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Transcript of Paul Henderson

Date: December 7, 2022

Case: Walen, et al. -v- Burgum, et al.

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Exhibit 38

Transcript of Paul Henderson
December 7, 2022

1 (1 to 4)

<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NORTH DAKOTA</p> <p>3 EASTERN DIVISION</p> <p>4 ----- x</p> <p>5 CHARLES WALEN, an individual; :</p> <p>6 and PAUL HENDERSON, an : individual, :</p> <p>8 Plaintiffs, :</p> <p>9 v. : Case No.</p> <p>10 DOUG BURGUM, in his official : 1:22-CV-00031-CRH</p> <p>11 capacity as Governor of the : 12 State of North Dakota; and : 13 ALVIN JAEGER, in his official : 14 capacity as Secretary of : 15 State of North Dakota, : 16 Defendants, : 17 ----- x</p> <p>18 (Caption continued on next page)</p> <p>19 Deposition of PAUL HENDERSON</p> <p>20 Conducted Virtually</p> <p>21 Wednesday, December 7, 2022</p> <p>22 9:15 a.m. EST</p> <p>23 Job No.: 473885</p> <p>24 Pages 1 - 47</p> <p>25 Reported by: Debra A. Whitehead</p>	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 PAUL R. SANDERSON, ESQUIRE</p> <p>4 RYAN J. JOYCE, ESQUIRE</p> <p>5 EVENSON SANDERSON</p> <p>6 1100 College Drive, Suite 5</p> <p>7 Bismarck, North Dakota 58501</p> <p>8 (701) 751-1243</p> <p>9</p> <p>10 ON BEHALF OF DEFENDANTS:</p> <p>11 DAVID R. PHILLIPS, ESQUIRE</p> <p>12 BAKKE GRINOLDS WIEDERHOLT</p> <p>13 300 West Century Avenue</p> <p>14 Bismarck, North Dakota 58503</p> <p>15 P.O. Box 4247</p> <p>16 Bismarck, North Dakota 58502-4247</p> <p>17 (701) 751-8188</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 (Caption continued from previous page)</p> <p>2 ----- x</p> <p>3 and :</p> <p>4 MANDAN, HIDATSA AND ARIKARA : 5 NATION, CESAR ALVAREZ, and : 6 LISA DEVILLE, : 7 Intervenor-Defendants. : 8 ----- X</p> <p>9 Deposition of PAUL HENDERSON, conducted</p> <p>10 virtually.</p> <p>11</p> <p>12</p> <p>13 Pursuant to notice, before Debra Ann Whitehead,</p> <p>14 E-Notary Public in and for the State of Maryland.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES CONTINUED</p> <p>2 ON BEHALF OF INTERVENOR-DEFENDANTS:</p> <p>3 MARK P. GABER, ESQUIRE</p> <p>4 MOLLY E. DANAHY, ESQUIRE</p> <p>5 NICOLE HANSEN, ESQUIRE</p> <p>6 CAMPAIGN LEGAL CENTER</p> <p>7 1101 14th Street, NW, Suite 400</p> <p>8 Washington, DC 20005</p> <p>9 (202) 716-2200</p> <p>10 - and -</p> <p>11 ALLISON NESWOOD, ESQUIRE</p> <p>12 MICHAEL S. CARTER, ESQUIRE</p> <p>13 NATIVE AMERICAN RIGHTS FUND</p> <p>14 1506 Broadway</p> <p>15 Boulder, Colorado 80301</p> <p>16 (303) 447-8760</p> <p>17 - and -</p> <p>18 SAMANTHA B. KELTY, ESQUIRE</p> <p>19 NATIVE AMERICAN RIGHTS FUND</p> <p>20 1514 P Street, NW, Suite D</p> <p>21 Washington, DC 20005</p> <p>22 (202) 785-4166</p> <p>23</p> <p>24</p> <p>25</p>

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December 7, 2022

2 (5 to 8)

<p>1 APPEARANCES CONTINUED</p> <p>2 ALSO PRESENT:</p> <p>3 LAURIE STIRLING, Paralegal, NARF</p> <p>4 CHUCK WALEN</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 PAUL HENDERSON,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION BY COUNSEL FOR</p> <p>5 INTERVENOR-DEFENDANTS</p> <p>6 BY MR. GABER:</p> <p>7 Q Good morning, Mr. Henderson. My name is</p> <p>8 Mark Gaber. I am one of the attorneys for the</p> <p>9 defendant-intervenors in this case.</p> <p>10 And could you just please state your</p> <p>11 name, for the record.</p> <p>12 A Yes. It's Paul Henderson.</p> <p>13 Q And have you been deposed before?</p> <p>14 A I have not.</p> <p>15 Q So I'll go over a couple of the ground</p> <p>16 rules, in that case.</p> <p>17 The deposition is a little bit different</p> <p>18 than a normal conversation because we have a court</p> <p>19 reporter here. She is transcribing everything</p> <p>20 that we say. So it's important that we both talk</p> <p>21 slowly so that she can get the words down, but</p> <p>22 also that we not interrupt each other. And that</p> <p>23 can sometimes be hard, because in a normal</p> <p>24 conversation you would anticipate what someone is</p> <p>25 saying, and maybe interject?</p>
<p>1 CONTENTS</p> <p>2 EXAMINATION OF PAUL HENDERSON</p> <p>3 By Mr. Gaber 7</p> <p>4 By Mr. Phillips 34</p> <p>5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 (none)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 In this case I just ask, I will do my</p> <p>2 best not to interrupt you. I will probably</p> <p>3 violate that rule more than you will. But we both</p> <p>4 should try to be cognizant of the fact that she is</p> <p>5 here and taking our words down, and that that's</p> <p>6 not an easy task if we talk over each other.</p> <p>7 Is that okay with you?</p> <p>8 A Yeah, very good.</p> <p>9 Q Another is that it's important to give</p> <p>10 verbal responses. Nodding of the head or uh-huh</p> <p>11 is hard for the court reporter to take down and</p> <p>12 get a clear transcript. So please do give verbal</p> <p>13 answers.</p> <p>14 And those are, you know, I think for our</p> <p>15 court reporter, those are the two most important</p> <p>16 things. I'd also say that if at any point you</p> <p>17 need a break, please let me know. I would just</p> <p>18 ask that if there is a question pending, that you</p> <p>19 give the answer to that question and then, you</p> <p>20 know, we can go ahead and take that break, if</p> <p>21 necessary.</p> <p>22 I don't anticipate that we're going to be</p> <p>23 taking a whole lot of your time this morning. And</p> <p>24 so hopefully the break issue won't be as much of</p> <p>25 one as it can be when these things go on for seven</p>

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3 (9 to 12)

<p>1 hours. So just let me know if you need that, 2 though. 3 A Very good. 4 Q I will assume that you understand my 5 question unless you say otherwise. So if you 6 don't understand please say so, and I'll do my 7 best to clarify. 8 Does that work for you? 9 A Yes. 10 Q And you have counsel here. There's 11 counsel for the state here. If folks don't like 12 the way I have asked my question, they may object 13 after I ask it. Unless you're instructed by your 14 counsel not to answer for attorney-client 15 privilege reasons, which I don't anticipate 16 needing to get into that issue, you should just 17 wait for the objection and then go ahead and 18 answer my question. 19 Does that make sense? 20 A Yes. 21 Q Is there any reason that you can't answer 22 my questions fully and truthfully today? 23 A No. 24 Q Now, obviously we're doing this 25 deposition remotely. And so I'm going to ask you</p>	9	<p>1 A I guess not. I don't know how to -- I'm 2 not a tech guy, so I don't know that. 3 Q I just want to make sure there's not, 4 like, e-mail or some sort of messaging software or 5 anything. 6 But it sounds like if it were there, you 7 wouldn't even know what to do with it. 8 Am I right? 9 A That's correct. 10 Q What, if anything, did you do to prepare 11 for this deposition? 12 A Not really anything. I knew that it was 13 coming, and I'm confident in my ability to answer 14 any questions. I didn't -- 15 Q Did you have any meetings with your 16 counsel, for example? 17 A I did, yeah. Just because I've never 18 done this before. 19 Q And when did that meeting occur? 20 A We met yesterday for a small period of 21 time. 22 Q And that was in person or over the phone? 23 A It was in person. 24 Q Who was present for that meeting? 25 A Ryan.</p>	11
<p>1 a couple of questions that I wouldn't if I were in 2 the room with you. 3 I gather you are at your counsel's law 4 office. 5 Is that right? 6 A That's correct. 7 Q And who is in the room with you? 8 A It's Paul Sanderson and Ryan Joyce. 9 Q Anyone else in the room? 10 A No. 11 Q And Mr. Sanderson and Mr. Joyce, are they 12 seated to the side of you or across from you? 13 A Ryan is seated across from me, and Paul 14 is seated to my right. 15 Q And do you have any notes in front of 16 you? 17 A I will be taking notes, yes. 18 Q But do you have any notes in front of you 19 now? 20 A No, I do not. 21 Q And on the computer screen, are there any 22 windows open, other than this Zoom screen? 23 A I don't know. 24 Q None that you're looking at on the 25 screen?</p>	10	<p>1 Q Anyone else? 2 A No. 3 Q Did you review any documents to assist 4 you in getting ready for today? 5 A I did not. 6 Q Did you talk to Mr. Walen at all in 7 preparing for today? 8 A I did not. 9 Q What was your -- what do you do for work? 10 A I own and operate a farm here in North 11 Dakota. 12 Q And where in North Dakota is that? 13 A It's in a small village of Calvin, on the 14 edge of the small village of Calvin. 15 Q And that's -- 16 A In North Dakota. 17 Q Is that in Cavalier County? 18 A It is. 19 Q And how long have you had that farm? 20 A My entire life. 21 Q Was that passed down from family, or did 22 you start that? 23 A Not relevant. But, yeah, it was passed 24 down. 25 Q Do you have any -- what sort of roles in</p>	12

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4 (13 to 16)

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<p>13</p> <p>1 the community do you play? Are you involved in 2 local government at all?</p> <p>3 A Yeah. I mean, I'm on my township board. 4 I'm on the county zoning board. I'm a volunteer 5 fire department volunteer. I've been an EMT 6 for -- in the past. And I've also been involved 7 in local politics as a -- participated in all the 8 Republican side of the meetings. And I was the 9 chairman in District 10 for about nine years.</p> <p>10 Q Are the town board and the -- well, the 11 town board position, is that an elected position?</p> <p>12 A The township board is elected, yes. The 13 zoning board is an appointed position.</p> <p>14 Q How long have you been on the town board?</p> <p>15 A Twenty-five years probably.</p> <p>16 Q And how frequently are those elections?</p> <p>17 A They're every year. But there's --</p> <p>18 Q Are they partisan or --</p> <p>19 A They're staggered.</p> <p>20 No, they're not partisan. They're 21 nonpartisan.</p> <p>22 Q And what is the -- I know you said 23 Calvin, but that's the city that is nearby. Is 24 the township different?</p> <p>25 A Yeah, the township would be Glen Isle</p>	<p>15</p> <p>1 A Yeah. I mean, that -- there was some 2 controversy because we weren't allowed to reorg.</p> <p>3 Q Do you know why that was the case?</p> <p>4 A Yeah. The leadership of the Republican 5 party in the state interpreted a law that was 6 passed in November saying that you -- if you had 7 more than 25 percent population change in your 8 district, because of redistricting, you were -- 9 mandatorily you had to -- you had to reorganize at 10 that point.</p> <p>11 But there was really nothing -- this was 12 a new law. And historically if you changed the 13 boundaries, you were allowed to reorganize. So 14 there was some controversy there.</p> <p>15 Q There was a meeting where folks walked 16 out.</p> <p>17 Is that right?</p> <p>18 A That was a different meeting. That was a 19 state meeting that was in, I want to say December 20 of last year. So that --</p> <p>21 Q And was that also related to the 22 boundaries of the district chairs and whatnot?</p> <p>23 A Yes.</p> <p>24 Q And what was your -- you were one of the 25 participants that walked out.</p>
<p>14</p> <p>1 Township, but the down is, kind of for reference 2 point, we only live a couple blocks away from that 3 town, so that's kind of what we say we're from.</p> <p>4 Q Right. And who appointed you to the city 5 zoning -- or I'm sorry, to the county zoning 6 board?</p> <p>7 A One of the commissioners.</p> <p>8 Q Now, you said you were the chair of the 9 District 10 Republican party.</p> <p>10 Is that right?</p> <p>11 A That's correct.</p> <p>12 Q And that was obviously prior to 13 redistricting.</p> <p>14 Do you hold a position within your 15 current district for the Republican party?</p> <p>16 A I do not. I do not.</p> <p>17 Q Did you run for a position for the -- for 18 your current district party?</p> <p>19 A No. There was no reorganization after 20 the redistricting, so that was not available.</p> <p>21 Q Now, I know there was some controversy, a 22 meeting of the Republican party related to 23 redistricting and the positions.</p> <p>24 Is this along the lines of that issue 25 that happened?</p>	<p>16</p> <p>1 Is that right?</p> <p>2 A I was.</p> <p>3 Q And what was your view on what was 4 happening there?</p> <p>5 A It was very unprofessional, and we were 6 not allowed to get our views across to the body 7 that were there. And so at some point we decided 8 that we would, as a block we would remove 9 ourselves.</p> <p>10 Q And you were attending as a proxy for 11 District 9.</p> <p>12 Is that right?</p> <p>13 A I was, yeah.</p> <p>14 Q Whose proxy did you have?</p> <p>15 A Tim Litvin's.</p> <p>16 Q And is he the current chair for the 17 Republicans for District 9?</p> <p>18 A He's not.</p> <p>19 Q Who is that?</p> <p>20 A That's a good question. I'm kind of 21 terrible with names, so ...</p> <p>22 It may come to me; it may not.</p> <p>23 Q Okay. When will be the sort of election 24 for those positions?</p> <p>25 A They will come due in the new year, from</p>

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5 (17 to 20)

<p>17</p> <p>1 January to April, I believe, is the time slot for</p> <p>2 reorganizations in North Dakota.</p> <p>3 Q And do you intend to run for a position</p> <p>4 when that happens?</p> <p>5 A I haven't decided yet, but it's possible.</p> <p>6 Q Other than that position as the chair of</p> <p>7 the District 10 for the Republicans, have you held</p> <p>8 any other positions within the state Republican</p> <p>9 party?</p> <p>10 A Yeah. I was on the executive board as a</p> <p>11 regional chairman for a couple of terms, which</p> <p>12 gave me the ability to be on the executive</p> <p>13 committee.</p> <p>14 Q And when was that?</p> <p>15 A Again, I think it was probably a</p> <p>16 four-year stint. But it was probably five years</p> <p>17 ago.</p> <p>18 Q What about on the national Republican</p> <p>19 party?</p> <p>20 A I was available to the national</p> <p>21 Republican party for a couple of conventions. I</p> <p>22 served as the resolution committeeman in 2012 in</p> <p>23 Tampa.</p> <p>24 Q What does the resolution committeeman do?</p> <p>25 A He takes the resolutions that are in the</p>	<p>19</p> <p>1 A No.</p> <p>2 Q What about an independent candidate?</p> <p>3 A No, I haven't.</p> <p>4 Q Now, I understand that your wife is Donna</p> <p>5 Henderson.</p> <p>6 Is that right?</p> <p>7 A Correct.</p> <p>8 Q And she ran for and was elected as the</p> <p>9 new representative for House District 9B, as in</p> <p>10 boy.</p> <p>11 Is that right?</p> <p>12 A That's correct.</p> <p>13 Q Had she run for office before this</p> <p>14 election?</p> <p>15 A Not the State House.</p> <p>16 Q What other office had she run for?</p> <p>17 A She ran for a position at the state party</p> <p>18 a couple of years ago.</p> <p>19 Q Did she get elected to that position?</p> <p>20 A She did not.</p> <p>21 Q And I should ask, aside from the elected</p> <p>22 position you have on the county -- or, sorry, the</p> <p>23 town board, have you held any other elected</p> <p>24 office?</p> <p>25 A No.</p>
<p>18</p> <p>1 national Republican party and reviews them and</p> <p>2 brings forth any relevant new resolutions that</p> <p>3 might be relevant to the party in the new election</p> <p>4 cycle.</p> <p>5 Q Did you work on the party platform as</p> <p>6 part of --</p> <p>7 A That's what it is, yes.</p> <p>8 Q Aside from your official roles in the</p> <p>9 state and national Republican party, are you a</p> <p>10 part of any other political organizations?</p> <p>11 A No.</p> <p>12 Q Have you worked on any political</p> <p>13 campaigns?</p> <p>14 A Certainly.</p> <p>15 Q And how many, would you say?</p> <p>16 A Twenty-five.</p> <p>17 Q So whenever there's an election, are you</p> <p>18 pretty actively involved --</p> <p>19 A Yeah.</p> <p>20 Q -- and working on --</p> <p>21 A Yes.</p> <p>22 Q And has that been exclusively for</p> <p>23 Republican candidates?</p> <p>24 A It has.</p> <p>25 Q Never worked for a Democratic candidate?</p>	<p>20</p> <p>1 Q Just the -- I guess the District 10 for</p> <p>2 the Republican party.</p> <p>3 That's elected. Right?</p> <p>4 A That is elected, correct. And so is the</p> <p>5 regional chairmanship. That's an election as</p> <p>6 well.</p> <p>7 Q But you have never run for the state</p> <p>8 legislature?</p> <p>9 A No. I was -- I did in -- I ran in our</p> <p>10 endorsing convention in 2018, but I was</p> <p>11 unsuccessful.</p> <p>12 Q And can you just explain for me the</p> <p>13 endorsing convention versus -- I know you all have</p> <p>14 primary elections as well.</p> <p>15 What is the role of the endorsing</p> <p>16 convention?</p> <p>17 A The endorsing convention is a political</p> <p>18 party function. And so all the constituents that</p> <p>19 want to declare that they're Republicans go to an</p> <p>20 endorsing convention in the district and vote on</p> <p>21 who they want to run as a candidate.</p> <p>22 Q And if you don't get the endorsement, can</p> <p>23 you still run, you know, with the state, on the</p> <p>24 primary?</p> <p>25 A Certainly.</p>

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6 (21 to 24)

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<p>21</p> <p>1 Q It's just a matter of who, you know, gets 2 the official endorsement of the local party. 3 Is that the idea? 4 A Yes. 5 Q In the most recent election for your 6 wife, did she have the endorsement at the 7 convention for District 9B? 8 A She did. 9 Q And was that over an incumbent state 10 representative? 11 A Correct. 12 Q What was that person's name? 13 A Charles Damschen. 14 Q And had he been the incumbent for what 15 was formerly District 10? 16 A Correct. 17 Q Do you know how long he was in that 18 position? 19 A I want to say 12 years. 20 Q Okay. 21 A I think he served 12 years. 22 Q What motivated your wife to run this 23 time? 24 A Well, we had talked about running, you 25 know. It's kind of a personal choice. And our </p>	<p>23</p> <p>1 decided that she probably would have a better 2 chance with the name recognition. 3 Is that the idea? 4 A Correct. And she's better looking as 5 well. 6 Q And from my experience in Wisconsin, the 7 State House races are more on the radio than they 8 are on the televisions. 9 A True. True. 10 Q I see on her website she says that, you 11 know, with the recent redistricting process, our 12 district border has changed, and now I'm very 13 excited about the new District 9B. And she 14 mentions having worked in Rolla. 15 Did you share her sort of view and 16 excitement about the new boundaries for 9B? 17 A We did. 18 Q What in particular did you like about 19 them? 20 A I think the opportunity was that by 21 moving a great portion of District 10, and 22 combining it with Rollette and Towner Counties, 23 that it gave -- it gave a Republican a chance to 24 win. 25 Q And that in your view was an improvement? </p>
<p>22</p> <p>1 time of life was ready for a -- to take a run at 2 the State -- a State House position. 3 Q Did she have any issue with the incumbent 4 that was part of the motivation? 5 A Well, I don't think that was -- that 6 wasn't -- any time you run against an incumbent, 7 there's that. But that wasn't the primary reason, 8 I believe. 9 Q Did the redistricting play a role in her 10 decision? 11 A Well, only reason that that would play a 12 role is that, again with Donna and I, just our 13 personal conversations, when they dissolved 14 District 10 and moved us into District 9, she had 15 worked in the Town of Rolla for 14 years, and so 16 she was better positioned, I think, to run against 17 an incumbent, you know, district-wide than I would 18 have been. 19 Q So you guys were sort of deciding as 20 between the two of you who should run. 21 Is that correct? 22 A Yeah. I think so. I think we would have 23 ran. If all things would have stayed the same, 24 you know, one of us would have ran in District 10. 25 Q And given her work in Rolla, you guys </p>	<p>24</p> <p>1 A It was the reality. I don't know if it 2 was an improvement, but it was a reality of what 3 we saw as far as the -- 4 Q And -- I'm sorry. Continue. 5 A I mean, that's -- we looked at the 6 numbers, and we felt that it was a good 7 possibility that we could pull it off and she 8 could win. 9 Q Your former district, District 10, that 10 was a district that also favored Republicans. 11 Is that right? 12 A Correct. Correct. 13 Q And your view is that 9B does as well? 14 A It's a lot closer to 50/50, but it is -- 15 there is a slight advantage I think to the 16 Republicans. It just depends on who comes out to 17 vote. I mean, I can't -- I can't sit here and 18 tell you what the vote percentages are, because 19 we've only had one election cycle. 20 Q Donna won by a large margin. Right? 21 A She ran -- I mean, she won handily, yes. 22 Q I think she -- 56.5 percent against an 23 incumbent. Right? 24 A Correct. 25 Q The incumbent, Marvin Nelson, he had run </p>

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7 (25 to 28)

December 7, 2022

<p>1 for governor before. Right?</p> <p>2 A He did.</p> <p>3 Q What was your impression in Cavalier</p> <p>4 County of folks' thoughts on him?</p> <p>5 A I don't really know that. I mean, I --</p> <p>6 it's not something I had conversations with people</p> <p>7 about more then.</p> <p>8 Q I gather from the vote totals, they liked</p> <p>9 your wife better?</p> <p>10 A Yeah. Yeah. Well, we worked hard, too,</p> <p>11 so there's that.</p> <p>12 Q So how did you become a plaintiff in this</p> <p>13 case?</p> <p>14 A Well, I became aware that the split was</p> <p>15 going to happen. And I think I had a conversation</p> <p>16 with Terry Jones on the phone one day, and we</p> <p>17 talked about it. And, you know, this was</p> <p>18 something that was brand-new, and that raised red</p> <p>19 flags for me right away. And I just latched onto</p> <p>20 the constitutional argument that's -- that I will</p> <p>21 stick with, that in District 9, during our</p> <p>22 election I got to vote for one representative, and</p> <p>23 the rest of the 47 -- or 45 districts in the state</p> <p>24 got to vote for two representatives. So I felt</p> <p>25 like that was probably not equal application of</p>	<p>25</p> <p>1 A Oh, I would say November, December of</p> <p>2 last year, somewhere in that area.</p> <p>3 Q And did he ask you if you would be</p> <p>4 willing to be a plaintiff?</p> <p>5 A No.</p> <p>6 Q What did he say?</p> <p>7 A We just generally talked about the split</p> <p>8 and how both him and I picked up on the fact that</p> <p>9 it was probably unconstitutional. And that was</p> <p>10 pretty general. Pretty general conversation.</p> <p>11 Q Do you know how he got your name or why</p> <p>12 he reached out to you?</p> <p>13 A I don't.</p> <p>14 Q He didn't tell you who had said that he</p> <p>15 should call you?</p> <p>16 A He did not. But you've got to realize</p> <p>17 that it's a small state, and I've been in the --</p> <p>18 politics for 25 years. So it's not like I'm</p> <p>19 unknown.</p> <p>20 Q And you were the -- at the time you were</p> <p>21 the Republican chair for what was District 10,</p> <p>22 which covered this part of this territory. Right?</p> <p>23 A Correct.</p> <p>24 Q And just I think we -- I think this was</p> <p>25 implied, but you live in the Subdistrict 9B.</p>
<p>26</p> <p>1 constitutional law.</p> <p>2 Q So I just want to -- to clarify for the</p> <p>3 record. When you say "the split," you mean</p> <p>4 District 9 being split into two subdistricts?</p> <p>5 A Correct.</p> <p>6 Q And you said you had a conversation with</p> <p>7 Terry Jones. Mr. Jones was an incumbent state</p> <p>8 representative from District 4.</p> <p>9 Is that correct?</p> <p>10 A That's correct.</p> <p>11 Q And did he reach out to you?</p> <p>12 A He did.</p> <p>13 Q How do you know Representative Jones?</p> <p>14 A I don't really know him.</p> <p>15 I mean, I know of him because he was in</p> <p>16 the House. But I didn't -- I don't have a</p> <p>17 personal relationship with Terry.</p> <p>18 Q What was the -- did he call you, did he</p> <p>19 e-mail you? How did he reach out?</p> <p>20 A I believe he called me.</p> <p>21 Q And what did you talk about?</p> <p>22 A Just the -- just the split of the</p> <p>23 district and how that -- how that was going to</p> <p>24 affect us going forward.</p> <p>25 Q When was that conversation?</p>	<p>27</p> <p>1 Is that right?</p> <p>2 A That's correct.</p> <p>3 Q And I think you explained it a little</p> <p>4 bit, but make sure I'm right.</p> <p>5 Your concern is that you're unable to</p> <p>6 vote for two state representatives at large; but,</p> <p>7 rather, you vote for one that's dedicated to your</p> <p>8 subdistrict.</p> <p>9 Is that your concern?</p> <p>10 A That's correct.</p> <p>11 Q And in terms of, you know, you mentioned</p> <p>12 that you thought it was unconstitutional. I</p> <p>13 gather that your complaint is that it's unequal</p> <p>14 for you to get one when other voters in the state</p> <p>15 get two representatives that they vote for.</p> <p>16 Is that correct?</p> <p>17 A Yeah. I'm not a lawyer, but I know</p> <p>18 enough to know that that's my experience.</p> <p>19 Q And when you say you thought it was</p> <p>20 unconstitutional, is that the unequal treatment</p> <p>21 that you were concerned about?</p> <p>22 A Correct.</p> <p>23 Q Do you have any other objections or</p> <p>24 complaints about the redistricting plan?</p> <p>25 A I guess I don't. I just -- that's what</p> <p>28</p>

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Transcript of Paul Henderson

8 (29 to 32)

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<p>29</p> <p>1 I'm basing my participation in, is that it's</p> <p>2 unconstitutional, in my view.</p> <p>3 Q And would you like to see the map</p> <p>4 changed?</p> <p>5 A I would like to have the opportunity to</p> <p>6 vote for two representatives, yeah.</p> <p>7 Q If that change made it harder for</p> <p>8 Republicans to win the district, would you like to</p> <p>9 see that?</p> <p>10 A It wouldn't matter.</p> <p>11 Q And aside from the fact that you cast</p> <p>12 your ballot for just one rather than two</p> <p>13 representatives, is there any other way in which</p> <p>14 you were affected by the way the map lines are</p> <p>15 drawn?</p> <p>16 A No. I guess that would be the height of</p> <p>17 my complaint.</p> <p>18 Q Did you cast a ballot in the 2022</p> <p>19 election? I assume your wife would have made you.</p> <p>20 A Yes, that is a correct statement.</p> <p>21 Q Do you regularly vote?</p> <p>22 A I do.</p> <p>23 Q Is there an election you've missed?</p> <p>24 A Not since I was 18. That's a long time</p> <p>25 ago.</p>	<p>31</p> <p>1 A Yeah.</p> <p>2 Q During the course of the campaign with</p> <p>3 your wife, did you guys text message each other?</p> <p>4 A I don't think so. We just talked.</p> <p>5 Q What kind of phone do you have?</p> <p>6 A Well, I had a Google phone, but I lost</p> <p>7 it. And I have an Apple phone now.</p> <p>8 Q Is that an iPhone?</p> <p>9 A Yeah. Don't ask me what flavor it is,</p> <p>10 though, because I couldn't tell you.</p> <p>11 Q Well, they're very expensive. I just had</p> <p>12 to get a new one. Not great.</p> <p>13 In your role as the Republican party</p> <p>14 chair for when it was for District 10, how did</p> <p>15 people, how did your sort of constituents or</p> <p>16 colleagues or party folks, how did they reach out</p> <p>17 to you? How do you all communicate?</p> <p>18 A Normally it was on -- by phone.</p> <p>19 Q Do you sometimes share text messages or</p> <p>20 back and forth over written communication with</p> <p>21 those folks?</p> <p>22 A No.</p> <p>23 Q Never?</p> <p>24 A I don't believe so.</p> <p>25 Q Who is paying for your attorneys in this</p>
<p>30</p> <p>1 Q Do you recall that you were -- the</p> <p>2 parties in the case were sent some document</p> <p>3 requests?</p> <p>4 A I don't understand that question. Go</p> <p>5 ahead.</p> <p>6 Q Sorry, that's the way we talk to each</p> <p>7 other.</p> <p>8 Did you look at any sort of document that</p> <p>9 had been sent by me or my colleagues or for the</p> <p>10 state for requests for production of the documents</p> <p>11 that you might have?</p> <p>12 A Yes. Yes, I perused those. Yes.</p> <p>13 Q What did you do, what was your process</p> <p>14 for determining whether you had material that</p> <p>15 would respond to those requests?</p> <p>16 A Just my memory.</p> <p>17 Q Did you look through any e-mail or look</p> <p>18 through your phone at all to see whether you had</p> <p>19 text messages or other materials that might</p> <p>20 respond?</p> <p>21 A I didn't. I just -- I don't text much</p> <p>22 and I don't e-mail much, so I didn't do any of</p> <p>23 those things.</p> <p>24 Q So you just thought about it, and that</p> <p>25 was basically the extent of it?</p>	<p>32</p> <p>1 matter?</p> <p>2 A That would be me and a few others.</p> <p>3 Q Is that like an hourly rate, or is that</p> <p>4 sort of a lump sum, capped amount? What is the</p> <p>5 arrangement there?</p> <p>6 A I believe it's an hourly rate.</p> <p>7 Q And who are -- you said you and some</p> <p>8 others. Who are the other people?</p> <p>9 A I don't actually have that in front of</p> <p>10 me. I mean, I know that Chuck is -- Chuck Walen</p> <p>11 has signed on to this complaint. I haven't really</p> <p>12 asked him how much money that he's put into the</p> <p>13 kitty.</p> <p>14 Q Any other people that you can identify?</p> <p>15 A I'm sorry to say I don't -- I don't know</p> <p>16 that.</p> <p>17 Q Do you know whether there are other</p> <p>18 people and you just don't know who, you can't</p> <p>19 think of who they are? Is that the case?</p> <p>20 A Yeah. I think there's -- there's some</p> <p>21 other donors, but I don't have their names in</p> <p>22 front of me.</p> <p>23 Q And what do you know about them? Are</p> <p>24 they individuals or are they any sort of entities</p> <p>25 or organizations?</p>

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9 (33 to 36)

<p>33</p> <p>1 A I think they're all people.</p> <p>2 Q Is the Republican party contributing any</p> <p>3 funds to pay for the case?</p> <p>4 A No. No, they're not.</p> <p>5 Q Have you discussed this lawsuit with any</p> <p>6 legislators?</p> <p>7 A Besides Terry, I don't believe I have.</p> <p>8 Q I suppose -- when is your wife sworn in?</p> <p>9 Is that January?</p> <p>10 A They actually got sworn in yesterday.</p> <p>11 Q Oh.</p> <p>12 A And, so, but this is all preliminary</p> <p>13 stuff. The actual session starts in January.</p> <p>14 MR. GABER: I am going to have us take a</p> <p>15 short break, if you don't mind. I don't think I</p> <p>16 have a ton more questions for you, but I want to</p> <p>17 think a little bit and talk to some folks. So</p> <p>18 maybe just a ten-minute break. Ten- or 15-minute</p> <p>19 break sound good?</p> <p>20 MR. SANDERSON: Yeah, that's fine.</p> <p>21 MR. GABER: Thank you.</p> <p>22 (A recess was taken.)</p> <p>23 MR. GABER: I do not have any further</p> <p>24 questions for you.</p> <p>25 I am going to pass the witness to</p>	<p>35</p> <p>1 A 1980.</p> <p>2 Q After high school did you attend any</p> <p>3 college?</p> <p>4 A Yeah. I took two years of -- at NDSU,</p> <p>5 and then I did one semester at NDSCS in Wahpeton.</p> <p>6 Q What did you study at NDSU?</p> <p>7 A Agronomy.</p> <p>8 Q And did that result in a degree?</p> <p>9 A It did not.</p> <p>10 Q What about in Wahpeton? You took one</p> <p>11 semester. Did you have any degree at the</p> <p>12 conclusion of that?</p> <p>13 A I did not.</p> <p>14 Q What did you study in Wahpeton?</p> <p>15 A Well, my wife was going there for dental</p> <p>16 hygiene, so I studied her quite a bit. Actually,</p> <p>17 it was an agronomy, it was an agronomy semester as</p> <p>18 well.</p> <p>19 Q Have you had any other education since</p> <p>20 high school in terms of technical training or any</p> <p>21 other formal education?</p> <p>22 A I just, I went through the EMT basic</p> <p>23 course. You know, that's probably 20 years ago.</p> <p>24 I was an EMT for seven years.</p> <p>25 Q Where did you do the EMT course?</p>
<p>34</p> <p>1 Mr. Phillips.</p> <p>2 MR. PHILLIPS: Thank you.</p> <p>3 EXAMINATION BY COUNSEL FOR DEFENDANTS</p> <p>4 BY MR. PHILLIPS:</p> <p>5 Q Still good morning, Mr. Henderson. I'm</p> <p>6 doing the questioning second today, so I will do</p> <p>7 my best not to repeat any of the questions you've</p> <p>8 already been asked. But if I do ask something</p> <p>9 you've already answered, please just bear with me.</p> <p>10 I am David Phillips. I'm not sure if we</p> <p>11 have met before specifically, but I represent the</p> <p>12 Governor in this case and the Secretary of State.</p> <p>13 And I will be doing the followup questions today.</p> <p>14 A Hello.</p> <p>15 Q I wanted to do just a few followups to</p> <p>16 clean up some of the matters that I heard you</p> <p>17 testify to earlier and to add a little bit more</p> <p>18 detail.</p> <p>19 I want to start with your background.</p> <p>20 Where did you go to high school?</p> <p>21 A I went to a now defunct high school</p> <p>22 called Border Central.</p> <p>23 Q Border Central. Where is that located?</p> <p>24 A In Calvin. Or it was.</p> <p>25 Q What year did you graduate?</p>	<p>36</p> <p>1 A In Rolla.</p> <p>2 Q What do you do currently for a living?</p> <p>3 A I'm in agriculture.</p> <p>4 Q And are you employed or self-employed?</p> <p>5 A As the owner and operator of a farm.</p> <p>6 Q What's the name of the operation?</p> <p>7 A There is no technical name. It's all</p> <p>8 under my name.</p> <p>9 Q How long have you been doing that?</p> <p>10 A Since I was 18.</p> <p>11 Q And you just farm the property around</p> <p>12 your residence in Calvin?</p> <p>13 A Yeah. I mean, there's -- it's spread out</p> <p>14 a little bit. But, yeah, it's around.</p> <p>15 Q I'm at a point where I'm likely to jump</p> <p>16 around between topics just because I've crossed</p> <p>17 things off my list that Mr. Gaber already covered</p> <p>18 with you. So please bear with me on that.</p> <p>19 What do you consider to be your race or</p> <p>20 ethnicity?</p> <p>21 A White, I guess.</p> <p>22 Q Do you consider yourself to be Native</p> <p>23 American?</p> <p>24 A No.</p> <p>25 Q And what's the race or ethnicity of your</p>

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10 (37 to 40)

<p>37</p> <p>1 wife?</p> <p>2 A I believe she would be white as well.</p> <p>3 Q Is she Native American?</p> <p>4 A She is not.</p> <p>5 Q I believe you had said in your testimony</p> <p>6 earlier that you voted in all of the elections</p> <p>7 since you were 18.</p> <p>8 Am I remembering that correctly?</p> <p>9 A That's correct.</p> <p>10 Q Would that include all state-wide</p> <p>11 elections in North Dakota?</p> <p>12 A As to the best of my recollection, yes.</p> <p>13 Q And all state legislative elections?</p> <p>14 A Correct.</p> <p>15 Q What's your current address?</p> <p>16 A 7980 99th Street, Northeast, Calvin with</p> <p>17 a C, C-A-L-V-I-N, North Dakota, 58323.</p> <p>18 Q And do you live there all year round?</p> <p>19 A I do.</p> <p>20 Q Do you own any other homes at all?</p> <p>21 A I don't.</p> <p>22 Q Some people spend part of the year down</p> <p>23 south. Are you that type of person, or do you</p> <p>24 live --</p> <p>25 A Haven't got there yet. We will be</p>	<p>39</p> <p>1 A Yeah.</p> <p>2 I mean, we may have taken some vacations</p> <p>3 and that type of thing, but our residency has</p> <p>4 always been Calvin.</p> <p>5 Q In this lawsuit, is it correct to say</p> <p>6 that you're seeking to eliminate the subdistrict</p> <p>7 seat in District 9?</p> <p>8 A That would be the end result, yes.</p> <p>9 Q Are you concerned in terms of what that</p> <p>10 would mean for your wife's current seat in the</p> <p>11 legislature?</p> <p>12 A I mean, obviously it's a concern, but I</p> <p>13 don't -- it doesn't raise itself to the level of</p> <p>14 overcoming my principles for the</p> <p>15 unconstitutionality of the process here.</p> <p>16 Q Do you know what the effect would be if</p> <p>17 the subdistricts were eliminated on your wife's</p> <p>18 seat?</p> <p>19 A I don't. I mean, it's never been done</p> <p>20 before. We don't know what's the court going to</p> <p>21 rule. I mean, that's, we don't know. If -- we</p> <p>22 could talk about what-ifs, I guess. But, I mean,</p> <p>23 I don't know.</p> <p>24 I don't know. I just -- I mean, it's</p> <p>25 possible that they would require a new election in</p>
<p>38</p> <p>1 renting a place here in Bismarck for the duration</p> <p>2 of the session.</p> <p>3 Q Have you already found a place to rent?</p> <p>4 A We have.</p> <p>5 Q And have you signed a lease?</p> <p>6 A No.</p> <p>7 Q So I take it you have not yet moved to</p> <p>8 Bismarck?</p> <p>9 A We have not.</p> <p>10 Q Your current address, is that in what's</p> <p>11 currently districted as Subdistrict 9B?</p> <p>12 A That's correct.</p> <p>13 Q Have you ever lived in the area that's</p> <p>14 subdistricted as Subdistrict 9A?</p> <p>15 A No.</p> <p>16 Q Has your wife lived with you the entire</p> <p>17 time you've been married?</p> <p>18 A She has.</p> <p>19 Q How long have you been married?</p> <p>20 A Changes every year. I think it's 39, but</p> <p>21 don't quote me on that, because I could get in</p> <p>22 trouble.</p> <p>23 Q That's fair.</p> <p>24 And has she lived there continuously that</p> <p>25 whole 39 years?</p>	<p>40</p> <p>1 2024 over the whole district. And if that</p> <p>2 happens, I guess we will work hard for</p> <p>3 re-election.</p> <p>4 Q Mr. Gaber had asked you earlier about</p> <p>5 your written discovery responses.</p> <p>6 Do you remember those questions?</p> <p>7 A Yeah. I mean, I looked at them.</p> <p>8 Q And did you sign those written discovery</p> <p>9 responses?</p> <p>10 A Yes. Yes.</p> <p>11 Q Did you look for documents to produce in</p> <p>12 response to those discovery requests that were</p> <p>13 made in this case?</p> <p>14 A No. I didn't really look a lot because I</p> <p>15 don't text and I don't e-mail a lot. I don't do</p> <p>16 that. Most of my communication is in person or</p> <p>17 over the phone.</p> <p>18 Q Did you look for any physical paper</p> <p>19 documents?</p> <p>20 A I don't have those, so I didn't look. I</p> <p>21 mean, I just -- I know I didn't write any letters</p> <p>22 or correspond with anybody in that vein, so ...</p> <p>23 Q Have you looked at the legislative record</p> <p>24 in this case on the legislative assembly website?</p> <p>25 A I --</p>

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Transcript of Paul Henderson
December 7, 2022

11 (41 to 44)


41	<p>1 Q I'm sorry, I cut you off. Go ahead.</p> <p>2 A I have not.</p> <p>3 Q You haven't looked at any of the</p> <p>4 documents or other materials on the legislative</p> <p>5 website relating to redistricting?</p> <p>6 A I have not.</p> <p>7 Q Did you look at those in preparing the</p> <p>8 answers to the written discovery?</p> <p>9 A No.</p> <p>10 Q Earlier I believe you had testified about</p> <p>11 a conversation that you had with Terry Jones.</p> <p>12 Do you recall that?</p> <p>13 A Vaguely. I mean, it was a year ago, so I</p> <p>14 don't -- I can't get specific what we exactly</p> <p>15 talked about. Generally, though, we talked about</p> <p>16 this, the unconstitutionality of the split.</p> <p>17 Q You had mentioned the discussion of the</p> <p>18 split.</p> <p>19 Do you have any recollection of any</p> <p>20 specific statement that you made during that call?</p> <p>21 A I don't.</p> <p>22 Q And do you have any recollection of any</p> <p>23 specific statement that Mr. Jones made during that</p> <p>24 call?</p> <p>25 A Specifically, no.</p>	43	<p>1 Q Did you, personally, attend or provide</p> <p>2 any testimony at the redistricting hearings at the</p> <p>3 legislature?</p> <p>4 A I did not.</p> <p>5 Q Did you, personally, attend the House or</p> <p>6 Senate floor debate on the redistricting?</p> <p>7 A I did not.</p> <p>8 Q Have you ever reviewed the videos of any</p> <p>9 of those hearings or debates of the redistricting</p> <p>10 that took place in 2021?</p> <p>11 A No.</p> <p>12 Q Have you ever reviewed transcripts of</p> <p>13 those proceedings?</p> <p>14 A I have not.</p> <p>15 Q Have you reviewed any documentation at</p> <p>16 all during the course of this litigation?</p> <p>17 A Just the -- I signed the complaint and</p> <p>18 I've read that. And of course we had meetings</p> <p>19 with counsel.</p> <p>20 Q I don't want you to tell me about</p> <p>21 anything that you talked about with your counsel.</p> <p>22 But anything else that you've reviewed? Documents</p> <p>23 you've reviewed or materials you've reviewed?</p> <p>24 A No.</p> <p>25 Q Have you retained an expert to testify at</p>
42	<p>1 Q Do you remember any details at all from</p> <p>2 that call, other than it involved the split of the</p> <p>3 districts?</p> <p>4 A No.</p> <p>5 Q Have you ever had any conversation with</p> <p>6 any other North Dakota legislator about the 2021</p> <p>7 redistricting?</p> <p>8 A No. Not to my recollection.</p> <p>9 Q Have you ever had a conversation with</p> <p>10 anyone employed with the North Dakota Legislative</p> <p>11 Council about the 2021 redistricting?</p> <p>12 A No.</p> <p>13 Q And that would include Claire Ness. If</p> <p>14 you had a conversation with her?</p> <p>15 A I don't know who that is.</p> <p>16 Q What about Emily Thompson?</p> <p>17 A No.</p> <p>18 Q And also Samantha Kramer; have you had a</p> <p>19 conversation with her?</p> <p>20 A Not that I'm aware of, no.</p> <p>21 Q Other than the conversation with Terry</p> <p>22 Jones, have you had any conversation with any</p> <p>23 other employee or agent of the State of North</p> <p>24 Dakota about the 2021 redistricting?</p> <p>25 A No.</p>	44	<p>1 trial in this case regarding the Voting Rights</p> <p>2 Act?</p> <p>3 A I would have to defer to counsel on that.</p> <p>4 I don't know.</p> <p>5 MR. PHILLIPS: Can we take just a</p> <p>6 few-minute break. I want to review a few things.</p> <p>7 I may be done, but I just want to check my notes.</p> <p>8 Let's go off the record briefly.</p> <p>9 (A recess was taken.)</p> <p>10 MR. PHILLIPS: I don't have any further</p> <p>11 questions, Mr. Henderson.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. PHILLIPS: Thank you.</p> <p>14 MR. SANDERSON: Any further questions,</p> <p>15 Mark?</p> <p>16 MR. GABER: No, nothing from me.</p> <p>17 Thank you for your time, sir.</p> <p>18 MR. SANDERSON: All right. I have no</p> <p>19 questions.</p> <p>20 Mr. Henderson, you have the right to read</p> <p>21 and sign your deposition, or you can waive that</p> <p>22 right. It's your choice. What would you like to</p> <p>23 do?</p> <p>24 THE WITNESS: I will waive today.</p> <p>25 COURT REPORTER: Mr. Phillips, do you</p>

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December 7, 2022

12 (45 to 48)

45	47
1 need a copy of the transcript?	1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2 MR. PHILLIPS: Yes.	2 I, Debra A. Whitehead, the officer before whom the
3 COURT REPORTER: Mr. Sanderson, do you	3 foregoing proceedings were taken, do hereby certify
4 need a copy of the transcript?	4 that the foregoing transcript is a true and correct
5 MR. SANDERSON: Yeah. Electronic	5 record of the proceedings; that said proceedings
6 condensed, please.	6 were taken by me stenographically and thereafter
7 MR. PHILLIPS: I'll second that,	7 reduced to typewriting under my supervision; that
8 electronic condensed is fine.	8 reading and signing was not requested; and that I am
9 (Off the record at 10:36 a.m. EST.)	9 neither counsel for, related to, nor employed by any
10	10 of the parties to this case and have no interest,
11	11 financial or otherwise, in its outcome.
12	12 IN WITNESS WHEREOF, I have hereunto set my hand and
13	13 affixed my notarial seal this 16th day of December,
14	14 2022.
15	15
16	16 My commission expires:
17	17 April 30, 2023
18	18
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21	21 E-NOTARY PUBLIC IN AND FOR THE
22	22 STATE OF MARYLAND
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1 ACKNOWLEDGMENT OF DEPONENT	
2 I, PAUL HENDERSON, do hereby acknowledge	
3 that I have read and examined the foregoing	
4 testimony, and the same is a true, correct and	
5 complete transcription of the testimony given by	
6 me, and any corrections appear on the attached	
7 Errata sheet signed by me.	
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10 (DATE) (SIGNATURE)	
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