5 at the statute right now. But it doesn't just -- like
6 the previous one cited to, it doesn't refer to a form,
7 it refers to other -- compare the signatures in the
8 registration records of the county.

9 MR. HAMILTON: The registration records.

10 THE COURT: I don't know what that means.
11 We'll have to argue about that.

12 MR. HAMILTON: Right.

13 THE COURT: It's on the record, though.
14 It's more than just the voter registration form. It's
15 registration signatures and registration records,
16 plural.

17 MR. HAMILTON: Right. Of course that's not
18 what the -- that's not what the Secretary tells the
19 voters in the petition form.

20 THE COURT: I understand that. But I'm not
21 sure where that gets them, either, because the
22 statute -- whatever he says to folks doesn't necessarily
23 conflict the statute if it says that's what they can do.

24 MR. HAMILTON: Of course.

25 So the first issue is the -- are any of

1 these other signatures relevant? And then the second
2 question is, if they were relevant, why weren't they
3 produced in response to the order from a long time ago?

4 And the answer was, it's going to take us
5 six weeks to redact all of this confidential information
6 out, and we don't have possession of them.

7 Well, the counties had possession. We just
8 heard testimony that the Secretary of State has
9 read-only access to the Montana Votes database. That's
10 where all this material is.

11 So they could have produced it either
12 directly or, apparently, as they did, go to the counties
13 and say, just give it to us.

14 THE COURT: You folks keep saying the
15 "counties." The counties aren't a party to this.

16 MR. HAMILTON: That's correct.

17 THE COURT: They not under any obligation to
18 come forward with anything absent some sort of subpoena
19 duces tecum.

20 MR. HAMILTON: A subpoena or a public
21 records act request. These were all public records.
22 And we've been trying to -- we've been requesting these
23 from everybody since before this case was even filed.

24 THE COURT: I don't know where that goes,
25 either, you know. I don't know about those.

1 So what I'm looking at here is the Secretary
2 of State had now produced documents that Judge Seeley
3 told them to produce. And it seems like we ought to
4 have some consideration of those documents. Not the
5 25,000, but some conversation of those documents.

6 So I think I'm going give them an
7 opportunity to do that. I'm not going to give them an
8 opportunity to do it today. You just got it, so you
9 need to have an opportunity to review them and they need
10 an opportunity to review them. And we'll continue the
11 hearing. I'm going to continue it for two weeks out.
12 What do I have two weeks out?

13 THE CLERK: Two weeks out I have Thursday,
14 June 7th. How long are we looking at?

15 THE COURT: A long time.

16 THE CLERK: A full day?

17 MR. STAPLETON: The election is June 5th.

18 THE COURT: I'm not getting anything done
19 before June 5th. That's the reality of where we are
20 with this.

21 MR. HAMILTON: Your Honor, if I could make a
22 suggestion. If we're going to be considering these
23 images, the plaintiffs would request the opportunity to
24 reopen their case to --

25 THE COURT: I'll grant that.

1 MR. HAMILTON: -- update all of the exhibits
2 and resubmit them with all these signatures attached in
3 the same way.

4 Our view is this isn't going to change
5 anything because our folks, if they had been allowed to
6 testify, would say they looked at those as well.

7 THE COURT: Right.

8 MR. HAMILTON: My concern here is that a
9 delay -- and you know Your Honor's schedule is what the
10 schedule is.

11 THE COURT: Right.

12 MR. HAMILTON: I think this is all a lot
13 simpler than this is turning out to be.

14 We can produce those exhibits. We can
15 deliver them to the Court. I'm not sure what else
16 remains to be tried. I don't think we need a full day
17 of evidentiary hearing to complete this case.

18 THE COURT: I'll give you a full day. Do we
19 have a full day on Thursday?

20 THE CLERK: I'll have to clear it.

21 THE COURT: You can do that.

22 THE CLERK: I can do that.

23 THE COURT: What time did you want to start?

24 MR. HAMILTON: What day is it?

25 MS. JONES: June 7th.

1 THE CLERK: Thursday, June 7th.

2 MS. JONES: I guess, Your Honor, before we
3 set a date we want to know if plaintiffs do intend to
4 reopen their case so we have enough time to be advised
5 of what the new arguments are going to be and how much
6 time to be prepared to address it at the time of the
7 hearing.

8 MR. HAMILTON: Your Honor, all we intend to
9 do is update all of the exhibits. And, I mean, they've
10 already been admitted. The Court's well aware of the
11 source of the additional information. I would just
12 simply offer those into evidence without the need for
13 laying any further foundation about where the signatures
14 come from since we're all pretty darn well familiar with
15 where they came from.

16 THE COURT: What about calling any other
17 witnesses?

18 MR. HAMILTON: I don't think we need to
19 recall any witnesses. We'll simply update those
20 exhibits, I think 1 through 28, provide them to the
21 Court and of course counsel, and move them into
22 evidence. That's all we intend to do.

23 THE COURT: Okay. Where would you go?

24 MS. JONES: So, Your Honor, what we will
25 need to do, then, is work with the county to identify

1 which voters they actually did look at multiple voter
2 signature files for. So we would need an opportunity to
3 present that in a way that -- just distill it and
4 present it in a way that's easy to read for the Court
5 and the other parties. We would need to get those
6 exhibits prepared before the hearing.

7 MR. HAMILTON: Your Honor, I don't think
8 actually there's any need for that. The exhibit will
9 already -- we can produce these by Monday, if need be,
10 with the image files.

11 I mean, so once those are there, of course
12 counsel can identify whichever ones she wants to argue
13 about. All the images will be in place. So that's --
14 there's no reason to delay this any further, to create
15 any additional steps or hurdles to delay this further.

16 MS. JONES: Well --

17 THE COURT: You're suggesting not having a
18 followup hearing?

19 MR. HAMILTON: No.

20 THE COURT: Again, sorry about the time
21 crunch. These cases are always real time critical
22 but --

23 MR. HAMILTON: My position is we conclude --
24 we exclude these materials and conclude this hearing
25 today.

1 I understand the Court is not inclined to do
2 that, is inclined to consider these additional
3 documents. To make it easy for the Court and counsel,
4 we'll take on the burden of taking these images and
5 slotting and extracting from the 25,000 PDFs that she's
6 delivered to us just the images for those that are
7 challenged by the plaintiffs and put them into the
8 exhibits that we have here, just replace them all and
9 provide them to the Court.

10 As far as I'm concerned, that's all we need.
11 We don't need another hearing. I understand that
12 counsel may want to present some witnesses and explain
13 what they did. My point is we don't need any further
14 delay or complication in creating any additional
15 exhibits beyond that. They are already in front of the
16 Court.

17 MS. JONES: Your Honor, I will agree to
18 that. If the plaintiffs will undertake the burden of
19 putting all these signatures into one exhibit and indeed
20 get it to us by Monday or in an expeditious manner, that
21 would greatly reduce the number of exhibits I would need
22 to introduce.

23 I would request a continued hearing so that
24 I could ask my witnesses about those exhibits and our
25 exhibits. But I think we can easily do that in two

1 weeks, if this is the process we're describing, and
2 we'll agree to that.

3 MR. HAMILTON: I don't think we need -- I
4 think counsel can proceed and ask the questions of this
5 witness on that understanding and we, you know, submit
6 those redone exhibits on Monday or sometime next week.

7 There's no -- I don't know that -- what the
8 point is, if that's the way we're going to go, of
9 continuing -- of having another hearing two weeks from
10 now, three weeks from now.

11 THE COURT: If they agree that they are
12 going to extract all the signatures associated with the
13 particular voters and attach those, and you review those
14 and it looks good to you, I don't think I need to have a
15 witness tell me that those are the signatures that were
16 reviewable.

17 MS. JONES: But --

18 THE COURT: So I don't see the need for a
19 followup.

20 MS. JONES: Sure, Judge.

21 So I believe Ms. McCue would have testified
22 today, and my clerk from Great Falls as well, that it's
23 not just the signature that they look at. They look at
24 other characteristics of the handwriting. For example,
25 a voter's motor vehicle form with address, you know,

1 certain ways the voter writes their numbers, that sort
2 of thing, can also be used in determining signature
3 genuineness and verifying that handwriting.

4 So I would anticipate introducing just a few
5 exhibits from this thumb drive with respect to that.

6 But again that doesn't -- I can greatly
7 reduce the number of exhibits I need to introduce. But
8 I do think there's more information relevant than simply
9 the voter's signature.

10 MR. HAMILTON: Your Honor, and to the extent
11 she's talking about motor vehicle records, we're
12 absolutely going to object to that. The very statute
13 that she cites and that Your Honor referenced a moment
14 ago says all the signatures on that sheet or section
15 must be compared with the signatures in the registration
16 records of the office. That doesn't say anything about
17 driver's license records or animal husbandry
18 applications or firearm permits or anything else that
19 county might contain.

20 MS. JONES: I don't want to misspeak, so
21 maybe Audrey can correct me. I believe there's a way
22 for Montana voters to register to vote through the DMV
23 and that is why they end up in the voter-wide database.

24 Mr. Hamilton is not from here so he's not
25 familiar with that process.

1 MR. HAMILTON: Your Honor, the Secretary's
2 already given examples of all these other exhibits.
3 We'll object to them. But if the point is we need
4 another hearing, we need to delay this so they can talk
5 about other sorts of documents -- this Exhibit A that
6 they gave us last week that includes a whole variety of
7 the other sorts of materials.

8 So they can use that as their exhibit, they
9 can ask the witness, is this the sort of thing, other
10 sorts of documents. Of course I'll be on my feet
11 objecting. Your Honor will rule however he rules. And
12 the witness will either be allowed to testify or not.
13 But we don't need to delay the hearing. We have the
14 material right here.

15 THE COURT: Okay. I'm not sure -- you know,
16 again, I don't know what's on the drive, so it's hard
17 for me speculate here.

18 But what I'm going to be seeing on the drive
19 are the records that fit into the statutory provision.

20 MS. JONES: Yes, Your Honor. And nothing
21 more.

22 THE COURT: And nothing more. And so it
23 seems to me like you wouldn't have the need to have the
24 exhibits be introduced. You wouldn't be introducing,
25 you know, dog licensing records or other records. What

1 is there is all that would be available for review. Is
2 that -- am I misunderstanding that?

3 MS. JONES: Yes, Your Honor, only --

4 THE COURT: Yes, I'm misunderstanding?

5 MS. JONES: Yes. Yes. The difference is
6 Mr. Hamilton has offered to simply take the signatures
7 from the records and update his exhibits to show the
8 additional signatures.

9 THE COURT: Right.

10 MS. JONES: But I'm saying when the counties
11 go through the petition review, they can look at the way
12 a voter prints their address, for example, on either
13 voter registration card or -- on a voter registration
14 card and look at handwriting to compare handwriting.
15 And that's part of the registration records.

16 And so I'm saying there would be other
17 information that the clerks do use in this process that
18 the Court should have.

19 THE COURT: That's beyond the statute
20 though. The statute just talks about, compare the
21 signatures in the registration records.

22 So seems like other types of printing or
23 writing or anything like that is beyond what would be
24 used. It would be the signatures only that are being
25 compared, according to the statute. That's what in the

1 statute.

2 MR. HAMILTON: And in addition, Your Honor,
3 that material will not be before the Court. With
4 respect to that material, just like Judge Seeley was in
5 the same position, it's not on the flash drive and now
6 she's referring to things that have never been produced
7 and still aren't produced before the Court.

8 THE COURT: Right.

9 MS. JONES: Well, again, Your Honor, I
10 couldn't produce documents I didn't have. So I don't --

11 THE COURT: I understand that. But I'm also
12 looking at what the statute says.

13 MS. JONES: Yes --

14 THE COURT: The statute talks about
15 comparing the signatures in the registration records of
16 the county. It doesn't talk about looking at their
17 addresses or anything else. It looks like to verify the
18 signature you're comparing it with the signatures on the
19 registration records of the county.

20 MS. JONES: Yes, I see that.

21 THE COURT: That's as fast as it should go,
22 I think. You know, that's as far as it goes.

23 MS. JONES: Okay, Your Honor. I would say I
24 would like the opportunity -- if we're going to have an
25 updated exhibit, I -- I would like the opportunity to

1 have my witnesses -- and if Mr. Hamilton wants to have
2 his witnesses as well -- testify about now the actual
3 exhibits that are going to be in the case -- so, again,
4 I would request a brief delay. I do not think it unduly
5 or unfairly prejudices the plaintiffs. But I would like
6 to have my witnesses testify about the actual exhibits
7 in this case.

8 THE COURT: He says he can get the exhibits
9 generated by Monday.

10 MS. JONES: Okay.

11 MR. HAMILTON: Yes. That's what I heard.

12 THE COURT: Mr. Stapleton volunteered the
13 election is on June 5th, so I would like to get a some
14 sort of decision out before the election, if we can do
15 that. And it seems like we ought to be able to do
16 that --

17 MS. JONES: Okay.

18 THE COURT: -- through the process we talked
19 about. Where you get a chance get to go through -- pull
20 out all the signatures. You get a chance to review
21 those, and you get the amended exhibits into me, and
22 that's it for purposes of this hearing.

23 MS. JONES: Okay.

24 THE COURT: I think that's as far as we need
25 to go.

1 Again, I don't mean to cut off anybody's
2 testimony, but I don't know that I need to have a
3 witness tell me, yes, I looked at this -- you know, this
4 registration card from 2014. This was the registration
5 card when she moved back in 2012. I don't need somebody
6 to tell me that, if I've got those signature available.
7 Do I?

8 MS. JONES: Well, I -- I do have those
9 questions in my outline for my witnesses, Your Honor.
10 In our preparation that's what we talked about.

11 Again, I don't -- I didn't look at those
12 because I didn't have access to them, but the counties
13 do. So --

14 THE COURT: Right.

15 MS. JONES: -- as I'm prepping them on the
16 phone, they're telling me, oh, yeah, you know, there was
17 a question about this one. And this is the one we used
18 to actually match it. And I think it would be helpful
19 to the Court and important for the Court to be able to
20 have that testimony in open court.

21 MR. HAMILTON: Your Honor, the witnesses are
22 here. They can -- I mean, to the extent we can use the
23 last 22 minutes before 5:00. She can ask whatever
24 questions she wants to ask about the way that they went
25 through this.

1 But at the end of the day, the question is
2 going to be for the Court -- we know what the county
3 auditors are going to say, with all due respect to the
4 hardworking county auditors. They're all going to say
5 these signatures match. They've already said they
6 matched. So --

7 THE COURT: I do have -- well, anyway, go
8 ahead.

9 MR. HAMILTON: No. So all I'm saying is in
10 the next 22 minutes, if she wants to put on and ask, you
11 know, questions about were there other sorts of things
12 that you looked at and would you look at this
13 occasionally, then they can say that.

14 MS. JONES: That's what drew the objection
15 in the first place. That's why we're having this
16 discussion.

17 MR. RHOADES: Your Honor, may I be heard?

18 THE COURT: You may.

19 MR. RHOADES: With respect to the folks who
20 actually did the verification, it's seems to us very
21 important for them to be able to explain to the Court
22 their methods.

23 Right now I'm a lay person in reviewing
24 these signatures. I would submit the Court is a lay
25 person in reviewing these signatures. Maybe we can get

1 educated on that by the court official. But until we
2 do, it seems to us that it's -- we as attorneys are not
3 in a position to be able to make that judgment unless we
4 get a lot more information from the witnesses who do
5 know how to do it.

6 So subsequently, we think it's important
7 that the county officials do explain to the Court the
8 exact process they go through in verifying what
9 signature -- when there's some questions about them in
10 their own mind when they have them. Thank you.

11 MS. JONES: And, Your Honor, I would just
12 add I think for this Court and the reviewing Court after
13 this Court, it will be helpful if we can do that on the
14 basis of the actual exhibits.

15 THE COURT: I'm going to let you continue
16 your examination until 5:00 today. So whatever
17 questions you want to -- then I'll decide by the end of
18 the day whether we need to have further testimony.

19

20 DIRECT EXAMINATION CONTINUED

21

22 BY MS. JONES:

23 Q. Thank you, Your Honor.

24 Audrey, perhaps you can help me as to where I was
25 with my questioning. But the question I have on my

1 outline is based on your experience and training, what
2 are the standards you use when determining whether to
3 accept or reject a signature?

4 A. Yes. So I think I was answering that we look at
5 broad characteristics and local characteristics, and
6 then there was an objection to me describing part of the
7 process that's not in evidence. Yes.

8 If I may refer to the processes we use and
9 illustrate them according to the exhibits that have been
10 submitted. This is part of my notes, so I don't know if
11 it's allowed, but I've tabbed certain signatures, and I
12 can explain how we use our training when we compare some
13 of the signatures.

14 Q. So --

15 A. Or if I can't refer to this one I could look
16 at --

17 Q. Yes, that's what I was going to say.

18 Rather than looking at your notes, why don't you
19 look at the exhibit notebook in front of you. I think
20 specifically we are looking at -- sorry, which one is
21 the Lewis and Clark County? Three or four or Exhibit 6?

22 MR. HAMILTON: 6.

23 BY MS. JONES:

24 Q. So Audrey, if you take a look at Exhibit 6 --
25 this is Plaintiff's Exhibit 6. And it represents all

1 the signatures being challenged in Lewis and Clark
2 County. So if you'd go ahead and use this document to
3 continue with your testimony.

4 A. So I haven't been in court before, so I am
5 unclear. I can refer to the exhibits and explain our
6 training and how we would look at the signatures?

7 Q. Correct.

8 A. So in Exhibit 6, page 2, we have the voter
9 registration signature from Debra Beaver. And then we
10 also see the signature as it was signed on the petition.

11 I think you can see that in this instance this
12 person signed by the No. 8, where they were intending to
13 sign on the petition sheet and they also signed where
14 they were supposed to print their name and printed their
15 name above that.

16 So I think this is an example of how nobody ever
17 signs exactly the same way because the signature on the
18 left is slightly different from the signature on the
19 right and is slightly different from the voter
20 registration record above.

21 However, we can look at signatures -- sorry,
22 trying to not refer to this -- that establishes habits
23 over time, signature habits.

24 So with this person's signature -- and it may be
25 hard to see on the voter registration record, but you

1 can see the way capital D is formed is the same. They
2 start at the top, they go down, they loop up a little
3 making the bottom of the D go back up, loop back down.

4 The voter registration image here, especially
5 where it's small and kind of hard to see, it loops back
6 down. But that's what I would call an explainable
7 difference, where they were perhaps signing in a smaller
8 space or thicker pen so that the loop back down is not
9 as spread out as it is on the example on the actual
10 petition sheet.

11 However we can look at other characteristics of
12 the signature to determine that it is a match. So there
13 are things like the capital letters. I explained how
14 the capital D is the same. The capital B you can see is
15 made in the same way.

16 You can see in the left signature on the right
17 she was maybe rushed and writing at a slightly different
18 angle -- sorry on the left, a slightly different angle
19 than the B on the right of the last name. But the one
20 on the right matches closer to the photo-form reference.

21 You can also see that the trailing letters are
22 the same. So she kind of makes her D E B go up and kind
23 of squiggles at the end.

24 And then the defining characteristics for this
25 signature is that it always ends the last name with a

1 long scribble.

2 So with my experience I would say that this
3 signature is a match for those reasons.

4 On the next page it's an example of a signature
5 that is suggested be rejected because it's in print,
6 whereas the voter registration signature referenced
7 right above is in cursive.

8 So this is a broad characteristic, if it's print
9 or cursive, and it's something what would warrant
10 looking at more of the local characteristics to
11 determine whether or not the signature can be accepted
12 and looking for those explainable differences.

13 So I would look at the way the capital letters
14 are made in the signature. You can see in the capital T
15 that there's a slight little dip when the T -- top of
16 the T starts to be made and the end of the top of the T
17 that's present in both signatures here.

18 And for this signature, I would say the spacing
19 really stands out to me. The capital M for the middle
20 name and the spaces to the capital M for the last name
21 is the same.

22 Also the way those capital Ms are made, a lot of
23 people make an M starting at the top going down, going
24 back up and down. Some people do a little curve at the
25 top of their Ms. But this person always starts at the

1 bottom, goes up and down. They also do the same period
2 after their middle initial.

3 So even though the signature on the petition is
4 using print, it still matches the signature on file when
5 you look at the overall characteristics. And the
6 explainable difference is that they printed the rest of
7 the letters in their name instead of writing them in
8 cursive.

9 Q. Audrey, is that what you're trained to do is look
10 at the overall characteristics of the signature?

11 A. Yes.

12 Q. As opposed to using any one given criteria to
13 reject automatically?

14 A. Correct.

15 Q. Go ahead and continue with your testimony.

16 MR. HAMILTON: Object to the narrative. May
17 she have another question?

18 THE COURT: Ask a question.

19 BY MS. JONES:

20 Q. Audrey, if you look at page 5 on Exhibit 6 are
21 there any explainable differences with respect to the
22 voter Holly Bigsby?

23 A. I'm not sure how to answer this question for the
24 Court because if this were an instance where if I was
25 verifying this signature, I would probably refer to

1 additional records on file for this voter.

2 Q. Did you verify this signature?

3 A. I don't know.

4 Q. Okay. And so if we have those additional voter
5 registration records we could look to see if perhaps
6 this signature is a closer match than just the one
7 signature we have on this page.

8 A. That's correct. I would look to see if there
9 were other signatures in cursive.

10 Q. Now, so that brings up a good point that I want
11 to discuss. So if a county election official has a
12 question -- I think we're using page 5 of Exhibit 6 as
13 an example here. If you have a question whether a
14 signature is genuine, what is your process then? What
15 are your next steps?

16 A. So I think I explained we're using a search
17 screen and the signatures are there for the voters.

18 So if you have a hesitation on a signature, you
19 click a button, and you view additional forms of the
20 signatures on file.

21 MR. HAMILTON: Objection, Your Honor, for
22 the same reasons as stated before about the evidence
23 about other signatures not previously produced other
24 than on a flash drive. So I want to reiterate that
25 objection.

1 But to the extent she's also testifying
2 about non-registration records she's referring to that
3 never have been produced, even on a flash drive. I need
4 to strike that.

5 THE COURT: Response?

6 MS. JONES: Well, Your Honor, maybe I could
7 just have Audrey explain what's in the Montana Votes
8 database.

9 THE COURT: Do that.

10 BY MS. JONES:

11 Q. Audrey, tell us what Montana Votes is.

12 A. Montana Votes is a database of voter registration
13 information and election management system. May I
14 answer the question as to the records that are on file?

15 Q. That's my question. What records are contained
16 in the Montana Votes database?

17 A. So county officials, I believe, are required to
18 scan in every voter registration form. So that's a form
19 that somebody uses when they first register to vote or
20 to change their address.

21 So for many voters there are multiple voter
22 registration forms on file. We will also often scan in
23 voter absentee requests or signature updates or other
24 forms signed by the voters so that we can create a
25 record of additional signatures for that voter.

1 Q. Are there any records contained in Montana Votes
2 that are not voter registration records?

3 A. I am not sure how to answer that question because
4 I don't know if voter registration records mean any form
5 filled out by the voter or if it's specifically supposed
6 to mean voter registration applications.

7 Q. Well, okay. Tell me -- so we covered that
8 Montana Votes has voter registration cards, correct?

9 A. Yes. So we keep absentee ballot requests records
10 for voters, we keep voter registration records for
11 voters, lots of different forms we send to voters.
12 There's different retention schedules for those
13 different forms that I'm just not sure what specifically
14 I'm being asked on.

15 Q. Are you required to maintain those documents --

16 A. Yes.

17 Q. -- at the county level? So you're required to
18 put those into the Montana Votes database?

19 A. We are required to enter the voter registration
20 applications. So those are new registrations, address
21 changes for the voter. Sometimes there's duplicate
22 voter registration applications.

23 We are not required, I don't think, to scan in
24 and copy the absentee requests. But many counties often
25 do.

1 Q. And with respect to the signature verification
2 process, how are you trained with respect to using
3 documents other than just the first signature that pops
4 up, that populates in Montana Votes, if you have a
5 question as to signature genuineness?

6 A. If we have a question as to signature
7 genuineness, we review the other signatures on file.

8 Q. And what would that possibly contain? So we
9 covered the voter registration cards, correct?

10 A. (Nodding.)

11 Q. Is that "yes"?

12 A. Yes.

13 Q. And then absentee ballot requests.

14 MR. HAMILTON: Object to the form of the
15 question, Your Honor. These are not registration
16 records. Absentee ballot requests are requests for
17 absentee ballots. They are not related to the
18 registration. And under the statute that we've all been
19 discussing, 13-27-303, all signatures on that sheet or
20 section must be compared with the signatures in the
21 registration records of the office, not an absentee
22 ballot.

23 Signature update is fine. I have no
24 objection to that. That plausibly is included within
25 the registration records. Older registration

1 applications, of course, those are registration records.
2 But absentee ballot request forms are not.

3 MS. JONES: Your Honor, my client is telling
4 me that in fact the Secretary of State does treat those
5 as registration records. This isn't -- I guess the
6 definition of registration records has not been briefed
7 in the case.

8 But, anyway, the objection is irrelevant
9 because my question to Audrey was what documents they
10 look at at the county level. So whether they are or not
11 registration records isn't relevant to what documents
12 they look at.

13 MR. HAMILTON: Oh so --

14 THE COURT: Well, I don't agree with that.
15 If she -- let me get back into the section, the
16 statutory construction here.

17 But if she's looking at a dog registration
18 record that's somehow available to the county, that is
19 different than what the statute requires her to look at
20 so --

21 MS. JONES: I can clarify that. I will
22 withdraw the question.

23 THE COURT: Okay.

24 MS. JONES: I withdraw my question.

25 BY MS. JONES:

1 Q. Audrey, other than records specifically relating
2 to voter registration cards or absentee ballot requests
3 or election records, are there any other records that
4 are -- well, let me ask it this way. I withdraw that
5 question because that was terribly asked.

6 In Montana Votes do you have access to all county
7 records through that database?

8 A. No.

9 Q. What documents do you have access to specifically
10 through Montana Votes database?

11 A. The documents we have access to in the Montana
12 Votes database are the documents that we county election
13 staff have scanned into Montana Votes database.

14 Q. What documents would those be?

15 A. So that would be any voter registration
16 application, and that's required. Often counties will
17 also scan forms such as absentee ballots.

18 MR. HAMILTON: Object to the form of the
19 question. She's now testifying about other counties.

20 THE COURT: Yeah, I'm going -- I think she
21 needs to tell me what they do in her office.

22 MS. JONES: I think -- I'm asking -- okay.

23 BY MS. JONES:

24 Q. In your office what documents are maintained in
25 the Montana Votes database?

1 A. In our office we recommend our staff scan in
2 almost any request from a voter. And this, of course,
3 in the scope of election. So a request for an absentee
4 ballot, an address change, a signature update, absentee
5 confirmation forms, replacement ballot request.

6 Q. And who sets -- okay. So -- well, just to
7 clarify, then. There's no dog registration records in
8 Montana Votes, correct?

9 A. Correct.

10 Q. No property tax information records in Montana
11 Votes, correct?

12 A. Correct.

13 Q. No criminal record information in Montana Votes,
14 correct?

15 A. Correct.

16 Q. The only thing that would be maintained in
17 Montana Votes specifically relates to records that would
18 allow a voter to vote, correct?

19 MR. HAMILTON: Objection, leading. And I
20 object to the question because it's asking about --
21 replacement ballot requests are not part of the
22 registration records. Neither are absentee voter
23 requests.

24 The fact that the counties can choose to put
25 in whatever they want to put in doesn't make it a

1 registration record of the office, within the meaning of
2 the statute.

3 THE COURT: All right. I'm going to
4 overrule the objection without ruling on the merits of
5 the objection. I think we're talking about what does
6 this mean, what does this statutory phrase mean,
7 "registration records." So I appreciated her listing
8 for me the things they do out of this office.

9 BY MS. JONES:

10 Q. Audrey, do you know what the statute requires
11 when it requires registration records?

12 MR. HAMILTON: Object to the form of the
13 question. It calls for a legal conclusion.

14 MS. JONES: Your Honor, if she's been
15 trained on what that is and her office has a policy,
16 surely she can testify as to her knowledge.

17 MR. HAMILTON: She can testify what they do.

18 THE COURT: All right. That's all she can
19 testify to, what they do.

20 BY MS. JONES:

21 Q. Have we covered what your office does, or was
22 there more that your office does with respect to
23 maintaining records in Montana Votes?

24 A. I think it's clear on what records are maintained
25 in Montana Votes. And I hope I'm clear that I'm

1 explaining what we do in our county, and that may not be
2 what every county does.

3 Q. Because you only have access to change voter
4 registration records in Montana Votes in Lewis and Clark
5 County, correct?

6 A. I -- in the context of this question, I can only
7 add documents for voters in Lewis and Clark County.

8 Q. So no other counties have access to Lewis and
9 Clark County and vice versa?

10 A. We have the ability to look at the records in
11 other counties, but we can't edit those records.

12 Q. Okay, thank you.

13 Ultimately -- so -- okay. So when you're
14 reviewing a petition like the Green Party petition,
15 you're looking to see if the signatures are genuine. Do
16 you look at all the information available to Montana
17 Votes?

18 A. When we are verifying signatures for a petition
19 or ballots we don't always look at every voter's
20 registration record. We only look at them if there's a
21 question as to the genuineness of the signature and we
22 need to look at more signatures.

23 Q. Okay. And ultimately you're trying to make a
24 determination as to whether it was that person that
25 actually signed the petition, correct?

1 A. Correct.

2 Q. To the best of your knowledge, is the process
3 that you've described for signature verification in
4 Montana Votes the same in all counties?

5 MR. HAMILTON: Object to the form.
6 Foundation.

7 THE COURT: Sustained.

8 BY MS. JONES:

9 Q. Do you know if the process is the same?

10 MR. HAMILTON: Same objection, Your Honor.

11 THE COURT: Sustained. I think that she's
12 actually testified that she doesn't know what goes on in
13 other counties.

14 BY MS. JONES:

15 Q. Audrey, what documents does your office use for
16 purposes of signature verification?

17 MR. HAMILTON: Objection. Asked and
18 answered, Your Honor.

19 THE COURT: Isn't that what we've just been
20 going through? I thought --

21 MS. JONES: If it is, I'll move on.

22 THE COURT: Move on. I think she answered
23 the question before. You asked what does she scan in,
24 what documents go into her --

25 MS. JONES: It may be a minor difference. I

1 think the difference is I asked what documents were
2 maintained in Montana Votes. Now I'm asking her
3 specifically what documents they use when verifying
4 petition signatures.

5 If I didn't articulate that clearly, I
6 apologize.

7 BY MS. JONES:

8 Q. I think we've been talking about the documents
9 that have been uploaded into the system. Now I'm asking
10 what documents are actually used with signature
11 verification.

12 MR. HAMILTON: And I'll object on the same
13 basis that we've objected to before. These materials
14 haven't been produced previously.

15 THE COURT: I'll sustain the objection.

16 BY MS. JONES:

17 Q. Is the process that you previously described for
18 signature verification the same process that you used
19 for the Green Party petition?

20 A. Yes.

21 Q. What date did you receive that petition in your
22 office?

23 A. March 5th.

24 Q. And was it timely received?

25 A. Yes.

1 Q. Since the petition was received in your office on
2 March 5th, it would have been impossible for any
3 signatures to be gathered after that date, correct?

4 A. Correct.

5 Q. What happened after your office received the
6 petition?

7 A. We received the petition on March 5th. We had
8 two staff people in the office at that time, myself and
9 one other staff person. She began working on the
10 petition then.

11 I let the state and other counties know that we
12 had received a large amount of petitions and that some
13 of the other large counties would as well.

14 I had -- I did not start on the petitions that
15 day. Then on Tuesday morning we had four staff in the
16 office, including myself, and we all worked on verifying
17 the petition that day.

18 I think I contacted the Secretary of State's
19 office and asked if they would like us to submit what we
20 had finished by that day to start their review. And
21 then it turned out where we finished everything by 5:00
22 that day. So we just submitted all our petitions first
23 thing in the morning, the next day, to the Secretary of
24 State's office.

25 Because we're local, we just delivered -- hand

1 delivered them to them.

2 Q. So if there was a question as to the genuineness
3 of the signatures to the Green Party petition, what did
4 your office do?

5 A. So we reviewed every signature on the petition.
6 And before a staff person moves to the next signature,
7 they make a determination as to whether the signature is
8 accepted or rejected. So if they immediately determine
9 its a match, they accept it and move on. If they have
10 more questions, they review additional signatures.

11 Sometimes we'll talk to each other in the office
12 and say, can you take a look at this one and get a
13 second opinion.

14 Q. Okay. Now, you said you reviewed all the
15 signatures on the petition, correct?

16 A. I personally didn't review all signatures --

17 Q. Your office --

18 A. -- but every signature was reviewed.

19 Q. By your office.

20 A. Yes.

21 Q. And is that what the statute requires, to your
22 knowledge?

23 A. No.

24 MR. HAMILTON: Objection, Your Honor. Calls
25 for a legal conclusion.

1 MS. JONES: Your Honor, I think the counties
2 need to know what their statutory obligation --

3 THE COURT: Whoa. Overruled. Overruled.

4 MS. JONES: Thanks.

5 BY MS. JONES:

6 Q. What does the statute require?

7 A. The statute requires randomly reviewing some
8 signatures, and if there's a question on those
9 signatures, to review all of the signatures.

10 Q. But that's not the process your office undertook?

11 A. No. At our training, since we have to check if
12 every person on the petition is a registered voter, at
13 that time we check the signature.

14 Q. In your experience in signature review, do voters
15 always sign their name identically the same way every
16 time?

17 A. In my experience and in any training no one ever
18 signs exactly the same twice.

19 Q. How can you make a determination as to whether a
20 signature is genuine?

21 A. We make our determination based on broad
22 characteristics and local characteristics that we're
23 trained to look at.

24 Q. And what are those characteristics?

25 A. May I refer to the notes I had on those

1 characteristics?

2 Q. Just tell us what you're looking at so we can all
3 look at the same thing.

4 A. These are my notes, at the top "verifying
5 signatures."

6 Q. Okay.

7 MR. HAMILTON: And, Your Honor, now that
8 she's refreshed her recollection, I would ask that she
9 turn the page over and not just read from the document.
10 That's not refreshing her recollection.

11 THE COURT: Scan it and turn it over.

12 BY MS. JONES:

13 Q. Take all the time you need to review it to
14 refresh your recollection and finish your answer.

15 A. Okay. I think some of it is what I just
16 described earlier. I look at the broad characteristics.
17 So those are things like cursive or print, slant of the
18 signature, proportions of the signature.

19 There's also local characteristics that are
20 things, like -- I know in our training it's called
21 curves, loops, and cross points, which I think to be
22 flashy. But it's how they actually make the capital
23 letters. The ratio of the size of the capital letter to
24 the smaller letters. The spacing between letters,
25 between the first and last names. The beginning strokes

1 and ending strokes of the signature. The presence and
2 absence of pen lifts. Those are some of the
3 characteristics.

4 MR. HAMILTON: And, Your Honor, I didn't
5 want to object, but this is cumulative. We've already
6 heard it, not only in the broad strokes and local
7 characteristics general rendition, but then she
8 specifically applied it to the exhibits, and now we're
9 just doing the same thing over again.

10 THE COURT: It's 5:00. So I need to let my
11 staff go. So you can step down.

12 So we're back to the question of whether we
13 need to resume the hearing. And your position is you
14 don't think we need to.

15 MR. HAMILTON: I don't believe we need to
16 resume the hearing, Your Honor. We can amend the
17 exhibits to include the produced materials and produce
18 them to the Court early next week.

19 I don't think there's anything
20 further that's really relevant to that. It's ultimately
21 going to be up to the Court. We know what the counties
22 all did; in fact they've approved and said all these
23 match. I don't know that it advances anything it's --
24 to have the clerks parade up and say, yeah, that
25 matches, that matches. We know that's what they think.

1 THE COURT: So that means you're waiving
2 cross-examination for any purpose here?

3 MR. HAMILTON: Correct. If we're not having
4 another hearing, I would waive cross-examination.

5 MS. JONES: Your Honor, I would respectfully
6 request the opportunity to present my case before we
7 rest. And I think -- I mean, I have a closing argument
8 as well. And I haven't gotten all of my evidence in.

9 I would request -- the plaintiffs had the
10 opportunity and I would like that opportunity as well.

11 And by the way, the plaintiffs did go
12 through and analyze each signature, which is why we had
13 to come back here today. We should be afforded the same
14 opportunity.

15 MR. RHOADES: Your Honor, we'd like to
16 present some evidence with respect to the -- our
17 response to the show cause. We submitted arguments
18 based on U.S. Constitution principles and whether or not
19 this March 5th deadline is too early in the process and
20 how it affects our clients with regard to their
21 compliance with state law.

22 It's our position that the state law is just
23 too restrictive, and we would like to offer some actual
24 evidence as to how it is too restrictive so we can make
25 those arguments for those purposes. So we would need at

1 least one witness.

2 MR. HAMILTON: Your Honor, with respect to
3 the constitutional issue, there is no constitutional
4 issues in this case. The Green Party has never filed a
5 pleading, never asserted a counterclaim or a cross claim
6 asserting any sort of -- and the issue in any event
7 isn't ripe. The Secretary has approved the admission to
8 the ballot.

9 So if they want to bring a lawsuit and sue
10 the state at some other time over the deadlines in the
11 statute, they can do that. But not here, and not now.
12 That's not relevant to this issue. And it's not even an
13 issue before the Court.

14 There was an exchange of papers and motions
15 that addresses that issue. So I'm sure the Court is
16 aware there's no reason to continue for that reason.

17 MS. JONES: Your Honor, if I may just
18 briefly respond to that.

19 Although I'm certainly not interested in
20 multiplying proceedings, especially against my own
21 client, I think the Court should be aware that if the
22 Court does rule that the Green Party should not be
23 allowed on the ballot, the deadline for actual Green
24 Party candidates like Mr. Kelly to submit petition
25 signatures to qualify for the ballot has not yet passed.

1 I think that's an important thing for the
2 Court to know, because the candidates can still
3 qualify -- is it May 29th? That's the deadline for
4 that.

5 So I think Mr. Hamilton is wrong that the
6 Green Party can't raise those issues. I think in the
7 interest of resolving all these issues at once, they do
8 need to be addressed and briefed by all parties.

9 MR. HAMILTON: Well, Your Honor, it's all
10 the more reason for expedition in resolving this case
11 quickly. The fact that individual candidates can appear
12 separate from the party qualification, that's fine.
13 They can go out and collect those signatures. They can
14 do what they want.

15 But the constitutional challenge to the
16 March 5th deadline doesn't have anything to do with
17 those folks. It has to do with this litigation and
18 the -- I'm sorry. It has to do with their concern over
19 the statutory scheme in Montana over the deadline for
20 collecting signatures. That's just completely a
21 sideshow to this.

22 And more importantly -- and counsel
23 doesn't claim it, because you can't. There's no claim
24 in this lawsuit. We certainly didn't make it, and
25 neither did either of the other parties, about the

1 constitutional issue. This is a random motion that got
2 filed yesterday or the day before raising this
3 constitutional issue that never before was in this case.

4 It's yet another step in this inexorable
5 march to just continue to delay this proceeding as far
6 back and then -- and then we're going to see the
7 argument, it's too late. Sorry. Nothing we can do
8 about it.

9 And that is not something -- and -- that the
10 Court should allow to occur, especially on an issue
11 that's not even ripe yet. I mean, how would the Court
12 address an issue that -- I mean, how could they present
13 that they have any injury, any standing --

14 MR. STAPLETON: Oh --

15 MR. RHOADES: Oh --

16 MR. HAMILTON: -- when, at least as we stand
17 here today, the secretary has certified them to appear
18 on the ballot. They have nothing to complain about.

19 If they want to -- sorry. If they want to
20 present an issue, then they can. The doors of the
21 courthouse are open and they can file a lawsuit. They
22 have it. And that issue is not in this case.

23 MR. RHOADES: May I be further heard?

24 THE COURT: You know, folks, I really do get
25 criticized for -- I have a lot tolerance for this sort

1 of thing. Go ahead.

2 MR. RHOADES: I want to correct the record
3 with respect to what Mr. Hamilton told the Court. We
4 filed a brief in response to the show cause order on the
5 day after I made an appearance in the case, making the
6 constitutional argument and setting forth the facts to
7 support it in the affidavits.

8 So that issue has been in the case since I
9 came into the case. It's been in prior to the show
10 cause hearing. And Mr. Hamilton's representation that
11 this has never been made an issue is simply wrong.

12 MS. JONES: Your Honor, I would add that
13 Mr. Kelly is on the ballot, so he doesn't know whether
14 he needs to get more signatures, because as of now,
15 people are voting, whether he's going proceed to the
16 general election or not. And now this Court's ruling
17 certainly has an effect on that issue. That's -- that's
18 all I have to say.

19 THE COURT: Well, I'm going to continue the
20 hearing. I do think the defense has the right to
21 present their full case. I don't want to truncate that
22 too much. I'm not sure there's much additional
23 information I need to have from this, but I'll give them
24 the opportunity to present whatever additional -- for
25 purposes of the record, whatever additional things.

1 So we have identified June 7th at 9:00 as
2 the date to continue the hearing.

3 I think they are entitled to present their
4 full case.

5 MR. HAMILTON: And, Your Honor, I
6 respectfully understand the Court's ruling. There's no
7 date prior to June 7th upon which we can continue this
8 hearing?

9 THE COURT: My docket is pretty full. This
10 is the first day we had for a continuation of the
11 hearing from Judge Seeley.

12 MS. JONES: June 7th is acceptable.

13 MR. HAMILTON: That's a three-week delay. I
14 understand, Your Honor. I'm just asking if there's
15 anything we can do to --

16 MS. JONES: I have --

17 MR. HAMILTON: -- accelerate it. I think a
18 half day or just two hours would be plenty.

19 THE COURT: Okay. We will move some things
20 on May 24th. That's next Thursday at 1:30. I can't
21 give you the morning because I have --

22 MR. HAMILTON: Thank you, Your Honor.

23 THE COURT: May 24th at 1:30.

24 MS. JONES: That's fine.

25 THE COURT: All right.

1 MS. JONES: I guess, Your Honor, just
2 clarification, so we'll still be receiving those
3 exhibits from --

4 MR. HAMILTON: Say again?

5 THE COURT: Will you still get the exhibits
6 to them by next Monday?

7 MR. HAMILTON: Yes, Your Honor, we will.

8 And may I clarify whether Exhibit 35 was
9 actually admitted?

10 MS. JONES: It was. I didn't object, so --

11 THE COURT: 35 was admitted.

12 MR. HAMILTON: Thank you.

13 THE COURT: It was the one admitted.

14 MR. HAMILTON: Okay. Your Honor, I very
15 much appreciate that.

16 THE COURT: All right, folks. I need to
17 talk about a little courtroom decorum. This goes to
18 you, Mr. Secretary. I do not like at all parties cross
19 talking. This isn't the place to do that. Your
20 conversations, your comments, should be directed to me
21 and no party should be making cross talk to the other
22 side. That is really rude, in my perspective.

23 The way that I make my decision is to listen
24 to one person as intently as I can and listen to the
25 other side.

1 As you notice, I don't do it just one, two,
2 three. I give people plenty of time to talk. I don't
3 want cross talk.

4 And, Mr. Secretary, that goes for you as
5 well. You made a couple of comments here this afternoon
6 that I think are inappropriate, and I am asking you to
7 not continue that behavior.

8 I noticed in reading the transcript that
9 there were some comments recorded from you as well in
10 the transcript in front of Judge Seeley. I do not want
11 you to continue to do that. It's disruptive, it's rude,
12 and it is inappropriate in this courtroom setting. Do
13 you understand that?

14 MR. STAPLETON: Yes, sir.

15 THE COURT: All right. We will go forward
16 and will see you next Thursday.

17 MR. HAMILTON: Thank you, Your Honor.

18 MS. JONES: Thank you, Your Honor.

19

20 (Whereupon, the proceedings were concluded at 5:14 p.m.)

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REPORTER'S CERTIFICATE

I, Vickie L. Pratt, a Registered Professional Reporter, residing in the City of Helena, 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;

That the said proceeding, taken down by me in stenotype, was thereafter reduced to typewriting by computer-aided transcription under my direction and is a true record of the testimony given.

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 21st day of May, 2018.

/S/ Vickie L. Pratt

Vickie L. Pratt, CSR, RPR