

1 commissioners when they make a motion.

2 Q Whatever they say you'll do whether it's right or  
3 wrong?

4 A (The witness indicated.)

5 Q You're nodding your head?

6 A Well, I haven't had them make a motion that was wrong  
7 or directed me to do something that was wrong, so I  
8 haven't had to have that dilemma.

9 Q So you think this was a correct motion giving six  
10 days?

11 A They made the motion. They agreed on it. I had  
12 nothing to argue about with that.

13 Q Do you think it was a correct motion? Do you think  
14 it complied with South Dakota election laws?

15 A I think that if -- they live down there and they were  
16 comfortable with that, then I didn't have an opinion  
17 on that.

18 Q Do you think that motion authorizing six days  
19 complied with South Dakota election laws? Yes or no?

20 A The election laws say the early voting starts 46 days  
21 prior to that. And we started early voting whether  
22 it be down there or by mail or coming to Hot Springs  
23 and so I think we've complied with the law.

24 Q So why did you change it from six days to 32 days  
25 like Fall River for the 2012 primary?

1 A Because there was -- there was a lawsuit that was  
2 brought that requested more than that.

3 Q All right. So you went from six days to 32 or 33  
4 days before the 2012 primary because of the lawsuit?

5 A Apparently, because this was their original motion  
6 that they made.

7 Q All right. And when did it go to 32 or 33 days?

8 A I cannot tell you the dates that -- I believe that  
9 was back in March.

10 Q All right. Did you know that it was -- was money an  
11 issue for determining the number of absentee voting  
12 days?

13 A Money comes to be an issue, but it was resolved with  
14 this lawsuit. So I'm happy about that.

15 Q All right. First of all, tell me how money was  
16 resolved by this lawsuit.

17 A In the past -- with the Secretary of State in the  
18 past, the reimbursement to Fall River County was only  
19 for overtime and it didn't include our eight hours a  
20 day that we were out of the office. And the lawsuit  
21 prompted the Secretary of State to authorize the  
22 additional monies to cover that.

23 Q Didn't you just -- why couldn't you just ask the  
24 Secretary of State to do it? Why did you need a  
25 lawsuit?

1 A I -- in the past, the Secretary of State did not  
2 authorize that.

3 Q All right. Let's go to what's been marked Exhibit  
4 161.

5 A Okay.

6 Q All right. Do you know the difference between Title  
7 I and Title II and Title III monies under HAVA?

8 A I would not testify on any of those differences.

9 Q You don't have any understanding of the differences  
10 between Title I and Title II and Title III funding  
11 requirements under HAVA?

12 A I cannot say I totally understand them. I just know  
13 what expenses would be reimbursable. Whether it's I,  
14 II, III, I don't -- I can't say.

15 Q All right. What's your understanding of what  
16 absentee voting costs in Shannon County can be paid  
17 by Title I?

18 A I can't tell you which title authorizes early voting  
19 reimbursement costs.

20 Q Have you ever researched it?

21 A I have not -- I have not sat down to get a full  
22 understanding of the different titles under the HAVA  
23 monies, no.

24 Q All right. You've known that Shannon County  
25 registered voters did not get the same number of

1 issues, yes.

2 Q Right. Do you remember that you stated that that was  
3 the basis for Shannon County not being able to  
4 provide the number of absentee voting days in-county  
5 in-person as other counties? Do you remember talking  
6 about that?

7 A I recall the general discussion, yes.

8 Q Right.

9 A Yeah.

10 Q And you stated that money was the cause of Shannon  
11 County not having the same number of absentee voting  
12 days in Shannon County in person, correct?

13 A Money is always an issue, so I -- without looking at  
14 my testimony...

15 Q You don't remember what you talked about there?

16 A If you showed it to me, I would know what I said.  
17 But I don't recall verbatim what I said, no.

18 Q Okay. I'm going to ask you here today, is the reason  
19 in 2004, your understanding, that the Shannon County  
20 registered voters didn't get the same number of  
21 in-county in-person days of absentee voting because  
22 of money?

23 A I would say that probably was, yes.

24 Q Any other reason?

25 A As far as I recall, that's the first time early

1 voting ever came up in Shannon County.

2 Q Same question for the 2006 election cycle, is the  
3 only reason that the Shannon County registered voters  
4 didn't get the same number of days of absentee voting  
5 in-person in Shannon County was because of money?

6 A I can't -- I don't recall why they only set two days.  
7 I don't recall that.

8 Q You were the county auditor in 2006?

9 A That's correct.

10 Q And you have no idea why Shannon County only had two  
11 days of in-person in-county absentee voting?

12 A I can only go back to minutes and see what motion  
13 they made.

14 Q Here today you have no idea?

15 A Money is always an issue in Shannon County.

16 Q As far as you know, funding was the only issue that  
17 restricts Shannon County from giving its residents,  
18 its registered voters the same number of in-person  
19 in-county absentee voting days as your other county,  
20 Fall River?

21 A I would say funding and whatever motion the county  
22 commissioners make.

23 Q And you have no idea what the Shannon County  
24 commissioners went ahead and considered in making  
25 that motion?

1 A I don't recall.

2 Q All right. Same questions for the 2008 general -- or  
3 2008 election cycle. Shannon County registered  
4 voters did not get, according to your answers to  
5 these interrogatories, the same number of days of  
6 absentee voting in-person in-county, correct?

7 A That's correct.

8 Q Why?

9 A That is set by the county commissioners.

10 Q Do you have any idea why it was restricted to less  
11 days than Fall River registered voters?

12 A Well, the commissioners are always considering  
13 funding and have the funds to do things on all of the  
14 decisions they make.

15 Q Same questions for the 2010 election cycle. Why  
16 didn't the Shannon County registered voters get the  
17 same number of days of in-person in-county absentee  
18 voting days as Fall River folks?

19 A And I would have to imagine it had to go back to  
20 funding.

21 Q So, in your mind, funding is the primary reason, lack  
22 of money in Shannon County is the primary reason that  
23 Shannon County registered voters have not got the  
24 same number of absentee voting days in-person  
25 in-county?

1 the discovery for responses.

2 Q Okay. Did you ever research -- you said you never  
3 researched the HAVA funding issue, what funds were  
4 available from HAVA?

5 A I did tag and research it. What I was aware of is  
6 what expenses were reimbursable.

7 Q Okay. Did you know how much money was available from  
8 Title I, if any, for absentee voting in Shannon  
9 County?

10 A As far as I recall, I don't know which title it was,  
11 I, II or III.

12 Q Did you know that there was money available from HAVA  
13 to conduct absentee voting in Shannon County?

14 A I'm aware of that in 2010, if I recall correctly, was  
15 the year that early voting in Shannon and Todd County  
16 was authorized.

17 Q All right. My question is, do you know if HAVA  
18 funding was available in Shannon County for early  
19 voting locations in Shannon County?

20 A Which year?

21 Q 2008.

22 A I don't -- I don't recall it being available then. I  
23 could be wrong but I -- in my mind, it was available  
24 in '10.

25 Q Do you remember the first time you contacted a South

1           Dakota Secretary of State and said, We need money for  
2           absentee voting in Shannon County? Do you remember  
3           what election cycle that was?

4           A     I just honestly can't -- I don't recall doing it in  
5           '08.

6           Q     You were the county auditor in 2006?

7           A     That's correct.

8           Q     I thought I just heard you say that funding was the  
9           issue that Shannon County registered voters didn't  
10          get the same number of in-person absentee voting days  
11          in-county?

12          A     Correct.

13          Q     All right. During that 2006 election, did you ever  
14          contact anyone at the South Dakota Secretary of State  
15          and say, We need more money?

16          A     I didn't think it was in my rights to ask for more  
17          other than what was allowed.

18          Q     What did you consider allowed?

19          A     Whatever guidelines that our Secretary of State had  
20          set out that would be reimbursable.

21          Q     What was your understanding of what costs for  
22          absentee voting in Shannon County in 2006 were  
23          reimbursable?

24          A     I don't recall early voting -- and I could be wrong.  
25          I don't recall early voting -- early voting, per se,



1 Q And you don't recall researching it?

2 A I don't recall that, no.

3 Q And you didn't produce any correspondence between you  
4 and the Secretary of State requesting information on  
5 how the funds could be utilized for absentee voting  
6 in Shannon County?

7 A No, I didn't.

8 Q And you don't remember here today a conversation you  
9 had with the South Dakota Secretary of State  
10 regarding reimbursement of funds for absentee voting  
11 locations in Shannon County?

12 A In 2006? I don't recall.

13 Q Same question for 2008, do you remember visiting or  
14 communicating with the South Dakota Secretary of  
15 State regarding funding, HAVA funding for absentee  
16 voting in Shannon County?

17 A I don't recall contacting him. I don't recall what  
18 year I became aware that early voting costs were  
19 reimbursable.

20 Q You have no idea what -- when is the first time you  
21 remember talking to the South Dakota Secretary of  
22 State?

23 A I just seem to think it was in 2010.

24 Q Why would you wait so long to talk to the South  
25 Dakota Secretary of State regarding funding issues

1 voting costs, but I honestly can't tell you.

2 Q All right. So through the election cycle in 2006 --

3 A Um-hmm.

4 Q All right. You have no idea here today what costs  
5 were reimbursable or not reimbursable under HAVA?

6 A For early voting?

7 Q For absentee voting locations in Shannon County?

8 MS. FRANKENSTEIN: Asked and answered.

9 Q You don't know?

10 A I don't know.

11 Q And you don't know -- you don't have any idea in 2004  
12 how many -- how much of that HAVA money could have  
13 been utilized for absentee voting locations in  
14 Shannon County?

15 A That's correct.

16 Q And you never researched it?

17 A Correct.

18 Q In 2008, during that election cycle, you had no idea  
19 how much money HAVA money was available for early  
20 voting locations in Shannon County, correct?

21 A That's correct.

22 Q You never researched it?

23 A I can't tell you if I did or not.

24 Q Here today you don't ever recall researching that  
25 issue?

1 A I don't recall researching the issue. When I became  
2 aware of the Secretary of State authorized funding  
3 reimbursements for early voting, then we submitted  
4 for that. But if it was not on his list of  
5 reimbursable HAVA expenses, then that's as far as I  
6 went as far as research. I mean, he made the  
7 determination and we followed it.

8 Q When did you first learn, if ever, that there was a  
9 large chunk of HAVA money that was available for  
10 funding absentee voting locations in Shannon County?

11 A I -- I don't know. I -- I believe in '10 he  
12 authorized expenses, so there must have been money  
13 available.

14 Q Do you have any idea what the reimbursable expenses  
15 were for an absentee voting location in 2010 from  
16 HAVA funds?

17 A I believe he authorized rent, office expenses,  
18 travel, meals and overtime costs.

19 Q What --

20 A And advertising or any other -- any other expenses  
21 needed.

22 Q If he authorized all those expenditures, why didn't  
23 Shannon County have the same number of absentee  
24 voting days in-person in-county as Fall River County?

25 A Well, that, again, was set by the county

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commissioners.

Q But are you --

A At that time they did not reimburse the -- my 8 to 5 days.

Q But are you saying now that funding wasn't an issue for determining the number of absentee voting days in Shannon County during the 2010 election cycle?

A Can you repeat that, please?

MR. SANDVEN: Can you read that back, ma'am?

(Question: "But are you saying now that funding wasn't an issue for determining the number of absentee voting days in Shannon County during the 2010 election cycle?" read by the reporter.)

A I -- I -- I think their determination was still -- had financial issues.

Q All right. If there were financial issues, I thought I just heard you say that the Secretary of State, during the 2010 election cycle, authorized advertising, correct?

A And I can't tell you at what point in '10 he authorized that, but yes.

Q And he authorized rent --

A Um-hmm.

Q -- for the office space?

A Um-hmm.

1 in-person in-county voting days?" read by the  
2 reporter.)

3 A Well, from the way I understand your question is I --  
4 I can't hire extra people in my office for -- without  
5 knowing whether it would be reimbursed or not.

6 Q Did you ask him? Did you ask the Secretary of State?

7 A I don't recall. All I recall was him telling me that  
8 overtime costs, but not the eight-hour day costs,  
9 would be reimbursed.

10 MR. SANDVEN: Can I have this marked 162, please?

11 (Exhibit Number 162 marked for identification.)

12 Q I'm going to hand you what's been marked Exhibit 162.

13 Are you familiar with this e-mail?

14 A Okay.

15 Q Who is it from?

16 A Chris Nelson.

17 Q Who is it to?

18 A Myself and Kathleen.

19 Q When was it transmitted?

20 A It was sent on May 1st, 2008.

21 Q And didn't he let you know that Title II money, he  
22 had EAC approval that Title II money could be  
23 utilized for absentee voting locations in Shannon  
24 County?

25 A Well, apparently, he let me know in May of '08 that

1           that would be an allowable expense.

2           Q     All right. This is your -- this is an e-mail you  
3           received?

4           A     Yes.

5           Q     Do you remember reading it before?

6           A     Not particularly, but...

7           Q     Did you know -- you produced this document in  
8           discovery on July 13th?

9           A     I did not produce this, no.

10          Q     Oh, you didn't produce this?

11          A     No.

12          Q     All right. So when is the last time you remember  
13          reviewing or thinking about this e-mail?

14          A     Probably in 2008.

15          Q     All right. So the way I read that e-mail, tell me if  
16          I'm incorrect, is you had access to any money you  
17          needed to go ahead and fund an absentee voting  
18          location in Shannon County?

19          A     Well, not for my -- I believe I was aware that early  
20          voting costs would be a reimbursable expense. And I  
21          can't say when I was told that only overtime would be  
22          allowed.

23          Q     And how many days of early voting did the Shannon  
24          County registered voters get in-person in-county  
25          during the 2008 election cycle?

1 A And -- can I refer to my Exhibit 161?

2 Q Yes, ma'am.

3 (A brief pause.)

4 A And can you repeat that? Was that for 2008?

5 Q Yes, ma'am.

6 A Primary or general?

7 Q Both.

8 A We had two days prior to the primary.

9 Q So your testimony is before the 2008 primary election  
10 in Shannon County voters only received two days of  
11 absentee voting in-person in-county, correct?

12 A That's correct.

13 Q And for the general election they only received two  
14 days of absentee voting in-person in-county, correct?

15 A That's what the records show, yes.

16 Q Why? You had all of the money you needed.

17 A Well, then that still goes back to the motion that  
18 the county commissioners make.

19 Q So now you're saying that money isn't the issue?

20 A It's still a twofold deal.

21 Q Explain the twofold deal.

22 A Money and the motion.

23 Q All right. Do you remember any of the discussions in  
24 2008 regarding why Shannon County residents only  
25 received two days in-county in-person of absentee

1 Q Right?

2 A According to that, yes.

3 Q All right. And it was -- the subject line was  
4 absentee sites in Shannon and Todd?

5 A Um-hmm.

6 Q So you knew that this e-mail was referencing funding  
7 for Shannon and Todd Counties, correct?

8 A I did at that time, yes.

9 Q And the first sentence of this e-mail said, We are  
10 picking up rumblings about a request for absentee  
11 sites in Shannon and Todd?

12 A That's what it says, yes.

13 Q So you understood clearly that there was funding  
14 available for early voting in those two counties  
15 without a courthouse for absentee voting?

16 MS. FRANKENSTEIN: I'll object. I'd ask that you  
17 allow her to read it so she can see what it is she  
18 understood as to what kind of expenses were allowed.

19 A I don't -- at that time I believe that I was aware  
20 there were expenses that would be reimbursed. I  
21 don't recall if I had the full list at that time.

22 Q Did you ever follow up to the South Dakota Secretary  
23 of State regarding this e-mail?

24 A I can't say.

25 Q And do you remember reading one of the questions we



1 are being asked is whether their county HAVA funds  
2 can be used for this purpose?

3 A Do I remember --

4 Q Do you remember reading that?

5 A I remember reading it right now and...

6 Q But do you remember in 2008 that the Secretary of  
7 State told you that this early -- that after May  
8 25th, this would be an allowable expense under the  
9 category of other improvements to federal elections?

10 A Apparently I earlier testified that I thought it  
11 started in '10, so I cannot say. Obviously I didn't  
12 remember that e-mail.

13 Q All right. And you don't -- when you read this  
14 e-mail --

15 A Um-hmm.

16 Q -- that's marked 162 --

17 A Um-hmm.

18 Q -- that's really good news, isn't it, HAVA funding to  
19 pay for early voting in Shannon County?

20 A That is good news, yes.

21 Q But you don't remember communicating that to anybody  
22 in the Shannon River (sic) County Commission?

23 A In the what? Shannon County?

24 Q Yes. You don't remember telling anyone on the  
25 Shannon County Commission, Good news. We've got HAVA

1 funding for absentee voting in Shannon County?

2 A I can't -- I can't say if I recall reporting that to  
3 them or not.

4 Q Did you search your e-mail files for any  
5 communication regarding absentee voting with Shannon  
6 County?

7 A I did not.

8 Q You never searched any of your records? You received  
9 a bunch of written discovery requests?

10 A That's correct.

11 Q All right. Do you remember in those written  
12 discovery requests you were supposed to produce all  
13 of the documents and e-mails that were related to  
14 absentee voting in Shannon County?

15 MS. FRANKENSTEIN: I'll object, because that's  
16 not true.

17 Q Go ahead.

18 A I responded to the interrogatory and the supplemental  
19 questions and if I -- I understand that if any of  
20 that information came from -- where it came from. I  
21 don't recall researching and finding any e-mails on  
22 the early voting.

23 Q Does it surprise you today to read this 2008 e-mail  
24 from the South Dakota Secretary of State that says,  
25 We have the money for early voting locations in

1 A Apparently they authorized money in 2008. What  
2 you're asking is why the commissioners set two days  
3 and that I can't say.

4 Q No. I'm asking why you didn't go to the South Dakota  
5 Secretary of State and follow up on funding that was  
6 available?

7 A I'm --

8 MS. FRANKENSTEIN: I'm going to object. Steve,  
9 you know that they did, in fact, seek funding.  
10 You've got the exhibit. I'm looking at it. Let's  
11 try not to confuse the record here.

12 Q Answer my question.

13 A I anticipate I submitted HAVA reimbursement for  
14 expenses. If it was allowed, we would have made  
15 application for the reimbursement.

16 MR. SANDVEN: All right. Can I have this marked  
17 Exhibit 163?

18 (Exhibit Number 163 marked for identification.)

19 Q What's this? What's the date of the e-mail, ma'am?

20 A October 10th of 2008.

21 Q What time?

22 A 2:46 p.m.

23 Q From who to who?

24 A This looks like a response from Chris to myself.

25 Q And he told you, again, October 10th of 2008, that

1 HAVA funds, Title II money could be utilized for  
2 absentee voting locations in Shannon County, didn't  
3 he?

4 A He told me it was available for legitimate costs  
5 associated with the site.

6 Q What was your understanding of what were legitimate  
7 costs?

8 A As I previously stated, the rent, the travel, any  
9 advertising, any supplies, and apparently overtime,  
10 but not the regular eight-hour day costs.

11 Q All right. So what's your understanding of all  
12 absentee costs that weren't required or weren't  
13 covered by HAVA?

14 A My understanding is it did not reimburse myself and  
15 my office for our regular eight-hour staff time.  
16 Only the overtime costs.

17 Q Okay. And that was it, everything else HAVA could  
18 pay for?

19 A As long as it was associated with the early voting.  
20 I don't recall if there were any expenses I put in  
21 that weren't reimbursed.

22 Q And you understood this in 2008?

23 A Apparently I did, yes.

24 Q Why do you say apparently you did?

25 A Well, I don't recall -- apparently I knew more about

1 easier between the 2004 primary or the 2004 general?  
2 Did you ever take any steps to make sure that the  
3 Shannon County registered voters would get the same  
4 number of days as everybody else?

5 A I did not do anything, no.

6 Q Why not?

7 A I wasn't even the auditor at that time.

8 Q All right. Let's talk about from the 2006 election.  
9 You were the county auditor, correct?

10 A 2006, yes.

11 Q And during the 2006 primary election, the Shannon  
12 County voters received -- registered voters received  
13 zero days in person?

14 A What did you say? For D, for --

15 Q C, the 2006 primary?

16 A Yes.

17 Q They didn't even get one day of absentee voting  
18 in-person in-county. Why not?

19 A I -- I -- I don't recall why. The commissioners did  
20 not make a motion to have early voting down there.

21 Q Before the 2006 primary election, did you ever try to  
22 do anything to solicit input on early voting?

23 A I don't recall doing anything.

24 Q Why not?

25 A I think the commissioners were aware that they had

1 the legal right to make a motion to request it.

2 Q Did you ever talk to anyone, Why aren't we doing any  
3 absentee voting in Shannon County for the 2006  
4 primary?

5 A I don't recall talking to anybody, no.

6 Q No correspondence that you remember?

7 A Not that I recall, no.

8 Q Wasn't that a big deal to you?

9 A 2004 was the first year that I recall doing it, so it  
10 was kind of a new thing down there.

11 Q Yeah. You knew that there was absentee balloting in  
12 2004, correct?

13 A I did, yes.

14 Q And you assisted with the absentee balloting in  
15 Shannon County?

16 A I did, yes.

17 Q But you never talked with anyone about doing absentee  
18 balloting in 2006 in Shannon County?

19 A I honestly don't recall any conversation.

20 Q Same question for D, the 2006 general election, there  
21 were zero days?

22 A Yes.

23 Q Was funding an issue?

24 A I don't recall what -- if there was an issue or why  
25 the commissioners didn't make a motion to request it.

1 days of absentee voting in Shannon County were there?

2 A Two.

3 Q What days were those?

4 A We were in Pine Ridge on October 23rd, and in Kyle on  
5 October 24th.

6 Q Were those full days?

7 A 10 to 3.

8 Q Why weren't they full days, ma'am?

9 A Again, I would assume to give us time to get down  
10 there and get back within our eight-hour day.

11 Q Why not use HAVA funds to go ahead and pay some  
12 overtime?

13 A I think that was in the motion of what the  
14 commissioners made.

15 Q Did you ever let them know, We could use HAVA funds  
16 for overtime to pay folks to get there two hours, you  
17 know, and allow for all of the necessary travel time?

18 A I can't -- I can't say if I did or not.

19 Q Don't remember?

20 A Don't remember.

21 Q All right. When you look at the 2010 primary  
22 election, there were no days of absentee voting in  
23 Shannon County?

24 A Correct.

25 Q Why?

1 Q Same question for the 2008 primary and general  
2 election?

3 A Same answer.

4 Q They've got the full six-week period?

5 A Correct.

6 Q And then for the 2006 election cycle, Fall River  
7 folks, Fall River registered voters, how many days of  
8 absentee in-person voting did they get?

9 A They had the six weeks, excluding weekends and the  
10 holiday.

11 Q Same question for the 2004 election cycle?

12 A I believe the same.

13 Q Six weeks?

14 A Yes.

15 Q All right. In interrogatory number 3, you were asked  
16 a series of questions regarding the number of folks  
17 that voted in person?

18 A Yes.

19 Q Do you think that having more days of absentee voting  
20 locations in Shannon County makes it easier for  
21 Shannon County registered voters to vote?

22 A I think it's an added convenience, yes.

23 Q Why do you think it's an added convenience?

24 A Well, there's different ways of getting your ballot,  
25 one being mail. One being come to Hot Springs. And



1 A 8 to 10.

2 Q 8 to 10?

3 A Somewhere in there.

4 Q Let's split it down the middle, 9.

5 A Okay.

6 Q All right. And you want two workers there, not one,  
7 correct?

8 A And I'm sorry. Coming back up, are we talking people  
9 we hire from down there or people from my staff?

10 Q People that meet the minimum requirements to staff an  
11 absentee voting location in Shannon County.

12 A But excluding my office people?

13 Q Right. You wouldn't have had to pay a nickel, would  
14 you, if you just hired someone new and trained them?  
15 Then that would have been reimbursed by HAVA,  
16 correct?

17 A Any people we hired down there, yes, would have been  
18 reimbursed.

19 Q So as far as you know, during the 2008 election cycle  
20 or the 2010 election cycle, you could have went ahead  
21 and just hired several folks to go ahead and train  
22 them to staff those absentee voting locations in  
23 Shannon County and that would have been reimbursed by  
24 HAVA?

25 A If a situation would work that way. But I would --

1 someone from my office would be taking ballots down  
2 there daily and returning ballots to my office.

3 Q Okay. So my question is -- I thought I heard you  
4 testify a little earlier that not all of the costs  
5 were covered by HAVA for absentee voting. Staffing  
6 costs were not covered if you used your own staff?

7 A Correct.

8 Q All right. So we're going to go through this and  
9 talk about if you didn't use your own staff and you  
10 hired new people.

11 A We can talk, but it's not going to happen.

12 Q Explain.

13 A I will not physically leave Shannon County ballots  
14 down there and I will always bring them back to my  
15 office daily.

16 Q For ballot security concerns?

17 A Correct.

18 Q And that's a Sue Ganje rule?

19 A That's correct.

20 Q Not required by South Dakota election rules and regs?

21 A I'm not aware of other counties that would have  
22 ballots leave their courthouse, so I can't say -- I  
23 don't think there's a state law, no.

24 Q All right.

25 A Those are my rules, yes.

- 1 (A brief pause.)
- 2 A I'm sorry. I'm sorry. I need more time with this.
- 3 Q Take your time, ma'am.
- 4 A So we're basing this on two people, approximately, \$9  
5 an hour. And we're talking -- were we talking the  
6 whole 32 days?
- 7 Q Yes, for the primary. 32 days for the general.
- 8 A And your question was 5100, \$5500 that they would  
9 have to allocate?
- 10 Q Yeah. If the Shannon County commission went ahead  
11 and allocated, they would only have to allocate \$5500  
12 annually and that could fund an absentee voting  
13 location in its entirety with HAVA funding  
14 supplementing it where those folks in Shannon County  
15 would get the same number of in-person in-county  
16 voting days, absentee voting days as everybody else?
- 17 A And we had come to 11,000 on wages on that. I  
18 apologize. My mind...
- 19 Q Take your time. We're going to stay here until we  
20 get it figured out.
- 21 A Okay. Do you want to go back through your figures  
22 again?
- 23 Q Yes, ma'am.
- 24 A All right. Please.
- 25 Q What I've learned from you today is that the South

1           Dakota Secretary of State will fund everything  
2           associated --

3           A     Now, yes.

4           Q     Yep. From 2008 on, will fund everything from Title  
5           II funds associated with an absentee voting location  
6           in Shannon County except for staffing costs that you  
7           are already incurring. Okay?

8           A     Which was?

9           Q     Not including overtime, correct?

10          A     For '08 and '10, yes.

11          Q     And then I thought I heard you say that it was your  
12                rule that you weren't going to hire local folks to  
13                staff the location. That you would only use people  
14                from your office, correct?

15          A     Can I expound on that?

16          Q     No. I want to just get through the math here,  
17                otherwise we're going to be here a long time.

18                MS. FRANKENSTEIN: I'm going to object. You've  
19                asked a question. I would like my witness to be able  
20                to answer the question as best as she can.

21          Q     Go ahead.

22          A     Can I go back to your question of my rule refusing to  
23                hire other people down there?

24          Q     Absolutely.

25          A     Okay. It has been done. We hired additional people

1 in '04 when we went down there. We had a really full  
2 staff of people in '08, still counting there was two  
3 people from my office, but we hired other additional  
4 people, local people down there. So I just -- you  
5 know, I won't answer to me refusing to hire people  
6 from down there, because it has been done.

7 Q Okay. So you have the discretion to go ahead and  
8 hire people locally in Shannon County to fulfill and  
9 administer elections down there, correct?

10 A To assist in providing early voting.

11 Q And that's your discretion?

12 A That's correct.

13 Q All right. So even if you didn't want to exercise  
14 your discretion in hiring people over there and you  
15 wanted to use existing staff --

16 A Yes.

17 Q -- to go ahead and deliver the ballots at 8 o'clock  
18 in the morning and start the hours at 8 o'clock in  
19 the morning --

20 A Yes.

21 Q -- and stay there until 5, HAVA would go ahead and  
22 pay for the overtime, correct?

23 A Prior to '12, yes.

24 Q Prior to --

25 A Prior to 2012, yes.

1 Q And '08, correct? They said they would do it in  
2 2008, also, didn't they?

3 A They did the overtime, yes.

4 Q Right.

5 A The overtime.

6 Q And in 2010, they were willing to do it?

7 A Yes.

8 Q That didn't change?

9 A That's correct.

10 Q All right. So in the last three election cycles,  
11 '08, 2010, 2012, even if you wanted to use your own  
12 office staff to go ahead and man the early voting  
13 location in Shannon County from 8 to 5 for the full  
14 32 days or so before the primary, the full 32 days or  
15 so before the general, all you would have to pay for  
16 is your staff hourly wages from 8 to 5, correct?  
17 HAVA would pay for the rest?

18 A Yes.

19 Q Okay.

20 A Yes.

21 Q So now we've got all that figured out. Now, we just  
22 have to get down to the issue of what would you have  
23 to pay your staff or trying to figure out an estimate  
24 for paying your staff, how much would it cost a day  
25 to go ahead from 8 to 5 and get them down there --

1 this request?

2 A When I received this, I put it on their agenda.

3 Q All right. You knew this was coming from my office  
4 and the 25 Pine Ridge folks I represented?

5 A Yes. When I received it, I put it on the agenda for  
6 the commissioners to take action.

7 Q All right. Do you remember when that first meeting  
8 was with the Shannon County commission after you had  
9 received this?

10 A Well, it would have most likely been the December  
11 meeting of '11.

12 Q And it would have been that meeting where the  
13 decision was made to give the registered voters 46  
14 days of absentee voting in person in Shannon County?

15 A I would assume if I received it on the 14th, I would  
16 have put it on their December agenda. But I can't  
17 tell without looking at my records.

18 Q You knew about the request for six weeks or 46 days  
19 of absentee voting in Shannon County?

20 A Once I received this?

21 Q Yes.

22 A By reading it --

23 Q Yes.

24 A -- it appears to ask for that.

25 Q Did you take any steps to go ahead and accommodate

1 this request besides moving it forward to the Shannon  
2 County commission?

3 A That's my role is to get it out there for the  
4 commissioners to make a determination.

5 Q All right. Did you begin doing anything to arrange  
6 for trained staff?

7 A When I received this, I took no action until I found  
8 out what the commissioners were going to request.

9 Q I'm going to hand you what's been marked Exhibit 103.  
10 Do you remember reading this memorandum from my  
11 office dated November 26, 2011?

12 A Hang on a second. I remember reading it, yes.

13 Q Do you agree with my reasons starting with reason  
14 number one, paragraph one? Do you agree with  
15 everything in paragraph one?

16 A Hang on a second.

17 (A pause.)

18 A Yes.

19 Q You're in total agreement with the statement, In  
20 2002, Shannon County voters were required to request  
21 an absentee ballot from the Shannon County auditor if  
22 they wanted to vote prior to election day, however,  
23 the Shannon County auditor services were contracted  
24 out to the Fall River auditor located in Hot Springs,  
25 South Dakota. A Shannon County voter would receive



1 A Yep.

2 Q All right. I'm going to go ahead and ask the same  
3 question for paragraph three, if you can read that.

4 A Yep.

5 Q Is that except for Shannon and Todd Counties, all  
6 eligible voters in the state of South Dakota can go  
7 to the courthouse geographically located within their  
8 respective county, register to vote, request and  
9 complete an absentee ballot in a single trip until  
10 two weeks before the election when registration  
11 closes, thereafter, except for registered voters in  
12 Shannon and Todd Counties, registered voters are able  
13 to go to the courthouse geographically located within  
14 their respective county and request and complete an  
15 absentee ballot for the final two weeks of the  
16 absentee ballot period including up until 3 o'clock  
17 p.m. of election day?

18 A Yep.

19 Q All right. These first three paragraphs, before we  
20 move to the second page, have you known or agreed  
21 with what's stated in these paragraphs since you  
22 became auditor in 2005? Were you aware of these  
23 things?

24 A These things that are mentioned are normal  
25 procedures.

1 want total HAVA reimbursements for early voting  
2 members?

3 Q Yeah. Absentee voting -- for costs for absentee  
4 voting in Shannon County.

5 A I didn't have early voting costs in '09. We're  
6 looking at early voting costs and then  
7 reimbursements. So I have a total of 16,898.13.

8 Q All right. And that number represents what, ma'am?

9 A That represents my costs off of my Exhibit 161, '04  
10 through '10, less my HAVA reimbursements for '08 and  
11 '10.

12 Q Okay. So that leaves a balance of how much actual  
13 voting costs, actual costs for absentee voting in  
14 Shannon County for 2004, 2006, 2008, 2010 election  
15 cycles less HAVA reimbursements?

16 A I took my 12, my 52, my 842, the 950 -- or not the  
17 52, but the 70.

18 Q Yeah. And ma'am, I think you've done it right. I'm  
19 just asking for the difference between what the  
20 county paid and what HAVA reimbursed?

21 A Okay. 16,898 -- oop. Hang on a second. Sorry. Let  
22 me redo my calculations here. Expenses, 21, minus my  
23 HAVA reimbursements, balance is 16,898.13.

24 Q That's the total? The total cost to the county so  
25 far?

1 A Yes.

2 Q And then we haven't included the \$20,000 from Four  
3 Directions yet, correct?

4 A That's correct.

5 Q All right. So now what was the cost to the county  
6 less the Four Directions submissions?

7 A Difference of 3,101.87.

8 Q And just so I'm clear, from your records or your  
9 responses to the interrogatories and the HAVA  
10 expenses and the Four Directions, the county received  
11 \$3,101.87 more than what they paid for absentee  
12 voting locations in Shannon County for the four  
13 election cycles, 2004 through 2010?

14 A Agreed upon that they are -- that is the figure upon  
15 my identifiable costs.

16 Q Okay. Does that surprise you? Once we go through  
17 all of the math, that the county has received more  
18 money than they spent on absentee voting locations in  
19 Shannon County?

20 A Maybe surprise, but...

21 Q Just never figured it out before today?

22 A Always happy for the county to get money, so...

23 MR. SANDVEN: Well, good. Do you want to take a  
24 short break now, ma'am.

25 THE WITNESS: I would, please.

1 Q Understood. So when -- could the commission have  
2 went ahead or you or your office went ahead and taken  
3 some of that private money to go ahead and hire new  
4 folks to go ahead and conduct the voting in Shannon  
5 County?

6 A Well, then you're getting back to the Sue Ganje rules  
7 and I would have still been the one to take the  
8 ballots down, me or my staff.

9 Q Right. But why didn't you have a little flex in your  
10 rule for the weekend?

11 A Because my people were running 12-hour days and they  
12 were tired.

13 Q No. I understand that. But to go ahead -- you had  
14 the money to go ahead and hire new people that just  
15 did some of the weekend shifts?

16 A But I would have still -- me or my staff would have  
17 still been taking them down and bringing them back.  
18 I don't care what county it is. I'm in charge of the  
19 ballots and I'm going to keep in possession of those.  
20 So it still involved us working on the weekend.

21 Q But even if you trained somebody in your office to go  
22 ahead? I mean --

23 A Well, that's why I say, me or someone in my office  
24 would have still been taking ballots down there and  
25 bringing them back.

1 took action on the 46 days.

2 Q Okay. I thought I heard you testify earlier that the  
3 county commission took this action because of the  
4 litigation? I though I heard you say that.

5 A The litigation and, I believe, more importantly, that  
6 intent in the commitment to do the additional  
7 \$12,000.

8 Q Okay. And let's -- so the litigation, that was one  
9 of the reasons, correct?

10 A Um-hmm.

11 Q Yes?

12 A Yes.

13 Q All right. And then it talks about due to the  
14 Secretary of State's commitment to provide an  
15 additional approximate \$12,000?

16 A Yes.

17 Q Okay. Do you know when the request for \$12,000 was  
18 made?

19 A I think that was -- I think that was dealt with with  
20 our attorney.

21 Q Because you don't know?

22 A Between the attorney and the Secretary of State. I  
23 don't know.

24 Q When is the first time you requested money from the  
25 South Dakota Secretary of State for the 2012 election

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cycle?

A We have our paperwork ready to go. And it will get sent in this week. We had to wait until Shannon County paid Fall River County for their expenses.

Q Right. So you went ahead and got the reimbursement form after the expenses had been paid by the county, correct?

A Right.

Q But for the 2012 election cycle, you never contacted the South Dakota Secretary of State before your attorney did on March 1st and said, We need more money?

A I did not, no.

Q Why not?

A I think I answered that earlier, that I was -- I requested what I was aware that he authorized and that prior to this \$12,000, he had not authorized the day-to-day eight-hour day amounts.

Q Right. And we're not going to redo all of the math.

A Right.

Q But we went through the math earlier?

A Yes.

Q You testified under oath, right, that the county had actually received more money for absentee voting?

A Well, I admitted that from what I could identify, it

1 A But it didn't include going down to Shannon County  
2 for 64 days.

3 Q It didn't include the absentee part of it?

4 A Correct. That's why that was added.

5 Q Okay. The last time I'll ask this question. So on  
6 -- in paragraph four of Exhibit Number 16, that  
7 \$34,200 that went to your auditor and your clerk, you  
8 don't know how much of that money was used for the  
9 \$11,330 that you cite in Exhibit 166?

10 A I don't have -- I do not have any figures to give you  
11 an answer to that.

12 Q Okay. All right. I thought I heard your attorney  
13 ask you a little bit on the AutoMARK on insurance for  
14 that \$200?

15 A Um-hmm.

16 Q Does HAVA reimburse that?

17 A Anything to do with that AutoMARK, they reimburse.  
18 But apparently I didn't put it down for  
19 reimbursement.

20 Q All right. So here today, you still don't have a  
21 number of how much absentee voting in Shannon County  
22 is going to cost Shannon County?

23 A I told you that, I don't have that today.

24 Q How come?

25 A Because I have not had time to sit and analyze our

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costs for this election yet.

Q Okay. All right. You were asked a bunch of questions on in-person delivery of ballots?

A Um-hmm.

Q All right. And that was a service that was only provided to Shannon County. Do you remember answering those questions?

A You're taking about me taking ballots down there?

Q Well, I thought it was talking about -- or I'm sorry. Registration, voter registration?

A Yeah.

Q All right. On something that Jean Belt does?

A Assists in voter registration, yes.

Q All right. Do you know how many registrations she delivered during the 2012 election cycle for the primary?

A We had very few.

Q How many were there? Less than 100?

A I would say, yeah.

Q Probably less than 50, wasn't it?

A Without the figures, I would say that.

Q All right. Do you know how many folks that Jean Belt helped with absentee balloting?

A I don't think she had very many requests. It was very little.



1 Q Okay. So for 46 days prior to the primary election,  
2 Jean Belt was there?

3 A Or an assistant.

4 Q Or an assistant. You were there?

5 A Myself or staff members.

6 Q Or a staff. So there was either three or four people  
7 on site?

8 A There was three always.

9 Q Three always?

10 A Yeah.

11 Q And potentially another person there?

12 A No. Just -- it would be two workers from the  
13 auditor's and the Lakota coordinator or the  
14 assistant.

15 Q Okay. And then every day you and your employee --

16 A Yeah.

17 Q -- ran ballots back to Hot Springs?

18 A Or two of my employees. Two people from Hot Springs  
19 went.

20 Q So do you think it would be possible to allow  
21 Ms. Belt to conduct the absentee balloting during  
22 those days?

23 A Well, I'm still going to have our people take them  
24 down there. I just -- I don't -- I don't -- I feel  
25 that we're going to take them down there, we're going

1 to stay down there for that day and do the voting.

2 Q And that's, basically, for security purposes?

3 A Security and it just doesn't make sense for us to  
4 drive four hours and...

5 Q You mentioned earlier that Pennington County has a  
6 satellite location in or near Wall, is that correct?

7 A That's what I understand, yes.

8 Q Do you know if they run ballots back and forth every  
9 day?

10 A I don't know what they do. I've never asked them.

11 Q So Jean Belt is already handling absentee voting,  
12 isn't she?

13 A She's assisting with it and she's helping them -- if  
14 they need help with their ballot, she's helping them  
15 with that or helping them run it through the  
16 machines.

17 Q So she's receiving ballots from your office,  
18 assisting people with those ballots and then sending  
19 them back to your office?

20 A We're all right there in the same room.

21 Q Okay. But she has that responsibility, also, with  
22 regard to ballots?

23 A Again? Rich, I'm sorry.

24 Q She -- as an employee, she is tasked with receiving  
25 ballots from your office?

1 A She's tasked with assisting people to get the  
2 ballots, whether it be helping them in her office or  
3 helping them fill out the application or ask them any  
4 questions, but the ballots are still coming from  
5 myself or my staff.

6 Q So if she were just to receive a bunch of ballots and  
7 work on site and store them in a safe for a week at a  
8 time, would that not make you feel a little bit  
9 safer?

10 A It would not. I didn't even have a locked door down  
11 there at our Pine Ridge office.

12 Q If she were to be able to secure the premises in some  
13 manner and put the ballots in some safe place, would  
14 that help alleviate your fear?

15 A You know, I would have to think about that. It's got  
16 -- it's what I feel comfortable with and I can't  
17 answer that right now.

18 Q I was just looking at the supplies number, 15,000 on  
19 the proposed budget?

20 A Um-hmm.

21 Q And you mentioned some of those were for the actual  
22 cost of the ballots, is that right?

23 A Correct.

24 Q Do you know how many of that was for actual ballots?

25 A Oh, it could be up to \$5,000 or so.

1 Q So 5,000 would be for ballots, approximately, and the  
2 remainder would be ink pads and such items as stamps?

3 A We buy the stamps. We have the envelopes for the  
4 early voting. We have all of the supplies that we  
5 put in our boxes that we send to the polling place.  
6 There's a long list of supplies that we use for  
7 elections.

8 Q Sure. So aside from the 5,000 in ballot costs, the  
9 rest would be miscellaneous office supplies?

10 A The ballots is the big thing I can think of, but  
11 there's a lot of supplies that we need and we spend  
12 it every year.

13 Q And did you mention this year, based on Secretary  
14 Gant's letter regarding reimbursement, that you don't  
15 believe that Shannon County will have to pay any of  
16 the costs associated with early voting?

17 A I think all of the costs would be reimbursed, yes.

18 MR. WILLIAMS: Okay. No further questions.

19 FURTHER EXAMINATION BY MR. SANDVEN:

20 Q What about the locked door? There wasn't a locked  
21 door?

22 A Well, there was a locked door to the building, but,  
23 you know, in our office there was no door.

24 Q So that's why you want your folks to go ahead and  
25 haul them back and forth?

1 A I wanted my -- I'm responsible for ballots and that  
2 makes me feel -- when I send them down and we bring  
3 them back every day, that's how I'm comfortable with  
4 ballots.

5 MR. SANDVEN: Thank you.

6 FURTHER EXAMINATION BY MS. FRANKENSTEIN:

7 Q Sue, you just testified that you thought all your  
8 expenses now would be covered through HAVA. I'm  
9 going to draw your attention --

10 A Except for the assistant. I'm sorry.

11 Q Okay. Jean Belt's assistant still, to your  
12 knowledge, is not covered by HAVA?

13 A Correct.

14 Q Okay. Going back to the identifiable costs issue.

15 A Okay.

16 Q Go back to your answers to interrogatories. Is that  
17 it?

18 A Okay.

19 Q I'm looking at interrogatory number 4 in your answer  
20 to sub little E, and you indicate \$842 identifiable  
21 at this time. Not all records, such as mileage and  
22 wages are available anymore. So the records you did  
23 not have available anymore, obviously that number is  
24 not included in the \$842, correct?

25 A Correct.