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1 marked the "Affidavit of David Ripley," and that
 2 would be Exhibit 1.
 3 Now I need to just make some technical
 4 objections, and you don't really need to pay
 5 attention to these if you don't want to.
 6 MR. GILMORE: I would like to make the
 7 following objections to Mr. Ripley's affidavit,
 8 which I guess we could call the first affidavit.
 9 I object to the second sentence of
 10 Paragraph 9, because Mr. Ripley has not provided
 11 a copy of the contract with his affidavit. This
 12 objection is under the thousand series of Rules
 13 of Evidence.
 14 I object to Paragraph 10 as hearsay
 15 concerning what IEA leadership determined in the
 16 1980s.
 17 I object to the first sentence of
 18 Paragraph 11 to the extent that it refers to a
 19 contract that has not been produced.
 20 I object to Paragraph 11 to the extent
 21 it's based upon a contract that has not been
 22 produced.
 23 I object to Paragraph 12 to the extent
 24 it's based upon a contract that has not been
 25 produced.

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1 I object to the second sentence of
 2 Paragraph 13 to the extent that it is based upon
 3 a contract that has not been produced.
 4 I object to Paragraph 16, Part A,
 5 Subpart 1, on the ground that it is based upon a
 6 direct-mailed document that has not been
 7 produced.
 8 I object to Paragraph 17 to the extent
 9 it is based upon a contract that has not been
 10 produced.
 11 I object to Paragraph 18 to the extent
 12 that it is based upon a contract that has not
 13 been produced.
 14 I object to Paragraph 19 to the extent
 15 that it is based upon a contract that has not
 16 been produced.
 17 And I'll tell you what, for the lawyers
 18 involved, I'll do a cut and paste of all my
 19 objections and mail you guys a document so you'll
 20 have it.
 21 MR. ALLEN: Thank you.
 22 MR. TROUPIS: That would be helpful.
 23 MR. GILMORE: Now, I think we're ready
 24 to start.
 25 Q. (BY MR. GILMORE) If you could turn to

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1 Paragraph 8 of your affidavit, which is on the
 2 bottom of page 2, I think, and then continues
 3 over to page 3.
 4 Do you see a reference there to the
 5 Idaho Education Association's Executive Director,
 6 Don Rollie?
 7 A. Um-hmm.
 8 Q. Is Mr. Rollie still alive, do you know?
 9 A. I think so, but I don't know for sure.
 10 Q. And also on the bottom of page 2 you
 11 refer to a consulting contract?
 12 A. Um-hmm.
 13 Q. Was that a written contract?
 14 A. Yeah, probably.
 15 Q. Do you have a copy of it, or have you
 16 retained a copy of it over the years?
 17 A. Probably not, but all that information
 18 is public record.
 19 Q. Where would it be a public record at?
 20 A. The Secretary of State's office.
 21 Q. So it would have been filed within the
 22 Sunshine materials?
 23 A. The expenditures to my consulting firm
 24 would have been.
 25 Q. Okay. But the contract itself might

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1 not have been, just the expenditures?
 2 A. A mass of expenditures over probably a
 3 decade.
 4 Q. Now, in Paragraph 9 you say in the
 5 second sentence, "I was offered a consulting
 6 contract"; is that the same one you refer to in
 7 Paragraph 8 or is that yet another contract?
 8 A. Well, over the course -- you know, I
 9 had a long-term contractual relationship with the
 10 Idaho Education Association starting in -- would
 11 have been the primary of 1986 -- so all the way
 12 through -- I worked every election, general and
 13 primary election, for IEA PACE Committee from '86
 14 through '92, at which point I became a staff
 15 person.
 16 Q. Now, can you look at Paragraph 10 of
 17 your affidavit, and I see -- do you describe the
 18 IEA as backing both Democrats and
 19 pro-education/moderate Republicans?
 20 A. Say that again.
 21 Q. Do you describe the IEA as backing both
 22 Democratic candidates and moderate Republican
 23 candidates, proeducation/moderate Republican
 24 candidates?
 25 A. Yeah, I think that's a fair

Summary of Comments on Ripley Deposition.ptx

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Number: 1 Author: user Subject: Sticky Note Date: 10/3/2010 11:39:20 AM
Objections to Ripley Affidavit

Author: lwinmill Subject: Sticky Note Date: 10/12/2010 7:42:16 AM

Overruled as to second sentence of para 9 because reference is to an "offer" of a consulting contract. May have been oral, and no terms of contract are referenced. Fact of contract has independent relevance regardless of terms.

Sustained as to para 10. Hearsay.

Overruled as to para 11 because reference is to acceptance of contract and no indication that it was in writing. Existence of contract by way of offer and acceptance is independently relevant, regardless of terms.

Overruled as to para 12. See above.

Overruled as to para 13. See above.

Sustained as to Para 16(b)(1), unless showing is made that original has been lost or destroyed. Rule 1002, 1003 and 1004.

Overruled as to paragraphs 17-19.


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1 Can you give me some examples of that?
2 A. Most certainly on social issues I think
3 you're talking about the guy who's as much to the
4 left of the Republican Party and the platform of
5 the Republican Party.
6 Q. Which specific social issues?
7 A. Abortion, homosexual marriage. I think
8 you also have to take into account his voting
9 behavior on spending and tax questions.
10 Q. Have you ever done any surveying,
11 specifically, of people in Latah County who
12 identify themselves as Republicans to see whether
13 they, in fact, are right in the center of the
14 Republican mainstream statewide or off to one end
15 or the other?
16 A. I'm not sure of the answer to that.
17 But I can tell you that the last primary
18 demonstrates --
19 Q. Well, my question was have you ever
20 done any surveying to find that out, so you
21 should be sure of the answer of whether you've
22 surveyed or not surveyed.
23 A. I'm not sure of the answer.
24 Q. You're not sure if you've surveyed that
25 issue?

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1 A. Right. But I am sure that the
2 conservatives won that primary, which I think
3 gives me some confidence in my -- you know, my
4 thesis that there are more mainstream Republican
5 than mainstream U of I.
6 There are a lot of people there that
7 don't have anything to do with the University of
8 Idaho, you know, farmers and businessman.
9 Q. Can we go, now, to page 2, and we'll
10 start the second part of your analysis, the 2006
11 congressional primary.
12 Now, am I correct, your thesis on this
13 page, the bottom part of this page, has to do
14 with crossover voting being manifested by the
15 vote for Sheila Sorensen; is that correct?
16 A. Yes.
17 Q. And you make a point that she got about
18 18 percent of the vote in the congressional
19 district, as a whole, and 31 in Latah County?
20 A. Yes.
21 Q. Wasn't there going to be some county
22 where she got her maximum vote and some county
23 where she got minimum vote?
24 A. I think that's irrefutable logic.
25 Q. Okay. Well, which county do you think


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1 was most likely to give her the maximum vote,
2 probably Latah?
3 A. Ada County.
4 Q. Ada. After Ada which is most likely,
5 probably Latah?
6 A. Nez Perce, maybe.
7 Q. Somewhere up around there. You
8 wouldn't expect her to have the same percentage
9 vote in every county in the state?
10 A. No.
11  Now, I'm going to ask you --
12 MR. GILMORE: I'm going to register
13 first a technical objection. Christ, in the
14 fourth paragraph under "Analysis of 2006
15 Congressional Primary" it says, "There were
16 widespread rumors at the time that Sorensen's
17 campaign was working Democrats in Latah County to
18 support her bid to stop 'right-wingers' from
19 taking control of the seat."
20 I'll object to that as hearsay, but I
21 will ask --
22 Q. (BY MR. GILMORE) -- what was the
23 source of those rumors or how did you find that
24 out?
25 A. I was very involved with the Sali

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1 campaign in that primary and, you know, she had
2 problems running as a Republican across that
3 district, given her voting record, particularly
4 on social issues and a couple of text votes and
5 spending questions that really created problems
6 for her in terms of trying to appeal to the base
7 of the Republican Party.
8 And so as the campaign developed we
9 began to hear numerous accounts that they had a
10 strategy of trying to get crossover voting
11 organized in Latah County, because it was a pool
12 of, you know, socially liberal people that would
13 be open to her message, frankly.
14 Q. Were there six candidates in that race
15 that year?
16 A. I think that's right.
17 Q. So was Representative Sorensen's
18 strategy trying to cut herself out from everybody
19 else that were all conservative, and "I'm the
20 moderate, everybody ought to vote for me"; is
21 that what she was trying to do?
22 All she needed to do was get 25 to
23 30 percent to win.
24 A. That may be a fair way to characterize
25 it.

 Number: 1 Author: user Subject: Sticky Note Date: 10/3/2010 2:21:14 PM
Objection to Ripley Memorandum

 Author: lwinmill Subject: Sticky Note Date: 10/12/2010 7:45:18 AM
Sustained. Hearsay and inadmissible unless expert establishes that this is the kind of information upon which experts in his field rely.

1 probably the greatest impact on voting behavior,
2 followed by, you know, the information that a
3 voter might have about a specific candidate or
4 candidates.

5 The difficulty that moderate candidates
6 always face is struggling with that trust between
7 the voter and that candidate. And that trust
8 factor is oftentimes confused by moderate
9 positions. Because, in fact, what it suggests to
10 many voters is that they don't come to the office
11 or won't come to that position with a set of
12 convictions that's reliable.

13 So while there is appeal to being --
14 and I'm not arguing -- I mean, there is appeal to
15 being a moderate, and there is a place for that
16 in a campaign, it's also -- it's not as simple
17 as, you know, it might seem.


18 That, in fact, you do have questions
19 where that moderate position or a moderate
20 approach on some issues, if it becomes a
21 wholesale deal where voters begin to perceive
22 that it's not a question of being moderate and
23 reasonable -- it's a question of being
24 unprincipled, or perhaps even dishonest -- that
25 becomes, you know, deadly to a candidate, of any

1 let's say.
2 The moderates who would come in to --
3 let's call them moderate Independents, or
4 whatever -- they are largely not motivated by a
5 desire to sabotage, you know, the opponent's
6 party. It is more of a question of advancing an
7 ideological aim, a set of policy objectives that
8 is driven by their perception of constraints in
9 which they work.

10 For example, a Democrat voter in Canyon
11 County would be a fairly frustrated voter. If
12 you are a liberal in Canyon County, you would be
13 a fairly frustrated person. Your hopes of
14 winning a legislative seat for a Democrat in your
15 lifetime are pretty narrow.

16 So the notion is not really -- those
17 people are not crossing over -- in a race like
18 District 10, they are not crossing over to help
19 elect a Democrat in the fall. They are crossing
20 over because they want to help advance a policy
21 objective and are looking for the Republican
22 candidate who most agrees with them, or agrees
23 with them on some core or set issues or issue.

24 Q. (BY MR. ALLEN) So, today, isn't it
25 true there is no way to tell what the membership

1  part.
2 Q. So in your analysis, you did not
3 identify -- wait a minute. Let me see. What
4 evidence did you identify of strategic crossover
5 voting in any of those elections? And by
6 "strategic crossover voting," let me define that.
7 It's somebody who votes for a candidate with a
8 less broad general election appeal, so that the
9 opposing candidate in a general election will
10 have a better chance of defeating that candidate.

11 MR. TROUPIS: And I'm going to tender
12 an objection that that's a narrow definition of
13 strategic crossover voting that is not consistent
14 with the State's own expert report that describes
15 three different categories of crossover voting.

16 But you can go ahead and answer.

17 THE WITNESS: Well, in my experience,
18 in Idaho legislative primaries, which is where
19 the most frequent and prevalent example of
20 crossover voting happens -- most of this is
21 taking place at the legislative level -- the
22 motivations for that are not to enhance the
23 chances of the -- the Democrats who go into those
24 legislative primaries are not going in with a
25 notion of trying to elect a Democrat in the fall,

1 of the Republican Party is?

2 A. As in, there is no such thing as a
3 card-carrying Republican Party member?

4 Q. There is no party registration;
5 correct?

6 A. That's correct.

7 Q. And there is no membership list;
8 correct?

9 A. Not that I've ever heard of.


10 Q. So, in your view, do you have to be a
11 conservative to be a Republican?

12 A. Not necessarily. I think there are
13 some -- since there is no membership, I don't
14 know that there is actually a hardcore definition
15 of who's in and who's not.


16 The platform, I think, is designed to
17 be sort of a self-screening set of principles.
18 And certainly from election to election, and
19 candidate to candidate, that party platform
20 remains fairly consistent -- I think it's fair to
21 say -- for both parties, both political parties,
22 at least in terms of their core values.

23 And I don't know what -- there is no
24 magic figure, you know, that says you must agree
25 with 98.7 percent of the platform in order to be

 Number: 1 Author: user Subject: Sticky Note Date: 10/3/2010 8:14:13 PM
Plaintiffs' objection to deposition question

 Author: lwinmill Subject: Sticky Note Date: 10/12/2010 7:46:40 AM
Overruled. Counsel can point out the differences in the definition of "strategic crossover voting" and witness can refuse to accept that definition if he is not comfortable using it.

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1 a Republican. But I suppose there is some kind
2 of critical mass which is based on the person's
3 own integrity, you know, that says that, up to
4 this point, you know, I can see myself as a
5 Republican Party member. Past that point, I
6 can't. You know, and I suppose that that changes
7 over time based upon emotions and events and so
8 forth.
9 . In this case, the Republican Party has
10 requested registration as a remedy, to require
11 everyone to register by party. And so my
12 question is . . .
13 MR. TROUPIS: I'm going to tender an
14 objection. The only request is that Republicans
15 register. There is no request that everybody
16 register by party.
17 MR. ALLEN: Okay. Thank you for that
18 clarification.
19 Q. (BY MR. ALLEN) That's correct, that
20 they want Republicans to register as Republicans.
21 Now, this remedy would not have
22 prevented the liberal candidates you identified
23 from signing up as Republican candidates, would
24 it?
25 A. No.

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1 Q. And it wouldn't have prevented IEA
2 members or crossover Democrats from registering
3 as Republicans either, would it?
4 A. Well, that gets more problematic.
5 Certainly if there is party registration
6 required, even for primary elections, there will
7 be IEA or liberal Democrats who will go ahead and
8 make that decision, because the objective is that
9 important to them.
10 I think it will, however, impose a
11 major impediment for most of those folks who can
12 casually vote in a Democratic -- or in a
13 Republican primary, for short-term political or
14 policy reasons.
15 And, again, in my experience, this
16 crossover situation is not a cynical operation,
17 for the most part. I mean, I'm sure there are
18 some cynics out there, but I don't think that's
19 really generally what goes on.
20 It is, for the most part, an act of
21 sincere public policy objective, you know, hopes.
22 There is some principle at stake.
23 And, you know, that could be -- in
24 general terms, that could be protecting the
25 environment, you know, for conservation voters;


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1 it could be advancing public schools, if you're,
2 you know, talking about IEA members or those
3 people around that orbit.
4 So it's not a question of sabotaging
5 and all that nonsense. It's more a question of
6 trying to get pro-education or pro-environment
7 Republicans elected, because they can't elect
8 Democrats.
9 That, however, is one -- that's one
10 question. And for many Democrats and liberal
11 voters, that's a difficult decision to make, to
12 actually go in and cast a vote in the opposition
13 party's primary. Because there is sort of a
14 subtle implication that, you know, you've become
15 one of them. Right? And that's not a small
16 deal.
17 Q. And that's true whether there is
18 registration or not, is it not?
19 A. It is true, whether there is
20 registration or not. However, when you add the
21 requirement of registration, that, I think,
22 becomes a very large psychological barrier that
23 will be too -- a bridge too far for many liberals
24 and Democrat activists who just will . . .
25 And, again, I think, the pattern that

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1 we've discussed in my analysis, you're looking
2 at -- I think the strongest evidence of crossover
3 voting are those anomalous races where you start
4 to see a disproportionate turnout in a specific
5 race regardless of what's happening in the rest
6 of the ballot.
7 And the reason that I use that
8 analysis, in part, is because of my own
9 experience in organizing these crossover efforts.
10 It's one thing -- it is possible to talk a
11 Democrat voter, in an organized fashion, into
12 going in and voting in a specific legislative
13 race because of either the problems with the
14 incumbents or because of the -- or opponent, or
15 because of the value of one of the candidates.
16 But to talk them into voting on the entire, you
17 know, opposition party ballot, that's just not
18 going to happen.
19 Q. Well, they've already voted on the
20 whole opposition party ballot, don't they,
21 because they have to go in and they have to
22 select a Republican or a Democratic ballot today,
23 do they not?
24 A. Yeah; except that what we're seeing is
25 -- and it's consistent with the picture I'm

 Number: 1 Author: user Subject: Sticky Note Date: 10/3/2010 8:15:02 PM
Plaintiffs' objection to deposition question

 Author: lwinmill Subject: Sticky Note Date: 10/12/2010 7:47:23 AM
Overruled. Question rephrased to accommodate objection.

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1 school concept, and challenges to public
2 education.

3 I would also point out that Senator
4 Schroeder has, or had, a perfect voting record
5 with the Planned Parenthood and with the abortion
6 lobby, which was, I think, at odds with both the
7 platform and the majority opinion of the
8 Republican caucuses in the Legislature.

9 And, again, I offer those votes in
10 legislative history as -- I have no doubt that if
11 we had the time and the money, that we would find
12 a very long list of examples where these
13 particular individuals were using their office to
14 advance an ideological view that was at odds with
15 the Republican majority and at odds with the
16 party platform.

17 But I think it covers more than just
18 social issues. I think it covers -- there are
19 disagreements on economic/tax policy issues, and
20 that kind of development issues, and budget
21 questions, certainly.

22 So I think part of what is missed in
23 that analysis by Martin is, not all votes are the
24 same. And that blanket analysis, I think, covers
25 over a multitude of sins, as it were.

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1 Q. The notes that you were referring to,
2 are those the summaries of what you just talked
3 about and the votes of those three individuals?

4 A. Yes.

5 MR. TROUPIS: Would you guys like -- I
6 realize this is additional information, and the
7 only reason I introduced it at this point is so
8 that Dr. Martin can have an opportunity to review
9 it and to respond.

10 Q. (BY MR. TROUPIS) Would you mind if we
11 make copies of that so that counsel can have a
12 copy of the notes?

13 A. Yeah, I think that's fine.

14 MR. GILMORE: I think -- well, as soon
15 as you were done with your additional questions,
16 I was going to object as being far beyond the
17 Affidavit.

18 MR. ALLEN: Yes.

19 MR. GILMORE: But, be that as it may, I
20 may want to review this, so I'm going to have
21 some follow-up questions.


22 MR. TROUPIS: No, that's fine. I just
23 wanted to introduce it at this point because
24 we're going to depose Dr. Martin, and I want to
25 make sure that you were apprised of the issues.

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1 MR. GILMORE: Do we need to make copies
2 right now to give to the reporter?

3 MR. TROUPIS: We could do it at the
4 end, if you want.

5 MR. GILMORE: We'll do it at the end,
6 sure.

7 MR. TROUPIS: Okay. I have nothing
8 further 

9 MR. GILMORE: Okay. Well, I have some
10 follow-up. And, first, I'll make official what I
11 just said a second ago. I'll object to all of
12 the additional questions that Mr. Troupis raised
13 as being far beyond the scope of the deposition
14 and far beyond the scope of the original
15 documents.

16 MR. ALLEN: The Intervenors join.

17 MR. GILMORE: However, I will have some
18 follow-up questions, because, as we say, we never
19 know if our objections will be overruled or
20 sustained.

21

22 FURTHER EXAMINATION

23 QUESTION BY MR. GILMORE:

24 Q. I think one of the first things you
25 referred to was votes by Bastian, Andreason, and

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1 Bunderson on Senator Risch's property tax bill in
2 the special session, I believe.

3 A. Schroeder.

4 Q. Schroeder, okay. That was the summer
5 of 2006; is that right?

6 A. Yes.

7 Q. Have you done -- well, first of all,
8 let me ask about the bill that you've
9 characterized as property tax relief. Was that
10 also tied to an increase in sales tax?

11 A. Yes.


12 Q. So there was some tax shifting from
13 property taxes to sales tax; is that correct?


14 A. Yes.

15 Q. Do you know whether voters in
16 Mr. Bastian's district were advantaged or
17 disadvantaged by the property tax shift?

18 A. As a matter of fact, I believe it's the
19 case that Ada County property owners and
20 taxpayers received a substantial benefit from
21 that legislation.

22 Q. Well, the question was, do you know
23 whether, in particular, in Senator Bastian's
24 district, whether those voters wound up paying
25 more in sales tax than they saved in property tax

 Number: 1 Author: user Subject: Sticky Note Date: 10/3/2010 8:17:04 PM
Defendant and Intervenor-Defendants' objection to series of questions

 Author: lwinmill Subject: Sticky Note Date: 10/12/2010 1:19:39 PM
Overruled.
