

1 Voting Rights Act, there has to be proof of causation -- and  
2 I'm looking at my notes here: "To demonstrate likelihood of  
3 success, plaintiff must establish that based on the totality of  
4 the circumstances, early voting and late voter registration in  
5 Montana" -- and I should say "in these counties, is not equally  
6 open to participation by Native Americans in that Native  
7 Americans have less opportunity than non-Indians to vote early,  
8 register late, and that they are unable to elect  
9 representatives of their choice."

10 And when I was going through the briefs, I kept looking  
11 for evidence that -- and I presume that's one of the things  
12 that you will put on this afternoon, or if we get started, this  
13 is not my courtroom, they're redoing the lighting and I have a  
14 clock in mine. That one there is not -- it's pretty close.

15 CLERK OF COURT: Pretty close.

16 THE COURT: If you can see it, it's pretty close.

17 The failure to have these type of satellite offices for  
18 late registration and in-person absentee ballots, has that made  
19 the Native American population in these counties unable to  
20 elect representatives of their choice?

21 MS. FRANKENSTEIN: Your Honor, I can speak to that.  
22 The plaintiffs haven't alleged any facts to substantiate that  
23 claim. It is a required element of the Section 2 Voting Rights  
24 Act claim that the plaintiffs be able to show not only unequal  
25 access, but also that they're unable to elect candidates of

1 choice. The reason no court in the nation has expanded the VRA  
2 to encompass convenience voting, like in-person absentee  
3 voting, is because that second prong counts all votes. Of  
4 course, not only absentee, in-person ballots are counted to  
5 determine who wins or loses a race, all votes cast in any  
6 method are counted. So unless the plaintiffs can show they  
7 can't vote at all, because they can't get their elected  
8 candidate in office, they do not make out a Section 2 VRA  
9 cognizable claim. There is no allegation that these plaintiffs  
10 can't otherwise vote on election day; designate a proxy to  
11 obtain their ballot and return it again; vote by mail. In  
12 fact, some of the plaintiffs have already voted by mail.  
13 Because all votes count regardless of how they're cast, no  
14 court in the nation has chosen one convenient method in the  
15 light of all the other methods that voters can utilize, and  
16 said because of that one inconvenience for that particular  
17 voter, they couldn't get their candidate elected. Because, of  
18 course, that voter could cast their vote in another method for  
19 which we have no evidence here that those methods are abridged.

20 THE COURT: Now, I'm presuming that Mr. Sandven and  
21 you, Ms. Frankenstein, you oppose each other on a frequent --  
22 maybe not frequent basis, but you -- you mentioned that --

23 MR. SANDVEN: This is only the second case, Your  
24 Honor, so far.

25 THE COURT: I see. Could be more in the future, huh?



1 the court. But there are some --

2 THE COURT: I'm going to hear from you. Go ahead.

3 MR. SANDVEN: Oh, there are some cases that deal with  
4 the Voting Rights Act on access to voter right acts -- voter  
5 registration sites. The Voting Rights Act prohibits unequal  
6 access to voter registration sites. That was Operation PUSH  
7 versus Allain, 674 F. Supp.1245. And that was affirmed by the  
8 Fifth Circuit. Unequal access to voting sites. Look at Spirit  
9 Lake Tribe versus Benson County, 210 W.L. 4226614.

10 THE COURT: Now, wait a minute. I have in my notes  
11 the cases that I looked at were this Jacksonville Coalition for  
12 Voter Protection versus Hood out of the Middle District of  
13 Florida in 2010. And then the Spirit Lake case, that was the  
14 case where a preliminary injunction was granted to prevent the  
15 county from closing voting locations on the reservation. And  
16 as I recall the facts, and this is -- I'm stating them simply,  
17 but they have polling places, such as exist now on all three  
18 reservations, and they were attempting to close those polling  
19 places. They weren't satellite offices, they were polling  
20 places, I think; weren't they?

21 MR. SANDVEN: Right. You can distinguish. But it  
22 still dealt with voting locations. And what I'm going off is  
23 the Department of Justice brief. I don't know if Your Honor  
24 got a chance to review that. But those are the cases that were  
25 cited in there that went ahead and dealt with --

1 THE COURT: That's the brief that had Professor  
2 Webster's affidavit attached to it?

3 MR. SANDVEN: Yes, sir. Under the "plaintiffs are  
4 likely to succeed on the merits of the Section 2 claim," they  
5 went ahead and cited about half-a-dozen cases dealing with  
6 unequal access to absentee voting opportunities, unequal access  
7 to voter registration sites, unequal access to voting sites.

8 THE COURT: And that brings up another question on  
9 Professor Webster's affidavit. I mean, I think his facts as  
10 far as they go, although the county says they're going to  
11 dispute it, he doesn't -- Professor Webster doesn't indicate  
12 that there's any proof that the distances are the cause of low  
13 Native American turnout. And he doesn't make any statements,  
14 at least that there's some kind of proof that those driving  
15 distances render the plaintiffs unable to elect representatives  
16 of their choice. Is that going to be --

17 MR. SANDVEN: We will address the same, Your Honor.

18 THE COURT: Okay.

19 MR. SANDVEN: The way we're going to do it, what we  
20 did is we requested the voting statistics for the last election  
21 cycle from the three defendant counties from the Secretary of  
22 State. We've received one batch from Blaine County. We'll go  
23 ahead and present those -- that analysis of same to you on the  
24 stand, sir.

25 MS. FRANKENSTEIN: Your Honor, I might add: You're



1 correct. In reading Professor Webster's report, he draws no  
2 causal relationship between driving distance and inability to  
3 vote on election day or in methods other than in-person  
4 absentee, and no causal connection with an inability to elect  
5 candidates of choice.

6 THE COURT: Okay.

7 And I brought Professor Webster up when I first got here  
8 on the bench this morning, because -- and I've indicated to  
9 you, I think, at least, that I think his statistics insofar as  
10 the ratios and things that he establishes are probably -- are  
11 probably correct. I think they're going to be difficult to  
12 dispute, the percentages of Native Americans who have  
13 transportation versus the Anglos who have transportation, the  
14 distances they have to travel, and that sort of thing.

15 So are we going to be able to agree, taken that -- are we  
16 going to be able to agree that the issue, at least under  
17 Section 2 of the Voter Rights Act for the purposes of this  
18 case, is going to be whether there's causation, whether there  
19 is -- do you agree with that, Mr. Sandven?

20 MR. SANDVEN: Yeah. And you're going to hear some  
21 additional statistical information on how this affects the  
22 number of absentee ballots cast. Yes, Your Honor. But also  
23 when you go ahead and look at the Senate Report Number 97-417,  
24 when you're dealing about the totality of the circumstances, it  
25 talks about political processes that are equally open depends

1 on searching practical evaluation of the past and the present  
2 reality.

3 Well, if you got poor folks and less access to cars, using  
4 that common sense, practical analysis, and they have to drive  
5 322 percent as far as the non-Indian folks, or 267 percent as  
6 the non-Indian folks, don't have gas to put in their car, and  
7 you apply this common sense argument that's cited in the Senate  
8 Report 97-417, the practical evaluation of past and present  
9 reality, and then you look at some of the isolated locations on  
10 a particular reservation and how those numbers are dramatically  
11 lower, it's kind of common sense. And it's consistent with  
12 this totality or how the totality factors are supposed to  
13 use -- in citing them.

14 THE COURT: Well, have there been any studies -- I'm  
15 asking because, again, I don't know -- have there been any  
16 studies that show that because of, for instance, further  
17 distances, inaccessibility to cars, being poor, that that has  
18 resulted, or somebody has argued that that has resulted in  
19 lower voter turnout? Or is it -- you're saying one and one  
20 equals two; two and two equals four?

21 MR. SANDVEN: I'm saying yes to both. There is --  
22 our experts, 12-5003 in the District of South Dakota case  
23 provided to you earlier, Doctor Braunstein, and we haven't  
24 submitted the report. I'll print it out over lunch in my truck  
25 and bring it up here.



1 out to obtain and maintain uniformity in the application,  
2 operation, and interpretation of election laws other than Title  
3 13 Chapters 35, 36, or 37. I think this court has discretion  
4 to go ahead. I think it's normal to presume under 13-1-202  
5 that this standard also applies to federal laws like the Voting  
6 Rights Act, as well as state law, since all federal elections  
7 in Montana must abide by federal law.

8 MS. FRANKENSTEIN: Your Honor, your question was  
9 whether Montana law was violated. That doesn't speak to --

10 THE COURT: That was my question.

11 MS. FRANKENSTEIN: It's not. There's no allegation  
12 that it is.

13 MR. SANDVEN: Obtain and maintain uniformity, Your  
14 Honor.

15 MR. QUINTANA: And Your Honor, Title 13 defines  
16 elections, which I assume -- the Title of 13 is called  
17 "Elections."

18 THE COURT: I know.

19 MR. QUINTANA: Title 13 defines elections as: "A  
20 general, regular, special, primary election held pursuant to  
21 the requirements of state law, regardless of time or purpose,"  
22 and that's in 13-1-101(8).

23 THE COURT: Okay.

24 And let's talk about the 14th Amendment, equal protection  
25 claim. Under the law -- unlike the voter -- Voting Rights Act,

1 a showing of discriminatory intent is necessary to prove voter  
2 discrimination claims, an invidious discrimination. Is there  
3 such proof in this case? And what I'm trying to do with these  
4 questions is try and eliminate some of the issues. Basically,  
5 it looks to me like it primarily boils down to Section 2 of the  
6 Voter Rights Act, but having said that, is there proof of  
7 discrimination? Intentional discrimination?

8 MR. SANDVEN: Right. I don't think we have to, under  
9 the Voting Rights Act, it's not the --

10 THE COURT: I'm talking about the 14th Amendment.

11 MR. SANDVEN: Yeah. Judge, I think there's -- I know  
12 this -- I wasn't sure how to offer this to the Chief Judge here  
13 but on page 17 of that piece of paper I just handed you, the  
14 order from Chief Judge Schreier, in a similar case, Pine Ridge  
15 Indian Reservation, page 17, she goes ahead and addresses the  
16 equal protection argument. Page 18, she addresses the equal  
17 protection argument, the role of the South Dakota Secretary of  
18 State was similar in that case to what was here. And she went  
19 ahead and concluded that the Secretary of State's motion to  
20 dismiss on that equal protection clause is denied. And it's --  
21 she's the best writer I know in the state, Judge. I can't say  
22 it any better than her.

23 MR. QUINTANA: First of all, if plaintiffs' counsel  
24 is going to rely so much on a case, I would ask for a copy of  
25 it. He had one copy for all counsels and I gave it to --



1 THE COURT: I tell you what we're going to do --

2 MR. QUINTANA: Second of all, Your Honor, please, he  
3 says the case is analogous to what we have here. That dealt  
4 with spending of HAVA funds. That's not alleged here. We  
5 don't spend funds to open offices.

6 THE COURT: Well, I'll tell you what we're going to  
7 do: We're going to recess until 20 minutes after 1.

8 Mr. Sandven, get him a copy of this, everybody a copy of this.

9 MR. SANDVEN: Yes, sir.

10 THE COURT: And we can probably get that done. We'll  
11 get it done. Here. We'll be in recess till 1:20. And I'll  
12 hear -- I'll hear testimony. I want to hear testimony on the  
13 issues that I've discussed, primarily Section 2 causation. If  
14 you have some proof on intentional discrimination under the  
15 14th Amendment, certainly that, too. If there are areas that  
16 counsel want to go into that I haven't thought about, tell me  
17 and probably we'll go there. All right?

18 Be in recess till 20 after one. Thanks.

19 (The proceedings in this matter were recessed at  
20 11:53 a.m. and reconvened at 1:23 p.m.)

21 THE COURT: Please be seated.

22 All right.

23 First, Mr. Sandven, I want to hear some testimony on  
24 Glacier County. There's this dispute about whether there is a  
25 satellite office there or not. And I want to hear some

1 And in the case of the Inter-Tribal Council Nevada resolution,  
2 that was provided to us by the Inter-Tribal Council of Nevada.

3 MR. SANDVEN: We offer Plaintiffs' Exhibit 1.

4 MS. MANN: Objection, Your Honor, relevance and  
5 hearsay. None of the authors of the documents are here to  
6 testify.

7 THE COURT: I'm going to admit it for the purpose of  
8 this hearing. I didn't say this, but I'm not exercising the  
9 option under the rules to consolidate this into a hearing on  
10 the merits. This is a hearing on the preliminary injunction.  
11 And with that in mind, I'm going to admit those documents.

12 MR. SANDVEN: May I approach with what's been marked  
13 Plaintiffs' Exhibit 2?

14 THE COURT: Yes.

15 Q (BY MR. SANDVEN) Before we get into this -- before we get  
16 into this document, you heard the Judge's questions about Four  
17 Directions offering money this election cycle?

18 A Yes.

19 Q Please respond.

20 A We offered to each of the three counties to pay for the  
21 additional expenses of providing the satellite offices in Fort  
22 Belknap, Lame Deer and Crow Agency. Two of the -- the offering  
23 of that were made the writing by the letter from Chairman Black  
24 Eagle of the Crow Nation to Big Horn County; made by letter by  
25 President Spang of the Northern Cheyenne Tribe to Rosebud



1 Secretary of State's website. They calculate for every county  
2 in the state a percentage of absent -- or percentage of  
3 registered voters casting an absentee ballot. It's right on  
4 their website. And in fact, it's on the complaint exhibit. I  
5 believe I --

6 Q Where did you get the Blaine County statistics that you  
7 based those slides on that you just talked about?

8 A The Blaine County statistics were a result of a request  
9 that I made in writing to Blaine County Clerk and Recorder,  
10 Sandra Boardman. The results, which were faxed to the Sandven  
11 Law Office shortly after I made the request, and, of course,  
12 paid the fees to provide that information.

13 MR. SANDVEN: We offer Plaintiffs' Exhibit 3.

14 THE COURT: Well, let me ask you: I get, for  
15 instance, an absentee ballot mailed to me. Now, that's  
16 available to all Native Americans; isn't it?

17 MR. SANDVEN: Can I respond quickly to that? It's a  
18 little more difficult for --

19 THE COURT: Well, I'm talking about -- I'm not  
20 talking about the practical matter. I'm talking about under  
21 the law, Native Americans can get absentee ballots; right?

22 THE WITNESS: If one has a post office box or a  
23 permanent address, theoretically, yes, they all could get.

24 THE COURT: Well, if you have a post office box or a  
25 permanent address, it's more than theoretical, you can get it

1 if you ask for it?

2 THE WITNESS: But not that many Native Americans have  
3 a post office box and/or a permanent address.

4 THE COURT: I know. But if you do, you can get them;  
5 right?

6 THE WITNESS: Yes, you can apply for it, as you can  
7 in other jurisdictions.

8 THE COURT: Right.

9 THE WITNESS: Through the mail.

10 THE COURT: Right. And -- do you know how many on  
11 this study you did, for instance, I notice Yellowstone County's  
12 high?

13 THE WITNESS: Yeah.

14 THE COURT: Probably the highest in the state?

15 THE WITNESS: It's extraordinarily high, yes.

16 THE COURT: Yeah.

17 THE WITNESS: But the Yellowstone County courthouse  
18 is pretty busy. I stopped by there this morning about 8:45 and  
19 there were three or four folks right there casting an absentee  
20 ballot, requesting it and casting it right then and there.

21 MR. SANDVEN: Chief Judge, we have Mark Wandering  
22 Medicine in the room. And he's from that little community  
23 where they don't have a post office. They have to drive to  
24 Lane Deer. It's about, I think, a 30-mile roundtrip or so, and  
25 it's a poor community. Unemployment probably 80 percent --



1 increase by having early voting via mail. And that most, if  
2 not all, Secretaries of State and Conference of State  
3 Legislatures are generally strong advocates of early voting and  
4 footnotes --

5 Q Bottom line, does that scholarly journal address whether  
6 or not early voting helps voter turnout in Indian Country?

7 A Yes, it does. Especially in the executive summary.

8 Q All right.

9 And then in footnote 19 on page 27.

10 A Correct.

11 Q And who went ahead -- has this expert ever been used by  
12 anyone besides me in an election issue?

13 A Yes.

14 Q Who?

15 A Actually used by the South Dakota Attorney General's  
16 Office.

17 Q What page are you looking at and where?

18 A Page 45 of the expert report. The prior Secretary of  
19 State, Chris Nelson, against Promising Future and Roger Hunt,  
20 defendants, he was paid nearly \$30,000 for an expert report.

21 MR. SANDVEN: We offer Plaintiffs' Exhibit 4, Judge.

22 THE COURT: I'll admit it for the purpose of this  
23 preliminary injunction hearing.

24 MR. SANDVEN: Can I approach with what's been marked  
25 Exhibit 5?

1       Assumption one: The days that the satellite office would  
2 be open. That's based on, of course, the calendar. Today is  
3 the 29th of October, and the election is on November 6th. It's  
4 based on Saturday and Sunday, courthouses are almost always  
5 closed. And it's also based on the Secretary of State's  
6 election advisory A01-12 laying out that absentee balloting in  
7 person must end on noon of the day before the election. And  
8 that the satellites, however, would be open for late  
9 registration for all five days.

10           THE COURT: But late registration -- isn't late  
11 registration, under state law -- doesn't that cease at noon?

12           THE WITNESS: No.

13           THE COURT: Okay.

14           THE WITNESS: It actually goes through all of  
15 election day.

16           THE COURT: Got you.

17 Q       (BY MR. SANDVEN) Why did you pick five and not 20, like  
18 defendants?

19 A       Because it's the 29th of October and the election's next  
20 Tuesday, November 6th. There aren't that many days.

21 Q       Second assumption you made?

22 A       Assumption two: Election judges have the certifications  
23 necessary to staff the satellite offices and transport ballots.  
24 This is based on the Secretary of State's election advisory  
25 issued August 28th. It's also based on an e-mail from Kathy



1 officials to and from the satellite each day, based on  
2 published IRS mileage rates for 2012 of fifty-five-and-one-half  
3 cents per mile.

4 MR. SANDVEN: We offer Exhibit 5.

5 THE COURT: I'll admit it for the purpose of this  
6 hearing.

7 MR. SANDVEN: Now, that we've kind of got through the  
8 math on the estimate, can we get to the hows? And we'll be  
9 brief and organized, Judge, on how we deal with some of the  
10 ballot security concerns that have been raised by opposing  
11 counsel.

12 THE COURT: Please.

13 MR. SANDVEN: May I approach?

14 THE COURT: Yes.

15 MR. SANDVEN: Can I approach the witness?

16 THE COURT: Well, certainly.

17 MR. SANDVEN: Do you want me to keep asking, Judge?  
18 I will.

19 THE COURT: I know you will. You don't have to.

20 MR. SANDVEN: Thank you.

21 Q (BY MR. SANDVEN) I'm going to hand you what's been marked  
22 Exhibit 6.

23 A Exhibit 9, you mean?

24 Q Exhibit 6.

25 A Oh. Okay. Did I --

1 earlier; does it?

2 A Without reading both reports extensively, I'd disagree  
3 with that. I'm not going to agree with your conclusion.

4 Q Do you agree that the expert report cites to this article?

5 A I agree that it footnotes it. I don't agree that it isn't  
6 supported in some of their data sets and whatnot. I have  
7 published refereed journal articles before. That's part of the  
8 give-and-take of the professional, scholarly journal  
9 publication business. Without reading both documents  
10 completely, I've just been asked to read the other document  
11 today, but in either case, both these reports you've asked me  
12 to look at, clearly haven't evaluated the data from South  
13 Dakota in 2004, it has not been evaluated by these reports.

14 Q Mr. Healy, I understand your personal position and your  
15 scholarly opinion, and I appreciate that.

16 But you testified to earlier that Exhibit 4 was supported  
17 by these exhibits -- these articles, and that's what my  
18 question is limited to.

19 A Yes. This exhibit said that he referenced that article  
20 and said that he had support for his position in his expert  
21 report. I'm not the author of that expert report.

22 Q Correct.

23 Mr. Healy, are you aware that the election judges that  
24 would be manning a satellite office would need to have a, quote  
25 "C," end quote, rating in order to man the office?



1 A I disagree that they would have to do that, because they  
2 aren't going to be running the electronic system. That can be  
3 done with somebody back in the county courthouse.

4 Q Mr. Healy, who is the best person to speak to the  
5 procedures and processes that would need to be done in order to  
6 open a satellite office for in-person absentee voting?

7 A Who would be the best person?

8 Q Wouldn't it be the Election Administrator?

9 A Not from the defendant counties. They have a point of  
10 view that they are trying to advocate.

11 Q And you're from South Dakota; is that correct?

12 A I am.

13 THE COURT: Trying to advocate what?

14 A That they have a biased position. Of course they aren't  
15 going to suggest that they can do this. They're going to look  
16 for everything they can throw out there to not do this.

17 I would say you'd have to have an unbiased county clerk  
18 and recorder that is not engaged in this litigation answer that  
19 question.

20 Q (BY MS. MANN) Is it your testimony, Mr. Healy, that you  
21 are a better person to speak to the procedures rather than the  
22 specific county Election Administrators?

23 A I have outlined a way to get this done.

24 Q That's not my question. Is it your position that you're a  
25 better person to speak to those procedures, over and above the

1 Election Administrators?

2 A Not over and above the Election Administrator, no.

3 Q Who is the best person to speak to the costs involved in  
4 having a satellite office for in-person absentee voting?

5 A Compared between the defendant counties and myself, I  
6 would say myself.

7 Q You believe -- your testimony, Mr. Healy, is that you, an  
8 advocate for Four Directions from South Dakota, is the better  
9 person to speak to the costs and expenses associated with a  
10 satellite office over and above the specific --

11 A Yes.

12 Q -- Election Administrator?

13 A It is. And I'll tell you why.

14 I've outlined my assumptions for those estimated coats.  
15 And I have seen the affidavits from clerks and recorders. They  
16 are clearly outlined 20 days of expenses, which would  
17 necessarily be four times the available days left. So if those  
18 are the expenses that we're going to evaluate, they're off by a  
19 factor of four as they start.

20 THE COURT: Well, let's get down to the nitty-gritty.  
21 Are there differences?

22 MS. MANN: There are, Your Honor.

23 THE COURT: Even though we're not talking about 20  
24 days?

25 MS. MANN: Yes, Your Honor.



1 A I had looked at a separate facility in Fort Belknap, but I  
2 don't believe -- it's not the courthouse, so, no, I certainly  
3 hadn't gone and toured the other facilities.

4 My understanding, though, is Executive Director O.J.  
5 Semans has been in the tribal building at Northern Cheyenne,  
6 and he could speak more fully to that.

7 Q Okay.

8 Have you spoken with any of the Election Administrators to  
9 determine what they would need to have at these sites?

10 A Extensive conversations with Blaine County and with  
11 Rosebud County. With Blaine County the 18th and 19th of  
12 September, we had extensive discussions about that. Sandra  
13 Boardman -- Blaine County Clerk and Recorder, Sandra Boardman,  
14 emphasized, as did the County Attorney, Dan Ranstrom, that the  
15 facility would have to be ADA-compliant, which the courthouse  
16 in Fort Belknap is.

17 Relative to Rosebud, some of those same conversations  
18 about certainly an ADA-compliant facility would be required,  
19 and that is my understanding of what is available at the tribal  
20 building in Lame Deer.

21 Q Have you visited with any of the Election Administrators  
22 on whether or not -- how many tables they'll need or chairs or  
23 anything like that?

24 A We didn't get to that conversation, because they kept  
25 saying they couldn't do it.

1 or any Indian tribes located there.

2 Q All right.

3 We had some discussions back in chambers, last question, I  
4 want you to clear this up. All right.

5 Is late registration, the requirements for late  
6 registration, a little bit different than the requirements for  
7 early voting? Is that apples and oranges?

8 A Certainly different by the Montana Secretary of State's  
9 election guidance that you can cross out a number, add a  
10 number. That's a pen-and-paper alternative that doesn't  
11 require a computer, a fancy computer, other than at the main  
12 office.

13 THE COURT: Does anybody do it in the state?

14 THE WITNESS: Anybody do the pen-and-paper?

15 THE COURT: Cross out. Pen-and-paper.

16 THE WITNESS: Given that this election guide was on  
17 August 28th, I'm not aware, Judge, that anybody is doing it  
18 right now.

19 Q (BY MR. SANDVEN) All right.

20 Then I think there's some suggestions that your five-step  
21 plan is a little bit over-simplistic and wouldn't work. One or  
22 two questions. You had went ahead and talked about this  
23 pen-and-paper delivery. Now, what are the five steps?

24 A Have the main office in the county courthouse print out  
25 the ballots; have the --



1 Q The sequentially-numbered ballot stubs?

2 A And if they're sequentially, or if they're unissued and  
3 blank, either way, a pen -- a writing pen will correct, based  
4 on the Secretary of State's own guidance, that you can cross  
5 out the wrong ballot number, and replace it by hand, keeping  
6 that sequential system in order. It's important to note that  
7 nobody's absentee ballot has a number on it. That would be --  
8 you wouldn't be able to maintain secrecy of the ballot. It is  
9 a ballot stub that just clarifies that it's a sequential  
10 number.

11 And based, again, on the secretary's guidance, you can  
12 cross out the wrong ballot sequential number, write in the  
13 correct one, and provide that ballot to the voter. And you've  
14 maintained the sequential numbering system, as per her advice.

15 Q All right.

16 But you need a computer then, don't you need that Montana  
17 Vote computer at the satellite location?

18 A No. You could print the ballots out at the county  
19 courthouse, ship ballots over to the satellite and write them  
20 down. By the clear language of the secretary's advice.

21 Q But wouldn't someone with that C designation, that  
22 training designation, have to be the one that transported or  
23 sat at the satellite office; or is that just for late  
24 registration?

25 A Certainly be for just late registration. The absentee

1 balloting, again, being able to cross out a number and write a  
2 number in, I would think could be done by anybody with any  
3 reasonable amount of training that you can cross out the  
4 number, write in the correct number, you wouldn't need that C  
5 person doing that, except back at the county courthouse. And  
6 again, the assumptions I built into my suggestion is: Use a  
7 telephone if there's questions. You've got a fax machine to be  
8 able to provide any paperwork back and forth. It is not that  
9 complicated.

10 Q Or the tribal member could go into that office, right, in  
11 the morning, into that satellite office, make a phone call --  
12 or the person?

13 A The election judges.

14 Q The person that was assigned there by the Clerk and  
15 Recorder's Office could make a call and request a ballot, and  
16 they wouldn't have to run them down one at a time; would they?  
17 They could get them in a pile and run them down once a day?

18 A Run them down at the beginning of the day. And again,  
19 because you have this pen-and-paper alternative, crossing out  
20 the ballot, writing the right -- not the ballot, the ballot  
21 stub, writing the correct sequential number, there's no reason  
22 to run them down three or four times, you've run them down at  
23 the beginning of the day --

24 Q Let me understand. So the person -- so I -- the tribal  
25 member walks in and says: "I want a ballot"?



1 A Yes.

2 Q And so that person at that office puts a list: "These are  
3 all the people requesting ballots"; right?

4 A No, you wouldn't have to do it that way.

5 Q This is an alternative; isn't it? That you would go ahead  
6 and request that a bunch of folks could go into that satellite  
7 office, request a ballot, that person there could get them  
8 lined up, and they could come back the next day and fill them  
9 out?

10 A That would be another option.

11 Q Would it work?

12 A That would. It would require more effort on the part of  
13 the voter. They'd have to come back a second day to the  
14 satellite office, which would be different, of course, than  
15 everybody's -- everybody else's opportunity. But it would be a  
16 way to do this.

17 Q Easier than driving a hundred and eighty miles, like Mark  
18 Wandering Medicine, roundtrip?

19 A Certainly easier than driving a hundred and eighty miles.

20 Q The Judge wanted to know who knows the most information  
21 about the tribe's willingness? There's suggestions that the  
22 tribe really doesn't want to work with the counties on having a  
23 location ready.

24 Have we got a couple of men in the room ready to talk on  
25 this?

1 health representative, youth counselor. Went to college for a  
2 while, then went back to work for the tribe as an  
3 accountant/bookkeeper. Then became the assistant housing  
4 authority director for a couple of years. And moved up to  
5 executive director of the housing authority, at which time, I  
6 was elected to the council, so I served on the council 14 of  
7 the last 28 years, with four years as tribal chairman. And  
8 most recently, I went back to work for a couple of years after  
9 getting off the council for the housing authority as an  
10 executive director again. I've also been the tribal health  
11 director for Fort Belknap. And the assistant compliance  
12 officer for the court system. And assistant court  
13 administrator for the court system. And in addition to that, I  
14 worked for the Bureau of Indian Affairs in Arlington, Virginia,  
15 as a housing program officer for the eastern -- the Bureau of  
16 Indian Affairs' eastern area.

17 MR. SANDVEN: Are we up to Exhibit 8, ma'am?

18 CLERK OF COURT: Yes.

19 MR. SANDVEN: Can I approach with what's been marked  
20 Exhibit 8?

21 THE COURT: Yes.

22 CLERK OF COURT: It's just one page, Judge.

23 THE COURT: Yeah. Go ahead.

24 Q (BY MR. SANDVEN) This document in front of you has been  
25 marked Exhibit 8?



- 1 A Yes.
- 2 Q Are you familiar with this document?
- 3 A This says Exhibit 54.
- 4 Q I know. Mine is marked correct.
- 5 A Yes. This is a letter.
- 6 Q From who to who?
- 7 A The letter is from Terry Healy, Chief Judge, and the Court  
8 Administrator for the Fort Belknap Community Court.
- 9 Q What's the date on it?
- 10 A October 23rd, 2012.
- 11 Q How are you familiar with this letter?
- 12 A I started -- when I started working with Mr. Healy on the  
13 concept of opening a satellite office, first of all, the idea  
14 sounded very -- a good idea to me.
- 15 So I basically embraced the idea, and any time he required  
16 assistance locally, he contacted me to assist him with certain  
17 functions. And on October 22nd, Brett called me and said --
- 18 Q Just how are you familiar with the letter, though?
- 19 A I'm familiar with the letter, because I asked Terry Healy  
20 to write the letter.
- 21 Q And she gave it to you?
- 22 A Or asked her to -- if we could use an office in the court  
23 building for absentee voting office.
- 24 Q And she gave it to you?
- 25 A Yes.

1 Q And you sent it to me?

2 A Right.

3 Q All right.

4 MR. SANDVEN: We offer Plaintiffs' Exhibit Number 8.

5 MS. MANN: Object on hearsay grounds.

6 THE COURT: Overruled.

7 I'll admit it for the purpose of this hearing.

8 Q (BY MR. SANDVEN) So when you go ahead and look at that  
9 letter, what does it offer?

10 A It offers an office or space available for an absentee  
11 voting office in the recently-renovated courthouse and  
12 discusses handicap accessibility, and Internet access and  
13 telephone access.

14 MR. SANDVEN: Can I approach with Exhibit 9, Your  
15 Honor?

16 THE COURT: Yes.

17 Q (BY MR. SANDVEN) The exhibit I handed to the clerk is  
18 marked Exhibit 9.

19 What is this?

20 A This is a letter from Clinton Brown, facilities quarters  
21 manager for the BIA at Fort Belknap Agency, also dated October  
22 23rd, 2012.

23 Q How are you familiar with this letter?

24 A I, in my work with Brett, found that the Blaine County  
25 Commissioners kept asking if we had an ADA-approved office or



1 facility which -- where this absentee voting office could be  
2 located. After Judge Healy authorized the use of an office in  
3 the courthouse, I contacted several people who could go through  
4 a checklist that I had obtained off the Internet for  
5 ADA-compliant facilities for polling places. And Mr. Brown --  
6 on the 23rd, Mr. Brown was available to do that, so he did so.

7 Q And that's the letter that you got from him?

8 A Yes.

9 Q You sent it to me?

10 A Yes.

11 MR. SANDVEN: We offer Exhibit Number 9.

12 MS. MANN: Objection. Hearsay.

13 THE COURT: Overruled.

14 I'll admit it for the purpose of this hearing.

15 Q (BY MR. SANDVEN) What's the date on that letter?

16 A October 23rd, 2012.

17 Q That's not that long ago?

18 A No.

19 Q How many days ago?

20 A Five.

21 Q You can't go ahead and offer a location and expect the  
22 county to jump five days ago and get it done; can you?

23 A No.

24 Q Tell the Judge, Chief Judge, what happened.

25 A What happened was on -- after a meeting with the County

1 renovation. And as a part of that renovation, was made  
2 handicap-accessible with an automatic opening door on the front  
3 entrance and so forth, handicap bathrooms.

4 Fort Belknap College was also mentioned as a potential  
5 location. But Sandra never did contact anybody about this  
6 office. Never did come out and look at the facilities. Brett  
7 Healy called me and told me that this thing was going to court  
8 and that we should probably have nailed down an office that can  
9 be used.

10 So it was my --

11 Q But why should we think that the tribe is serious about  
12 this location now? These are just letters. Sometimes people  
13 change their mind.

14 A No. The council president and most of the council members  
15 have relayed to me that they will do whatever is necessary to  
16 accommodate this office.

17 Q What does that mean?

18 A That means that, basically, that I have the support of the  
19 council to go and choose a location, and that they will direct  
20 whoever is in charge of that office to have it available.

21 MR. SANDVEN: Can I approach with what's marked  
22 Exhibit 10?

23 THE COURT: Yes.

24 Q (BY MR. SANDVEN) The one I handed to the clerk is marked  
25 10.



1 A Okay.

2 Q Do you know what this is?

3 A Yes. It's another letter dated October 23rd, 2012, from  
4 Chief of Police Jeff Stiffarm.

5 Q How are you familiar with this letter?

6 A After obtaining the letters of acceptance -- accepting the  
7 location at the courthouse, Chairman King and the council  
8 members that were -- Chairman King, on a conference call, and  
9 council members that were present at the September 13th meeting  
10 in Chinook, Montana, said that the issue of security had come  
11 up. And the -- at both times, the president and the council  
12 members said that security would be provided as needed.

13 Q So how are you familiar with this letter? Did you go and  
14 get it?

15 A I asked Jeff Stiffarm, the Chief of Police, to -- if he  
16 could do a -- I needed a letter of commitment that security  
17 would be available. And he did so.

18 MR. SANDVEN: We offer Exhibit 10.

19 MS. MANN: Objection. Hearsay.

20 THE COURT: It's overruled.

21 I'll admit it.

22 Q (BY MR. SANDVEN) You're sitting next to the Chief Judge  
23 of Montana. Can you commit to your efforts to go ahead and  
24 provide a location if he goes ahead and orders same?

25 A Yes.

1 called away the day of the meeting in Chinook on another issue  
2 and was not able to attend that.

3 Q Mr. Main, Exhibit 8, this letter, was never mailed to  
4 Blaine County; was it?

5 A No. They never requested any.

6 Q The county never requested it?

7 A No.

8 Q How can Blaine County know there's space available if this  
9 letter is never given to them?

10 A Because it was -- would be presented in court.

11 Q So this was prepared specifically for this hearing today;  
12 isn't that right?

13 A Yes.

14 Q And Mr. Healy asked you to round this letter up; is that  
15 correct?

16 A Yes. Because Ms. Boardman never did show up or contact  
17 anybody at Fort Belknap, as we were instructed she would, to  
18 look at the potential locations.

19 Q When did Mr. Healy ask you to round up this letter?

20 A On the 23rd.

21 Q On October 23rd?

22 A Yes.

23 Q This facility that's discussed in Exhibit 8, have you  
24 visited that facility?

25 A I've worked in that facility.