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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE JOHN A. MENDEZ, JUDGE

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JESSE VANG; WANG CHANG; JOUA CHAO
MOUA; ALEXANDER VANG; DANG XIONG;
DOLLARSAI YURGH; JOUA YENG VANG;
MANISY MOUA; POUA VANG; RICHARD
VANG; and DOES 1-200,

Plaintiffs,

Vs.

CASE NO. 2:16-CV-2172 JAM

SHERIFF JON LOPEY, individually
and in his capacity as Sheriff
for the COUNTY OF SISKIYOU;
COLLEEN SETZER, individually and
in her capacity as Clerk for the
COUNTY OF SISKIYOU; ALEX
NISHIMURA, individually and in his
capacity as an agent of the
CALIFORNIA SECRETARY OF STATE; the
COUNTY OF SISKIYOU; CALIFORNIA
DEPARTMENT OF FORESTRY AND FIRE
PROTECTION; DOES 1-20, in their
capacity; and DOES 1-20, inclusive,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
RE: PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
TUESDAY, NOVEMBER 1, 2016, 2:50 P.M.

APPEARANCES:

For the Plaintiffs: CANNABUSINESS LAW, INC.
506 Broadway
San Francisco, California 94133
BY: KYNDRA MILLER, Attorney At Law

(Appearances continued)

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APPEARANCES

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For the Plaintiffs: LAW OFFICES OF RANDOLPH E. DAAR
506 Broadway
San Francisco, California 94133
BY: RANDOLPH E. DAAR, Attorney At Law

LAW OFFICES OF BRIAN A. FORD
506 Broadway
San Francisco, California 94133
BY: BRIAN A. FORD, Attorney At Law

For the Defendnats
Lopey, Setzer
County of Siskiyou: SPINELLI DONALD NOTT
815 S Street, Second Floor
Sacramento, California 95811
BY: DOMENIC D. SPINELLI, Attorney At Law
BY: ALISON W. WINTER, Attorney At Law
BY: AMY E. WILLIAMS, Attorney At Law

For the Defendnats
Alex Nishimura,
Calif. Sec. of State,
and Cal Firee: STATE OF CALIFORNIA, DEPT. OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
1300 I STREET
SACRAMENTO, CALIFORNIA 95814
BY: GEORGE WATERS, DEPUTY AG
BY: ALLISON GOLDSMITH, DEPUTY AG

Reported by: CATHERINE E.F. BODENE, CSR #6926, RPR
Official Court Reporter USDC, 916-446-6360
501 I Street, Room 4-200
Sacramento, California 95814

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 SACRAMENTO, CALIFORNIA, TUESDAY, NOVEMBER 1ST, 2016, 2:50 P.M.

2 ---o0o---

3 THE CLERK: You may remain seated. Court is again in
4 session.

5 Calling Civil 16-2172, Vang, et al, versus Lopey, et al.
6 Counsel, state your appearances, please.

7 MS. MILLER: Good afternoon, Your Honor. Kyndra
8 Miller appearing on behalf of the plaintiffs.

9 MR. SPINELLI: Good afternoon, Your Honor. Domenic
10 Spinelli appearing on behalf of Sheriff Jon Lopey, County of
11 Siskiyou Clerk Colleen Setzer and the County of Siskiyou.

12 MR. WATERS: Good afternoon. George Waters from the
13 Attorney General's Office, appearing on behalf of Alex
14 Nishimura who is seated behind me inside the railing. And
15 since last Thursday, Your Honor, the Attorney General has also
16 represented Cal Fire. I'm here with the woman next to me who
17 will introduce herself. She will respond on behalf of Cal Fire
18 if necessary.

19 MS. GOLDSMITH: Good afternoon, Your Honor. My name
20 is Allison Goldsmith. I am as my colleague has introduced me.

21 THE COURT: Okay.

22 MS. WINTER: Good afternoon. Alison Winter, also on
23 behalf of Sheriff Jon Lopey, County Clerk Colleen Setzer and
24 the County of Siskiyou.

25 MS. WILLIAMS: Good afternoon, Your Honor. Amy

1 Williams, also on behalf of the County of Siskiyou and Sheriff
2 Jon Lopey and County Clerk Colleen Setzer.

3 THE COURT: Ms. Miller, do you want to introduce your
4 colleagues?

5 MS. MILLER: Yes.

6 MR. FORD: Good afternoon, Your Honor. Brian Ford for
7 the plaintiffs.

8 MR. DAAR: Good afternoon, Your Honor. Randolph Daar
9 for the plaintiffs.

10 MR. FORD: We're accompanied by our law clerk.

11 MR. KRASNOFF: Jeffrey Krasnoff, Your Honor.

12 THE COURT: Welcome. This is on this afternoon on the
13 plaintiffs' motion for a preliminary injunction involving
14 allegations in a complaint with respect to alleged civil rights
15 violations of the Voting Rights Act and allegations regarding
16 searches done by the sheriff's department with respect to
17 marijuana issues going on in Siskiyou County.

18 Let me start first with, Miss Miller, your attempt to file
19 supplemental affidavits on October 30th, 2016. I'm not certain
20 what you were thinking or why you believed that you would be
21 entitled to file supplemental affidavits in this court, so I
22 want to start there to try to understand your thinking behind
23 violating every possible local, federal, procedural rule in
24 doing this.

25 You can see what my calendar is like. You can see how

1 important it is to me that lawyers read, are familiar with
2 and/or follow the court's rules. So I'm going to try to give
3 you an opportunity to explain what you were relying upon in
4 filing those affidavits.

5 If there is something that you found that I'm unaware of,
6 then I might reconsider my view that they are not part of the
7 record in this case and that each and every one should be
8 stricken.

9 But did you have something that you were relying upon that
10 you think allowed you to file these?

11 MS. MILLER: Your Honor, may I stand?

12 THE COURT: As long as we hear you. It doesn't matter
13 to me, if you feel more comfortable standing. The court
14 reporter has to be able to hear you and I have to be able to
15 hear you. If you want to come to the podium, come to the
16 podium.

17 MS. MILLER: Okay. Your Honor, this case has been
18 very emotional, tense and a lot of developments have occurred
19 since the filing of our complaint on September 12, 2016.

20 We have affiants who are coming forward as a result of the
21 acts that have occurred by the hands of certain defendants
22 since our filing.

23 THE COURT: I'm going to cut you off. It is very
24 important that lawyers answer my question. And it is a very
25 specific question. Do you have a rule, a Federal Rule of Civil

1 Procedure, a local rule, a rule that I have issued that you
2 think allowed you to file these supplemental affidavits,
3 because my court and every district court operates on
4 procedure.

5 And we're going to get into that a lot during this hearing,
6 but I'm not aware of any case or rule that would have allowed
7 you to file the supplemental affidavits, short of getting leave
8 from the court to do so, which you didn't. You just went ahead
9 and filed them.

10 Are you aware of anything?

11 MS. MILLER: Your Honor, for equitable purposes, and
12 in order to show the irreparable harm and the public
13 interest --

14 THE COURT: That's, again, not answering my
15 question.

16 MS. MILLER: No, Your Honor.

17 THE COURT: Okay. That's the answer. And it was
18 somewhat of a rhetorical question.

19 Mr. Spinelli, I don't blame you for filing the response
20 that you did, which was 96 more pages that I got, because you
21 weren't certain if I would, in fact, consider these
22 supplemental affidavits.

23 In the future, to all litigants, feel free to send an email
24 when something like that happens so that everyone is copied on
25 it, to maybe save your client some time and money in responding

1 to something that I'm not going to consider and have no basis
2 in law to consider.

3 So those supplemental affidavits are stricken. I obviously
4 have not read them and cannot read them. Most of them, as I
5 understand it, are from individuals that aren't plaintiffs in
6 this case.

7 MS. MILLER: Correct.

8 THE COURT: So they have no standing. And so we will
9 not be in any way, shape or form arguing the supplemental
10 information that was attempted to be presented to the court.

11 I'm not going to impose sanctions. I considered imposing
12 sanctions in the form of you reimbursing Mr. Spinelli for the
13 time that they put into responding to this.

14 Mr. Spinelli, you can ask, but I would deny that request,
15 if you want to make a record. It is a lesson learned in terms
16 of how this court operates and how district courts operate in
17 general so --

18 MS. MILLER: Thank you, Your Honor.

19 THE COURT: -- you have to follow the rules and you
20 have to have a basis for doing so. Okay.

21 There are numerous objections to the affidavits that were
22 submitted on behalf of the plaintiffs. Again, Miss Miller, in
23 terms of form and what is expected in this court, and again, I
24 think, universally across district courts, the affidavits that
25 you submitted have serious problems from just an admissibility

1 or evidentiary point of view.

2 In particular, as Mr. Spinelli points out, there is nothing
3 in these affidavits, and it is just a simple sentence that is
4 expected and should be contained in affidavits, which says as
5 follows, "If called upon to, I can testify competently and from
6 personal knowledge to the following." It's usually in the
7 first paragraph. That's missing from your affidavits.

8 Second is that there's always -- and this is in some of the
9 affidavits -- "I declare under penalty of perjury under the
10 laws of the State of California and the United States of
11 America that the foregoing is true and correct," and then it is
12 dated and signed and the location of the where it is signed is
13 indicated in the affidavit.

14 There are a number of affidavits, while they contain that
15 phrase, don't contain a date. That concerns me.

16 There's one affidavit in which the person admits that they
17 don't speak English, yet the affidavit is in English. And it
18 is signed by the individual, but there is no indication who
19 interpreted it, who the interpreter was, was the interpreter
20 qualified. So that calls into question the affidavit itself.

21 You, yourself, submitted an affidavit which is completely
22 inadmissible. It really is an argument in the form of an
23 affidavit. Affidavits are supposed to provide the court with
24 facts, facts and facts.

25 Your affidavit is nothing but opinion, opinion, opinion.

1 Your first paragraph:

2 (Reading:)

3 The local government in Siskiyou County is engaged in a
4 systematic campaign to deprive plaintiffs and other members
5 of the Asian community of their right to vote and their
6 right to the exclusive use and enjoyment of their private
7 property.

8 (Reading concluded.)

9 That's a wonderful opening sentence in a brief. It is
10 clearly improper in an affidavit. You can't testify. You
11 can't make yourself a witness. Otherwise I would have to take
12 you off the case. And you want to be the lawyer, not the
13 plaintiff. So please don't submit affidavits such as this from
14 yourself unless you suddenly want to make yourself a witness in
15 this case.

16 MS. MILLER: Understood, Your Honor.

17 THE COURT: For the record, the affidavit of Alexander
18 Vang contains no declaration under penalty of perjury.

19 The other affidavits, while containing facts as to what
20 occurred, as I indicated, they lack the language that "If
21 called upon to testify, I can testify competently from personal
22 knowledge."

23 There again are, as the defendants have pointed out, a
24 number of statements in these affidavits without foundation.
25 So I have looked at these. Obviously, as a court that is

1 intimately familiar with the rules of evidence and the
2 application of those, I have looked at the objections and have
3 reviewed the affidavits in light of the objections that have
4 been raised by the defendants.

5 Next, Cal Fire does not have to worry about anything here
6 today. You cannot and would not be subject to a preliminary
7 injunction since you weren't served on time. And while I
8 appreciate the attempt to file an opposition, you weren't
9 served with the complaint and/or the motion in time to allow
10 the plaintiffs to in any way obtain injunctive relief against
11 your client.

12 So the motion for preliminary injunction as to Cal Fire --
13 is it the California Department of Forestry and Fire
14 Protection, is that the proper title?

15 MS. GOLDSMITH: That is the proper title. They also
16 go by Cal Fire.

17 THE COURT: Okay. To the extent that we use Cal Fire,
18 the motion for preliminary injunction as to Cal Fire is denied.

19 I want to focus on the injunctive relief sought against
20 Mr. Nishimura first before I get to the sheriff and Siskiyou
21 County in general.

22 In reviewing the opposition by Mr. Nishimura to the motion
23 for preliminary injunction, other than the one time he went up
24 to Siskiyou County for three days, I didn't see any evidence of
25 anything that's occurred or that he's taken any action since

1 then that would warrant the need for a preliminary injunction
2 against Mr. Nishimura.

3 As he points out, it was -- correct me if I'm wrong -- it
4 was a one three-day trip, and he hasn't been up there since, no
5 action has been taken since. The secretary of state's office
6 doesn't intend to go back up there at all. Is that correct?

7 MR. SPINELLI: That is exactly correct, Your Honor.

8 THE COURT: So why do you need injunctive relief
9 against him?

10 MS. MILLER: From my understanding, Your Honor, the
11 secretary of state is and has gone up to Siskiyou County in
12 order to, one, monitor the polls which occurred on June 7,
13 2016. The secretary of state plans to return to Siskiyou
14 County on November 8th, 2016. To that end, we are requesting
15 that Alex Nishimura not be allowed to return because of the
16 impact that his presence had on my clients, the plaintiffs, as
17 well as the community, specifically the Asian community at
18 large when he participated in these visits to the properties of
19 not only the plaintiffs herein, but other persons of Asian
20 decent in Siskiyou County.

21 So the request is that prospectively going forward, that we
22 would request the court to enjoin Mr. Nishimura from
23 participating in any voter fraud investigation or any
24 investigation related thereof in Siskiyou County.

25 THE COURT: Okay. First, let's make it clear that you

1 only represent ten plaintiffs. So what, if anything, you want
2 to argue as to anyone else isn't relevant for purposes of this
3 motion. They're not before this court.

4 If you want to represent those individuals, then you've got
5 to find a way procedurally to make them part of this. If
6 you -- if this is going to turn into some type of class action,
7 then it should be a class action. But this isn't a class
8 action complaint that's before me.

9 They don't have standing. You can't argue on their behalf.
10 So you can only focus on those ten individuals that you
11 represent at this time, so I can't consider other arguments.

12 Second, the response back to that is, the secretary of
13 state's responsibility is to enforce the voting laws. And what
14 you're asking is for injunctive relief prohibiting someone, who
15 is employed by the secretary of state, from doing their job to
16 enforce the laws of the State of California.

17 And I'm looking for evidence as to what, if anything, is
18 likely to occur if -- even if Mr. Nishimura goes up to Siskiyou
19 County as part of his job responsibilities to monitor
20 elections, what do you expect will happen?

21 You're asking me to tell the secretary of state not to
22 allow one of their employees to do exactly what they're
23 required to do in terms of monitoring elections.

24 It goes back to my question of where is there evidence that
25 anything is going to happen that would require an injunction?

1 That's sort of question number 1.

2 Number 2, the other thing that keeps coming back to me over
3 and over in this case is that 70 percent of your plaintiffs
4 vote by mail, under the photo registration cards that I have
5 taken judicial notice of, they are permanent vote-by-mail
6 voters. So there's nothing that Mr. Nishimura could do to
7 affect them. They should have voted already, in fact, or they
8 could have voted already.

9 So I'm having a problem seeing how in any way those, at
10 least seven individuals, need injunctive relief at all. There
11 is no threat of intimidation, there's no threat they won't
12 vote. They've got their ballots already. They can go into the
13 privacy of their home, fill out the ballot and mail it in.

14 What am I missing?

15 MS. MILLER: Your Honor, the fear element of white
16 police officers showing up with body armor and assault rifles
17 on the property of my Asian clients who are a minority in
18 Siskiyou County.

19 The intimidation doesn't have to be repeated in order for
20 it to be effective. One time is all it takes for the -- for my
21 plaintiffs, my clients, who are of Asian descent, to be visited
22 by Cal Fire, an agent from the secretary of state, police
23 officers, in order to investigate voter -- alleged voter fraud.

24 The intimidation has already occurred. The chilling effect
25 has already occurred. The activities that the defendants

1 engaged in did not promote the exercise of the franchise. In
2 fact, it did the exact opposite, which is the reason why we're
3 here today, Your Honor.

4 THE COURT: So they didn't vote in June? Or did they
5 vote, the seven plaintiffs that vote by mail?

6 MS. MILLER: They did vote, Your Honor, but they feel
7 that after they voted, the certain defendants, from Sheriff
8 Lopey's office -- the sheriff's office --

9 THE COURT: I'm only talking about the secretary of
10 state right now.

11 MS. MILLER: Okay. Sorry.

12 After they voted some of the local actors -- I know you're
13 just talking about Nishimura -- but they came to their property
14 and raided their homes and violated their personal items. And
15 they feel that this was done in retaliation for their vote,
16 which is why they do not want to vote or are afraid to vote in
17 the next primary election or any election in Siskiyou County
18 for that matter because the damage has already been done by the
19 initial visit and the press releases and the continued
20 campaign.

21 THE COURT: You keep sliding over into -- now you are
22 talking again about the sheriff. I'm focusing on the secretary
23 of state and Mr. Nishimura and whether he really belongs in
24 this lawsuit or not.

25 We'll deal with that issue. There is a motion to dismiss,

1 obviously, that is pending in two weeks. But what am I going
2 to enjoin?

3 I don't think the law, at least you haven't presented any
4 law, that would allow me to prevent Mr. Nishimura from doing
5 his job to enforce the law, particularly with respect to seven
6 out of the ten plaintiffs that vote by mail.

7 There's, again, nothing he can do. There is no irreparable
8 harm here that that is going to occur that would warrant
9 injunctive relief as to this individual.

10 So I'm still looking for factually what do you think you've
11 submitted; and then second, and this will be a bigger issue,
12 legally what is the case that you think would support your
13 argument that injunctive relief is warranted here?

14 MS. MILLER: Mr. Nishimura showed up at the
15 plaintiffs' property under the impression of investigating
16 information on a voter registration form.

17 THE COURT: Sorry to interrupt you again, but you can
18 assume that I have read everything. I know what you alleged
19 happened.

20 This is a perspective, a moving forward, a request for
21 injunctive relief. And you still haven't answered my question
22 in terms of where is the evidence that your clients will
23 suffer, have suffered.

24 Subjective belief doesn't do it. It is is there evidence
25 that you have submitted, that I haven't seen, that would

1 require me to say to the secretary of state, "You cannot go up
2 to Siskiyou County and monitor the elections with this
3 employee," particularly given his affidavit that says that was
4 it, I went up for three days.

5 I can't issue an injunction based on speculation, on
6 guesswork. I still haven't heard from you, you know.

7 MS. MILLER: The affiants' statements made it clear
8 that Mr. Nishimura told them that they would go to jail if they
9 voted. Mr. Nishimura asked for local sheriffs to accompany him
10 to these locations.

11 THE COURT: They voted anyway. We're going in
12 circles. Let me ask Mr. Waters, is there anything he's going
13 to do that needs to be enjoined?

14 MR. SPINELLI: No. The declaration is short and
15 direct, and I think it explains all of this. No, he has no
16 plans of returning to Siskiyou County at any time in the
17 future. He's an employee. He's not a supervisor. I mean, if
18 a supervisor told him to go to Siskiyou County, he would have
19 to go. But there is no reason to believe that is going to
20 happen.

21 I also want to make clear, because opposing counsel has
22 referred to observers and the secretary of state, I represent
23 the individual. I don't represent the secretary of state. The
24 secretary of state is not a defendant in this action.

25 But now that it has come out, I will say that the secretary

1 of state did have observers in Siskiyou County for the June
2 election to make sure there was no voter intimidation, to deter
3 any possible voter intimidation.

4 I believe that will happen with the upcoming election, but
5 it has nothing to do with Mr. Nishimura. He's an investigator.
6 It is not what he does. His declaration is clear. He has no
7 intention of returning to Siskiyou County and has not been
8 there since June 2nd.

9 THE COURT: Anything further you want to add with
10 respect to just Mr. Nishimura?

11 MR. FORD: If I may, Your Honor?

12 THE COURT: Go ahead.

13 MR. FORD: Personally I have a bit of an issue with
14 this concept that voting undercuts the possibility of
15 intimidation in this case.

16 I don't believe that that actually absolves anyone from
17 liability. And I don't believe that an actual vote is seen as
18 any sort of defense to those charges.

19 In this instance the intimidation that is alleged is based
20 off, and this is admitted to in the defendants' affidavits as
21 well in support of their papers, is based off the idea that the
22 county clerk had identified these folks on the basis of their
23 property numbers being parcel numbers instead of physical
24 addresses, based off of their association with a movement to
25 overturn county ordinances that are prohibiting the growth of

1 medical marijuana.

2 There are two very suspect bases, particularly when the
3 court considers that each sheriff's deputy has stated under
4 penalty of perjury in their affidavit that they're familiar
5 with the fact that this area in particular does not use
6 physical addresses, it uses county-assigned parcel numbers.

7 It is also relevant when we consider that the county as a
8 party has woven this theory of marijuana throughout the entire
9 case.

10 Tying it back to the secretary of state, it was --

11 THE COURT: The secretary of state isn't a defendant.

12 MR. FORD: No.

13 THE COURT: We're only focused on Mr. Nishimura, who
14 has said in an affidavit, which has been not challenged at all
15 by you or your clients, and that is I'm not going back to
16 Siskiyou County. So it is a really simple practical question.
17 Why do you need injunctive relief against a defendant who has
18 already said that I'm not doing anything to -- if I accept your
19 allegations obviously that there is intimidation going on by
20 Mr. Nishimura, so I'll accept that for purposes of my
21 question -- he has told your clients, he has told you, I'm out.

22 And you're asking me to enjoin, and you can't question
23 that. There is nothing to dispute that. You haven't submitted
24 any evidence to dispute that. Again, courts don't issue
25 injunctions on the basis of speculation. It is pure

1 speculation, first of all, to say that he needs to be enjoined
2 because he's likely to do something.

3 And I look at that and say, he's already told me he's not
4 doing anything and there is nothing to contradict that.

5 It's a request for injunctive relief that, as far as I can
6 tell, as a matter of law, is unwarranted.

7 Is there some case that -- because I didn't see you cite a
8 case that said that when someone files an affidavit that says
9 that he will not engage in the conduct that lead to the request
10 in the first place, and the plaintiffs have accepted that, that
11 the court should still go ahead and issue an injunction anyway.

12 Show me that case, because in all my years I've yet to see
13 it.

14 MR. FORD: Your Honor, with all due respect, I think
15 the court is failing to consider this from the perspective of
16 the plaintiffs who are the aggrieved parties here. From their
17 perspective, living in, as the defendants have described, "an
18 arid, rural and rugged terrain, where there is no help to be
19 found for miles." And we have an ongoing situation of
20 essentially mass warrant executions using assault rifles. And
21 I know these are in the affidavits that the court has stricken,
22 but we do have --

23 THE COURT: You are doing the same thing Miss Miller
24 did. You're not focusing on this defendant. He doesn't have a
25 rifle. He's not going up there.

1 You know, we'll get to the sheriff, but we're talking about
2 an individual who was tasked to do his job and went up
3 there for three days and has no intention whatsoever of going
4 back.

5 So the remedy you're requesting -- and by the way, you
6 don't have to use the words "with all due respect." It drives
7 me crazy. You're an advocate. Argue as much as you want.

8 But I completely disagree with you that I'm not seeing it
9 from your clients' point of view. I'm taking your clients'
10 point of view, and your clients are being told this guy's never
11 coming back. And you have nothing to contradict that. It
12 would seem to me to be almost a moot issue in terms of
13 injunctive relief.

14 Whether he violated your clients' civil rights, whether he
15 said what they claim he said, that's an issue for -- that's a
16 different issue. I'm only focused on do your clients need or
17 as a matter of law are they entitled to injunctive relief
18 before the November 8th election.

19 And I'm still sitting here trying to figure out why?
20 What's the legal basis for granting injunctive relief against
21 this individual?

22 MR. DAAR: Your Honor, Randolph Daar. In light of the
23 comments made in court, I think the plaintiffs can accept that
24 Mr. Nishimura is not going to go back to Siskiyou. And I think
25 it is meaningful that it was said in open court, and I think it

1 will serve the purpose that we sought so...

2 THE COURT: I appreciate that. Okay.

3 So let's turn to the allegations against the sheriff and
4 Miss Setzer.

5 I'm sorry, Mr. Waters, I didn't want to cut you off.

6 Anything further you want to add for purposes of the
7 record? You obviously can see which way I'm leaning with
8 respect to injunctive relief.

9 MR. WATERS: I would just make one clarification that
10 the statement is not that Mr. Nishimura will never return to
11 Siskiyou County, it is just there are no present intentions to
12 return to Siskiyou County.

13 For the issue I think before the court, which is the period
14 of time between now and the election, that's off the table.
15 He's not going. What will happen next year or the year after,
16 I don't know.

17 THE COURT: Okay. On the issue of injunctive relief
18 with respect to the remaining defendants, Sheriff Lopey, the
19 Clerk, Colleen Setzer, and the county itself, the issue I have
20 with the briefs on the motion for preliminary injunction as to
21 these defendants is -- I'll put this as delicately as I can --
22 there is little or no discussion of the law, of an analogous
23 factual situation to this factual situation.

24 There is citation after citation after citation of cases,
25 mostly nonbinding cases outside of the Ninth Circuit, or even

1 district courts in California, that in no way are analogous to
2 the facts before this court.

3 The likelihood of success on the merits argument in the
4 opening brief is about two-and-a-half pages and contains no
5 discussion as to how whatever case you may be relying upon fits
6 the facts of this case.

7 The reply contains a discussion of the likelihood of
8 success on the merits only on pages 5 and 6, and there's not
9 one case cited.

10 And what's missing from this motion is a discussion of the
11 elements of the claims upon which you are asking the court to
12 find that you're likely to succeed on the merits, so an
13 analysis of the claims themselves and the elements required and
14 why you're likely to succeed on the merits and case law to
15 support that.

16 So that's lacking in both the discussions regarding your
17 voting rights claims, and then your Fourth and Fourteenth
18 Amendment claims, which are contained in the First, Second,
19 Third, Fourth, Fifth and Eleventh causes of action.

20 There is a discussion as to every claim in your complaint,
21 and you're not basing your motion for preliminary injunction on
22 every claim in your complaint, but the merits of that issue
23 alone are lacking. And that's the problem I'm having with this
24 motion for a preliminary injunction.

25 It's really a simple question. It's a question that judges

1 look for in briefs, and that is what's the case or cases that
2 support you and how are they analogous to this situation?

3 And I understand that, again, there is this feeling of what
4 happened or allegedly happened in Siskiyou County to your
5 clients before the June election has created intimidation and
6 fear such that they are unlikely to vote in the November
7 election.

8 And that raises again -- assume I took that as absolutely
9 true. Where's the case that then supports the argument that
10 under those circumstances this court should issue injunctive
11 relief?

12 Again, it is much different from your lawsuit on the merits
13 in terms of whether there were civil rights violations here or
14 violations of other constitutional provisions, particularly the
15 search and seizures that have gone on up there.

16 That's different, because that will require a trial, that
17 will require testimony from both sides. But this issue of the
18 mere subjective belief that this is going to occur again next
19 week or it's intimidated them so much that your ten clients
20 won't vote, where's the case or cases that support your request
21 as a matter of law for injunctive relief?

22 That's what I'm looking for.

23 MS. MILLER: May I respond?

24 THE COURT: Yes. Absolutely.

25 MS. MILLER: So we outlined in our legal argument

1 several cases which go to the analysis of the four points in
2 determining whether or not a preliminary injunction should
3 issue.

4 The first of those four points being whether movant has a
5 strong likelihood of success on the merits, which the court
6 just mentioned.

7 In our moving papers, I'm looking at right now page 9 of
8 the argument, Section 1, which goes into the purpose. And it
9 cites United States versus W.T. Grant Company with respect to
10 the purpose of an injunction to prevent future violations.

11 THE COURT: Sure. But there is no discussion about
12 Grant. Those are general principles of law. No one disagrees
13 with what the legal standard for a preliminary injunction is.
14 But if I go to pages 14 through 17 of your opening brief, it's
15 the case Hunter versus Underwood, which is factually
16 distinguishable. There's a case from the Western District of
17 Washington which has no precedential value in this court.
18 There is a case from the Southern District of Ohio, Miller
19 versus City of Cincinnati. There's not a lot of discussion
20 about that. That, again, has no precedential value to this
21 District Court in California.

22 You cite a case from the Western District of Oklahoma, from
23 the Eastern District of New York, from the Northern District of
24 Florida and the Eastern District of Pennsylvania. That's it.

25 And what's missing is all these cases, how do they -- there

1 should be, again, another whole section that talks about how
2 these cases, which it appears you're trying to rely upon, how
3 they somehow are analogous to the case that's before the court,
4 and I can rely upon and cite to those cases in granting your
5 motion for preliminary injunction. That's what's missing.

6 And it is sort of the primary attack, among others, that
7 the defendants have raised in their opposition. Again, it's
8 the argument that you have cited to nonbinding cases in which
9 injunction may have been allowed, but in which none of these
10 cases are analogous to the facts that are here.

11 That's what I'm looking for, Miss Miller, and I think
12 that's what's missing here with respect to just the issue of is
13 there a likelihood of success on the merits. Because this is a
14 hotly -- I mean, there are two different sets of facts here,
15 completely different sets of facts.

16 MS. MILLER: Rights.

17 THE COURT: Obviously, your clients have the burden of
18 proof on the claims. There are two different versions of what
19 went on out there. Completely. And only a jury is going to
20 resolve that issue of whether there were civil rights
21 violations such that your clients would be entitled to a
22 remedy.

23 And because the burden is on your clients at this point of
24 showing a likelihood of success on the merits, and given the
25 evidentiary problems with your clients' affidavits, I don't see

1 how under any circumstances I could find that you've met at
2 least that first factor, that first requirement of a
3 preliminary injunction.

4 You know it is a remedy that is not favored. I mean I'm
5 sure I've read those cases too.

6 MS. MILLER: Yes.

7 THE COURT: It is a remedy that a court has to feel
8 comfortable issuing, because it appears that this is certainly
9 a meritorious case and you are likely to succeed on the merits.
10 And on this record, as it sits before me, I'm not there. I'm
11 not comfortable with issuing an opinion granting injunctive
12 relief of this type given the strong opposition to this.

13 There's other issues -- legal issues which obviously you
14 have now seen in the motions to dismiss, in which you, again,
15 may have to step back and rethink this entire lawsuit. There's
16 qualified immunity issues. There's Monell issues.

17 Again, we'll get to those at the motion to dismiss, but you
18 may not have the right defendants in this case. None of the
19 individuals that actually went out to the property have been
20 named as defendants.

21 It's interesting to me, you don't have to respond, but I'm
22 sort of giving you what I see are problems for you at this
23 stage of the proceedings when you're here asking for injunctive
24 relief.

25 Before you respond I had a quick question for Mr. Spinelli.

1 You asked me to take judicial notice of assessor parcel
2 information, and I wasn't sure why.

3 MR. SPINELLI: Just to -- Your Honor, just to --

4 THE COURT: It would seem to support the claim that
5 they actually are owners of property there.

6 MR. SPINELLI: Well, to show the court that this
7 parcel number matches the individual plaintiff and the voting
8 card. That was the intent, to show the court that.

9 THE COURT: But it shows then that they are the owner
10 of that parcel, right?

11 MR. SPINELLI: To the extent that's the county record,
12 it does.

13 THE COURT: So why would you want me to take judicial
14 notice of a fact that would tend to support the plaintiffs'
15 claim that I am a property owner here?

16 MR. SPINELLI: Out of completeness, Your Honor.

17 THE COURT: Okay. It was curious to me. I appreciate
18 that, but it was curious to me.

19 Miss Miller, I'll give you an opportunity to respond.

20 MR. SPINELLI: Great, Your Honor. Thank you. I
21 appreciate that.

22 I understand your point with respect to finding specific
23 case law that deals with voter intimidation. Unfortunately,
24 the cases just aren't out there.

25 But if we could go -- if I were to have the opportunity to

1 go through each cause of action and look at the likelihood of
2 success, I would be able to put forth factual matters which the
3 court could take into account. For example --

4 THE COURT: So the record is clear, you really base
5 the injunction on either your Voting Rights Act claim, which is
6 your Ninth Cause of Action, or as I indicated, on your Fourth
7 and Fourteenth Amendment claims, which are the First, Second,
8 Third, Fourth, Fifth and Eleventh causes of action. There
9 isn't any discussion about any other claims, so those are the
10 ones you base it on?

11 MS. MILLER: Correct.

12 THE COURT: Go ahead.

13 MS. MILLER: So the first cause of action with respect
14 to the Fourth Amendment claims, I believe the plaintiffs will
15 be able to show that defendants showed up on the plaintiffs'
16 property without a search warrant.

17 Brian, do you want to jump in on the Fourth Amendment
18 issues if I miss anything?

19 MR. FORD: In terms of the Fourth Amendment, no lawful
20 warrant authorizes officers to act in excess of the warrant.
21 And in this instance we're alleging instances where during the
22 voter fraud investigation, not only did they show up without a
23 warrant, they showed up with assault rifles, as describe by my
24 plaintiffs, assault rifles the county tries to justify through
25 citation to marijuana ordinances and some obscure reports of

1 shots being fired in the area.

2 But, again, in the same affidavits, they describe this area
3 as widespread, as being very rugged terrain. The cornerstone
4 of the Fourth Amendment is going to be both reasonableness and
5 particularity. When you've got hundreds of square miles of
6 vast open spaces, in the State of Jefferson I might note, where
7 the Second Amendment is king, a few gunshots in the area? What
8 area? There is no particular area.

9 So we have a showing where officers are arriving with
10 assault rifles, and these are recognized by plaintiffs who grew
11 up in war zones. They grew up in areas where they are
12 suffering under agent orange, genocidal acts recognized by our
13 president. They know what assault rifles look like, and they
14 know what invading forces look like.

15 Under these auspices, they were told under a faulty legal
16 theory that they were fraudulently registered to vote because
17 they didn't have septic tanks essentially, and septic tanks
18 that the county is not processing applications for.

19 They were also told that they would go to jail if they
20 followed through with the vote. All of these statements are
21 beyond the scope of the Fourth Amendment.

22 The purpose of the investigation, as from Mr. Nishimura's
23 affidavit, was to establish purely whether or not they resided
24 there. The county has clearly admitted that in their filings.

25 So as to the Fourth Amendment claim just surrounding the

1 voting rights investigation or voter fraud investigation, which
2 the secretary of state has publicly stated very quickly turned
3 into a voter intimidation investigation, I think we've
4 established our burden of likelihood to succeed on the merits.

5 However, the Fourth Amendment violations do not stop there.
6 They continue into Mr. Dang Xiong's property wherein they --
7 after the election happened, the abatement process was
8 established. This was a civil process whereby notice was
9 required, a hearing could be requested, and a hearing would be
10 conducted by McGeorge School of Law's courts.

11 In that instance, as the county points out in their papers,
12 they only brought 22 of those cases. I, myself, represented 11
13 Hmong in those cases, meaning we make up 50 percent of all
14 abatement proceedings in Siskiyou County.

15 Looking at our pleadings again, we're alleging somewhere
16 between 300 and 1000 Hmong people in Siskiyou County. There is
17 no allegation to the contrary. That means that our population
18 is less than 5 percent of Siskiyou County, and we make up 50
19 percent of abatement proceedings.

20 More than that, we have 33 abatement clients, all of whom
21 have requested a hearings, only 11 of which got them. That
22 means we have 22 that were not receiving their due process
23 under the laws passed by the defendants.

24 Instead of moving forward with those hearings, the county
25 wholeheartedly, in August and September, switched its method of

1 enforcement, abandoning enforcement of the civil -- or of the
2 county ordinances all together.

3 At this point they're now using felony warrants to rely on
4 traditional marijuana law in California, something they could
5 have done without the assistance of county ordinances. These
6 include certain of our clients, including Dang Xiong, who is
7 not only intimidated through the voting and received the
8 abatement procedure, but after he had requested his hearing and
9 before he had received it, he received a felony service of
10 warrant.

11 At this point we have specific allegations that officers
12 exceeded the scope of the warrant. They ate food, drank water,
13 destroyed property. Moreover, in the affidavits we don't have
14 before the court, but we do have over 100 witnesses who will
15 testify to it, these processes have continued.

16 Turning to the county's affidavits, Sheriff Lopey's
17 affidavit, he admits that he's been going on this systematic
18 raid. He admits to over millions of dollars of seizures.

19 And in those allegations in his press release that he cites
20 as attachments to his affidavit, he takes responsibility for
21 the task force which is enforcing both state law and county
22 ordinances in terms of marijuana.

23 In other words, we do have a very high likelihood of
24 success on ongoing Fourth Amendment violations.

25 In terms of the affidavits that were not heard, they

1 establish an ongoing harm and an ongoing threat of harm. You
2 can't easily divide the mens rea in this case because it was
3 Alex Nishimura and the secretary of state who asked for armed
4 assistance.

5 All the people that I represent know is that the state
6 showed up with a sheriff, with assault rifles and told them
7 they would be imprisoned if they exercised their First
8 Amendment right to take part in an election that personally
9 affected them, because in 2015 it was them alone who was being
10 singled out under the abatement ordinances, under the county
11 ordinances at that time. We have a very clear factual
12 continuity of racial selective enforcement.

13 We can't bring vindictive prosecution claims against the
14 county at this time because charges haven't been filed in these
15 felony warrants. At this point in time the only relief that we
16 can seek, the only action that we can seek from this court to
17 protect my clients' right to vote is some sort of statement
18 that defendants need to follow the law.

19 THE COURT: Mr. Spinelli, do you want to respond?

20 MR. SPINELLI: Yes, Your Honor. Mr. Ford has argued a
21 great deal of facts right there that aren't in admissible
22 evidence before this court.

23 What is in admissible evidence before this court, and I'm
24 going to relate right now to the allegations of the ordinance
25 and searches and seizures, there are ten plaintiffs, and as to

1 nine of them -- well, there's no evidence that anything
2 happened, that they were even interviewed by the secretary of
3 state.

4 But there is only one that was cited, and that was Mr. Dang
5 Xiong. He was cited under County Ordinance 5-21.3(a) by
6 Detective McGrew, and that was for having a Porta-Potty, and it
7 was not in a construction zone. He was not cited under the
8 Ordinance of 2015, Measure T or Measure 2 -- the Measure T or
9 Measure U ordinances.

10 And he is the only one that there was. And he admits in
11 his declaration that there was a valid search warrant, and
12 marijuana plants were taken off his property pursuant to that
13 search warrant.

14 He was not on the property at the time, and that is
15 admitted in the complaint, his declaration, and supported by
16 declarations by the detectives who conducted that and served
17 the search warrant and executed the search warrant.

18 None of the other defendants -- excuse me. None of the
19 other plaintiffs have had anything happen to them in the sense
20 of illegal searches or alleged illegal searches and seizures.

21 So you can't just put all of these plaintiffs together.
22 They have to be, under this motion, looked at individually.
23 And Mr. Dang Xiong, if he is intimidated of voting, he had a
24 legal search warrant that was executed, and his marijuana
25 plants were cut down. He's admitted in a declaration in

1 federal court that he had marijuana plants cut down.

2 It's illegal to grow marijuana in the state beyond if it is
3 not medical marijuana. He's not alleged that he had a card or
4 that his marijuana was medical marijuana.

5 So my position here is, at least on the Fourth and
6 Fourteenth Amendment claims, they have not sustained their
7 burden of success or likelihood of success on the merits.
8 That's the factual background. The legal background is the
9 sheriff and the clerk didn't do any of this personally.

10 The clerk simply did her job by submitting what looked like
11 to be questionable or suspicious voter registration forms to
12 the secretary of state. That's her job.

13 The sheriff is carrying out the laws of the state and in
14 enforcing illegal activity, and that is illegal marijuana
15 growing.

16 And neither of them have done anything to these plaintiffs
17 individually. There is no allegations of a plan or process,
18 anything to substantiate a Monell theory in this case against
19 the county. This is, again, the Fourteenth and Fourth
20 Amendment claims.

21 As to the claims of voter intimidation, again you do have
22 to look at the law, and you have to look at the allegations in
23 the complaints and causes of action.

24 What they have alleged there are voting right violations
25 that don't apply to this case. The first one is that we have

1 what is an election at large. This was not an election at
2 large so it doesn't apply.

3 The second one, they haven't substantiated the Gingles
4 factors, all three factors. So they have not legally, as the
5 court has put out, based on their causes of action, sustained
6 their burden legally that there is a likelihood of success.

7 From a factual standpoint on the voting issues, there are
8 voting registration cards that were submitted with the clerk's
9 declaration.

10 THE COURT: There were a number of people using the
11 same address.

12 MR. SPINELLI: I'm sorry?

13 THE COURT: A number of people using the same
14 address.

15 MR. SPINELLI: But on these ten plaintiffs, as the
16 court points out, seven were permanent vote by mail. Two --
17 one was vote by mail only. That is Dollarsai Yurgh, Y-u-r-g-h.
18 And the one that was a poll voter was Dang Xiong, the
19 individual I mentioned who is the only one who had a search
20 warrant executed on his property.

21 And there has been an argument made that some of them had
22 to vote in June provisionally. Well, if they didn't -- if
23 they're a permanent vote by mail, and they don't -- and they
24 show up to the polling precinct, and they don't have their vote
25 by mail envelope, they're given a provisional ballot.

1 Why? Because they don't want two votes to be counted. It
2 is pretty simple there.

3 So when the county counts the votes, and the mail in ballot
4 does not show up, the provisional ballot was counted.

5 Seven out of ten voted. A higher percentage of those
6 plaintiffs than the percentage of all county registered voters
7 that voted in June.

8 There is another issue that has come to my attention just
9 in the last day. One of the plaintiffs submitted a declaration
10 to the court that the court indicated was unsigned, and that is
11 Joua Chao Moua.

12 THE COURT: Is this one of the supplemental
13 affidavits?

14 MR. SPINELLI: No. This was an original affidavit,
15 and then a supplemental. The original was unsigned, and then
16 the supplemental on Sunday evening was signed, but it is an
17 identical affidavit. And the spelling is J-o-u-a, C-h-a-o,
18 M-o-u-a.

19 It has come to my attention from the county clerk -- and I
20 make this as an offer of proof, and I can provide a declaration
21 from the county clerk within a day or two if necessary -- that
22 this individual, as of October 16th, 2016, has registered to
23 vote in Trinity County for this election. And if that's the
24 case, he should be dismissed. He should -- they should dismiss
25 his case here because he's registered in another county and no

1 longer can vote in Siskiyou County.

2 THE COURT: Okay.

3 MR. SPINELLI: So with that -- I will leave it at that
4 for the time being.

5 THE COURT: Do you also want to respond to Mr. Ford's
6 argument regarding violations of the Fourth Amendment when --
7 alleged violations of the Fourth Amendment when the sheriff's
8 department members went out to assist Mr. Nishimura, including
9 intimidation, trespass, and took actions beyond what one would
10 expect under the Fourth Amendment?

11 MR. SPINELLI: Well, Your Honor, I don't think any of
12 the evidence submitted indicates that occurred. The
13 plaintiffs -- the affidavits that have been submitted indicate
14 that the detectives or sheriff's deputies that were present,
15 some had a sidearm, which they carry with them, all of them had
16 some form of a protective vest, which they wear all the time.

17 THE COURT: Assault rifles.

18 MR. SPINELLI: Two of them had assault rifles with
19 them that they had slung over their shoulder pointing down.
20 And they -- the encounters -- all the questions were asked by
21 Mr. Nishimura who was interviewing these people. They did
22 not -- if wearing the assault rifle to protect the process is
23 intimidation, that is what police officers have to do to
24 protect themselves and others, and specifically here
25 Mr. Nishimura, because of the area where this was.

1 Whether or not that's a factual issue down the road, but
2 certainly they were not ordered to get on the ground, they were
3 not handcuffed. They didn't even go on the property unless
4 they were allowed to go on the property. There is no evidence
5 before the court that there was a trespass during the
6 investigations.

7 Now, if there's warrants at a later date on some of these
8 properties -- only one really -- if there are other warrants,
9 that's a different story. But here it is just these
10 plaintiffs. And there was no trespass on their properties.
11 They only interviewed a few of them, and the rest, they weren't
12 there.

13 THE COURT: Okay. Miss Miller, Mr. Ford, anything
14 further you want to add?

15 MS. MILLER: Yes, Your Honor.

16 THE COURT: Go ahead.

17 MS. MILLER: With respect to counsel's claims there is
18 no evidence that the plaintiffs were interviewed, it seems a
19 bit nonsensical that the sheriff's deputies would cite someone
20 for violating a local code enforcement law without having had
21 any conversation around that.

22 There's several statements being made that are made by
23 different affiants regarding the interaction of the sheriff's
24 officers while they came on the property on or about June 2nd,
25 investigating and asking them questions about water and sewer

1 and whether or not a Porta-Potty was on the property.

2 So there is evidence to show that there was interaction,
3 there was an interview by the sheriff's officers during an
4 investigation that was only supposed to be about voter
5 registration.

6 With respect to Colleen Setzer's actions, there are a lot
7 of assumptions being made here about suspicious voter
8 registrations.

9 What was so suspicious?

10 A conclusion is made in her declaration that there was --
11 that these registration forms were suspicious, one, because it
12 appeared that all of them had been signed by the same person,
13 but the exhibits that are provided by the defendant don't show
14 that. They don't reflect that at all. In fact, they
15 reflect --

16 THE COURT: Slow down.

17 MS. MILLER: They reflect that each signature is
18 distinct and unique, so her suspicions are not founded based on
19 their own evidence.

20 Second, every single voter registration that was flagged
21 and sent to the secretary of state had the name of an Asian
22 person on it. That in and of itself is suspect.

23 What was suspicious to Colleen Setzer?

24 I can tell you. What was suspicious was that they were of
25 Asian descent, and they were, what she believed, trying to

1 influence the two measures that Sheriff Lopey had on the ballot
2 on June 7th, specifically Measures T and U, regulating and
3 restricting cannabis activity on private property.

4 I'm just looking at my notes, Your Honor.

5 THE COURT: Go ahead.

6 MS. MILLER: Also Miss Setzer, by affidavit, states
7 that she held her position -- she's held her position as
8 Siskiyou County Clerk and Registrar since 1999. That's
9 approximately 17 years that Miss Setzer has been in this
10 position, yet she wants this court to believe that after 17
11 years of service she was not aware that voters could register
12 using an assessor's parcel number? That's not logical.

13 Under California law a voter can register, if they're
14 homeless, if they can just describe the general area in which
15 they live. So plaintiffs will most likely succeed on that
16 issue with respect to whether or not these flagged registration
17 forms were based on a racially protected class.

18 Miss Setzer's affidavit also states that she is aware that
19 the areas in which the plaintiffs reside tend to not have a
20 physical address, and yet she uses that as a basis of
21 suspicious activity and a basis upon which to flag these voter
22 registration forms and send them to the secretary of state
23 saying that they didn't have a physical address.

24 Well, it doesn't make sense. She's knows, after 17 years
25 of being the County Clerk, that these particular areas, they

1 will not have a physical address.

2 That is not a rational basis upon which to flag these
3 registration forms and subject them to investigation by the
4 secretary of state and the local sheriff.

5 THE COURT: She also says that:

6 (Reading:)

7 As the elected County Clerk-Registrar, I'm obligated to
8 report such suspicious activity, and I have no authority to
9 independently investigate suspected voter fraud.

10 (Reading concluded.)

11 In other words, she's a reporter, but not a decision-maker.

12 MS. MILLER: Yet she sent out letters in May of 2016
13 asking questions about the registration forms. Why was she
14 involved? At that point it should have been handed off to the
15 secretary of state.

16 MR. SPINELLI: Your Honor, may I respond to that?

17 THE COURT: Yes.

18 MR. SPINELLI: She sent out letters that are attached
19 to her declaration to individuals where the voter registration
20 form was incomplete and asked them to complete it. That is her
21 job. So if they completed it, and it was fine, they were
22 registered.

23 THE COURT: The letter says, it is Exhibit F, I'm
24 looking at it:

25 (Reading:)

1 This is to notify you that the voter registration card you
2 recently sent to this office does not contain all of the
3 information required by law. You may not be eligible to
4 vote until this information is provided to us. Please
5 call.

6 (Reading concluded.)

7 Then there are phone numbers.

8 MR. FORD: Your Honor, I would ask the court to note
9 that that letter is neither dated, signed or addressed. It's
10 simply a blank paragraph put on county clerk letterhead. There
11 is no way for any of my plaintiffs, my clients, to understand
12 that that is an official letter. And frankly, it could have
13 been written or sent by anyone for any reason.

14 MR. SPINELLI: There are form letters that go to many
15 people by the County Clerk.

16 MS. MILLER: Your Honor --

17 THE COURT: Go ahead.

18 MS. MILLER: The conclusory statements made in
19 Miss Setzer's affidavit about suspicion has not been proved.
20 She's saying they were suspicious. Why? Why were they
21 suspicious? She never gets to that.

22 I can tell you the only common denominator between all of
23 the registration forms that were sent to the secretary of state
24 is that they were signed by persons of Asian descent. That's
25 the only common denominator.

1 What we have here is a racially protected class that is
2 overwhelmingly represented in the enforcement of their local
3 rules, and are overwhelmingly visited upon by a large number of
4 government officials asking them about whether or not -- asking
5 the plaintiffs specifically about whether or not they are
6 lawfully within the county.

7 THE COURT: She says:

8 (Reading:)

9 I was alerted by staff that 23 people were registered to
10 vote at 12115 St. George Drive in Montague, California, and
11 ten people were registered to vote at 17204 Pleasant Drive
12 in Montague, California.

13 (Reading concluded.)

14 It was this amount of people registered at one address that
15 she found unusual. That's her job, isn't it, to at least
16 report that to the secretary of state?

17 MS. MILLER: That was after she had already flagged
18 them, Your Honor.

19 THE COURT: And what difference does that make?

20 MS. MILLER: Because that wasn't the basis upon which
21 she flagged them initially. This was an afterthought.

22 THE COURT: Well, she didn't send them to the
23 secretary of state until she got that information as well.
24 Again, it also comes back to this issue of, she doesn't have
25 any authority beyond making reports.

1 So the question, again, is sort of coming full circle, what
2 are you going to enjoin?

3 Enjoin her from performing her duties as a county clerk to
4 simply report something?

5 I don't know. I mean, it is not analogous to a mandatory
6 reporting and mandatory reporters of child abuse, but reporters
7 are reporters. They simply are obligated to report something
8 that someone else then has the responsibility to investigate
9 and then make a decision. She doesn't have that responsibility
10 at all.

11 And it is a question of are you suing the right person
12 here. You may not like what she did, but in what way has she
13 violated the law?

14 Again, the problem I'm having, Miss Miller, none of these
15 questions are answered in your brief. None of these are
16 discussed.

17 It's: Here are the facts, Judge. Believe everything my
18 clients say and issue an injunction. And the detail, the
19 necessity for legal analysis is just lacking.

20 MS. MILLER: Your Honor, part of the issue is that
21 there are not voter intimidation cases on point. This is
22 somewhat novel. We had to use cases by analogy in order to get
23 us to the analysis of whether or not we are entitled to
24 preliminary injunction. The cases simply do not exist, so
25 there was -- the initial question you asked is what is

1 unlawful?

2 What is unlawful is the racially motivated reason behind
3 her sending these forms to the secretary of state. There are
4 only Asian people whose forms were sent. That's unlawful
5 motivation in her reporting.

6 THE COURT: Mr. Spinelli, do you want to respond to
7 that?

8 MR. SPINELLI: Your Honor, as the court read from
9 Miss Setzer's declaration, it was reported to her that 23
10 people resided and registered to vote from one address, and ten
11 people from another address.

12 Additionally, the voter registration cards for Alexander
13 Vang and Richard Vang indicated their address was in
14 Sacramento.

15 When they were interviewed by the secretary of state, they
16 admitted that they lived in Sacramento and did not live on the
17 parcel.

18 Poua Vang had an address in Stockton on his voter
19 registration card and admitted at the investigation by the
20 secretary of state that he lived with his parents in Stockton
21 and not on his parcel up in Siskiyou County.

22 So there are other clear facts as to Miss Setzer's
23 reasoning to send information to the secretary of state. And I
24 think the court has hit the nail on the head, she is simply a
25 reporter doing her job. She is not the decision-maker. She

1 has no investigative power and no decision power.

2 She registered all of these plaintiffs, and seven out of
3 ten voted. So, again, all of them could have voted by mail
4 before we even got here today if they wanted to.

5 So the plaintiff has not sustained its burden that it's
6 likely to succeed on the merits against Miss Setzer on the
7 voting violation claims.

8 THE COURT: Okay. We're going to take a break. We'll
9 come back in ten minutes, and I will indicate my decision on
10 this motion.

11 MS. MILLER: Thank you, Your Honor.

12 MR. SPINELLI: Thank you, Your Honor.

13 (Off the record at 4:00 p.m.)

14 (Back on the record at 4:16 p.m.)

15 THE CLERK: You may remain seated. Court is again in
16 session.

17 THE COURT: Back on the record. The court, having
18 considered the briefs and the oral argument of counsel, is
19 prepared to rule as follows:

20 As I've already indicated, the plaintiffs' motion for
21 preliminary injunction as to the California Department of
22 Forestry and Fire Protection is denied. That defendant was not
23 served on time in order to fully participate in this hearing,
24 and therefore there is no basis for awarding or granting the
25 motion for preliminary relief as to that defendant at this

1 time. So the motion is denied.

2 As to Mr. Nishimura, the court also denies plaintiffs'
3 motion for preliminary injunction as to that defendant. Again,
4 there is no evidence whatsoever that there are likely to be any
5 violations of either the Fourth Amendment or Fourteenth
6 Amendment claims that have been raised against him with respect
7 to conduct that occurred in June of 2016.

8 There is no likelihood of irreparable harm for these
9 plaintiffs with respect to Nishimura who has made it clear that
10 he will be nowhere near Siskiyou County on November 8th for
11 this election, and there has been no showing by the plaintiffs
12 of the need for injunctive relief as to Mr. Nishimura, and, in
13 effect, almost conceded by plaintiffs with respect to this
14 defendant as well.

15 In terms of the specific elements and requirements of a
16 preliminary injunction as to Mr. Nishimura, the plaintiffs, as
17 argued by Mr. Nishimura in his opposition brief, the plaintiffs
18 have failed to show a likelihood of success on the merits of
19 their claims against him.

20 They have not met their burden. And again, they've failed
21 to show that they're likely to suffer irreparable harm in the
22 absence of a preliminary injunction. So for those reasons the
23 complaint -- or the motion as to Mr. Nishimura is denied.

24 As to the remaining defendants, the sheriff, Jon Lopey,
25 Colleen Setzer and the County of Siskiyou, the court also

1 denies the motion for preliminary injunction for the following
2 reasons:

3 First, a preliminary injunction is a request for an
4 extraordinary remedy that can only be awarded upon a clear
5 showing that the plaintiff or plaintiffs are entitled to such
6 relief. And again, to obtain that relief the plaintiff must
7 demonstrate that the plaintiff is likely to succeed on the
8 merits, that they're likely to suffer irreparable harm in the
9 absence of a preliminary injunction, that the balance of
10 equities tip in their favor, and that the injunction is in the
11 public interest.

12 I'll call them the Siskiyou County defendants argue first
13 that the plaintiffs' motion is not timely. The court is not
14 denying the motion for preliminary injunction on the basis of
15 that argument. There was an amendment a day after the original
16 motion was filed on October 4th. There was no prejudice to the
17 defendants by the amendment. In effect, it didn't change the
18 contents of the motion, and it was simply brought to respond to
19 a concern by our clerk's office. It was really an
20 administrative matter. And for those reasons the court doesn't
21 find that the timeliness argument is meritorious.

22 In terms of the likelihood of success on the merits, as a
23 general rule a court can enjoin an officer from enforcing an
24 unconstitutional law, but a court must act -- but a court acts
25 in excess of its jurisdiction if it attempts to enjoin the

1 enactment or enforcement of a valid public statute or
2 ordinance.

3 In this case the plaintiffs are not challenging the
4 constitutionality of the ordinances themselves that deal with
5 the growing of marijuana in Siskiyou County. And one of the
6 arguments that have been raised by the defendants in this case
7 is simply that you can't enjoin these officers from doing their
8 job, which is the enforcement of a constitutional law.

9 As I indicated, the claims upon which the plaintiffs have
10 based their motion for a preliminary injunction are their
11 Voting Rights Act claim, their Ninth Cause of Action, and their
12 Fourth and Fourteenth Amendment claims which are scattered
13 throughout their complaint in a number of different causes of
14 action.

15 The county defendants have argued that the plaintiffs have
16 not met their burden of proof in showing that they're likely to
17 succeed on the merits of their claims because the plaintiffs
18 have not shown that the defendants have infringed on
19 plaintiffs' right to vote, and that the clerk's report of
20 possible voter fraud to the secretary of state, and the
21 sheriff's minimal involvement in assisting the secretary of
22 state in its investigation are not adequate to establish any
23 violation of the plaintiffs' right to vote.

24 Defendants have also argued plaintiffs have failed to
25 establish the requisite county residency in order to vote, and

1 defendants have indicated, as they've argued here today, that
2 at least seven of the plaintiffs did, in fact, vote in June.
3 They're registered as permanent voters by mail, and therefore
4 in no way was their right to vote infringed.

5 Plaintiffs have alleged that racially derogatory statements
6 made by Sheriff Lopey against the Asian community, compounded
7 with threats of arrest from participating in the democratic
8 process, has instilled righteous fear among the minority
9 community.

10 Plaintiffs have submitted affidavits from some plaintiffs
11 who have said that they are afraid to vote in the upcoming
12 election, but plaintiffs have failed to provide any legal
13 analysis whatsoever as to how they meet each element for a
14 Voting Rights Act claim or how any of the cases they've cited
15 apply to the facts at hand.

16 And the court finds that plaintiffs have not met their
17 burden of showing a likelihood of success on the merits of the
18 Voting Rights Act because they have not in the briefs in any
19 way applied the facts of their case to any applicable law.

20 And while there may not be a case directly on point, what
21 the court looks for is arguments that there are at least
22 analogous cases out there similar to what the court faces in
23 this case. And again, that analysis is lacking in these
24 briefs.

25 In terms of the Fourth and Fourteenth Amendment claims, the

1 plaintiffs have alleged violations of the right to be free from
2 unreasonable searches and seizures pursuant to the Fourth and
3 Fourteenth Amendments.

4 Again, however, the plaintiffs failed to outline the
5 elements of their Fourth and Fourteenth Amendment claims in
6 their briefs, and they have not applied the alleged facts of
7 their case to the law.

8 The reply brief, for example, basically repeats the same
9 allegations and arguments made in the opening brief without
10 directly responding to arguments raised by defendants and
11 without citing to applicable case law or applying, again, the
12 facts of this case to the law.

13 For those reasons the court finds that the plaintiffs have
14 failed to meet their burden of demonstrating a likelihood of
15 success on the merits by demonstrating that their Fourth and
16 Fourteenth Amendment rights have been violated.

17 Defendants have argued that plaintiffs have not established
18 any trespass or unlawful seizure, and that the only alleged
19 seizure was executed at only one of the plaintiff's property
20 pursuant to a search warrant supported by probable cause.

21 Defendants have also pointed out that simply citing to
22 nonbinding cases where an injunction was allowed in those
23 cases, but those cases are not analogous to the facts here, is
24 insufficient. The defendants are correct.

25 The plaintiffs in seeking a preliminary injunction have a

1 heavy burden to prove that this court should issue an
2 injunction, and the inadequate legal analysis has failed to
3 meet that heavy burden.

4 Plaintiffs have not addressed any other causes of action
5 upon which they base their motion for preliminary injunction
6 and the court need not take up any of the other causes of
7 action in the complaint that have not been the basis of the
8 motion for a preliminary injunction.

9 Given the court's finding on the likelihood of success on
10 the merits factor, the court need not reach the other factors
11 which are irreparable harm, balance of equities, public
12 interest, and then the final issue, an injunction motion as to
13 whether a bond is required.

14 For all of those reasons the court denies plaintiffs'
15 motion for preliminary injunction due to the failure to meet
16 their burden to show that such an extraordinary remedy is
17 appropriate or legally mandated under the facts of this case as
18 they are before the court at this time in the record.

19 And again, for purposes of the record, the court has
20 sustained the defendants' objections to the affidavits that
21 were submitted in support of the motion for preliminary
22 injunction. Again, as the court pointed out, those affidavits
23 are procedurally defective.

24 MS. MILLER: Your Honor, may I make a statement?

25 THE COURT: You can for the record. Go ahead.

1 MS. MILLER: Yes. During the break I had an
2 opportunity to look at the affidavits that were originally
3 submitted with the motion, and I believe that there was a
4 mischaracterization of the affiants' testimony presented to the
5 court by Mr. Spinelli.

6 I looked at the affidavit of Richard Vang, and it states
7 that he did not vote on June 7th, and he did not vote by mail.

8 I was looking at the affidavit of Dollarsai Yurgh, and she,
9 in fact, did not vote because she did not want to go to jail.

10 I looked at the affidavit of Manisy Moua who said that she
11 did vote by mail, but if you look at paragraph 16 it clearly
12 states: "I received a second letter from the Siskiyou County
13 Clerk's office informing me that my vote did not count."

14 I was looking at the affidavit of Alexander Vang, and he
15 clearly states in paragraph 9 that he did not vote on June 7th.

16 So, in fact, 70 percent of the plaintiffs who did provide
17 statements did not vote. And the one who did vote by mail
18 received a letter from the County Clerk, Colleen Setzer,
19 stating that his vote did not matter.

20 It was for these reasons, Your Honor, I just wanted to
21 clarify the record, about the testimony of the affidavits that
22 were submitted by and accepted by the court.

23 THE COURT: Okay. Perfectly acceptable.

24 If the defendants want to get together and prepare a
25 proposed order reflecting the court's ruling today, please do

1 so. Submit it to the plaintiffs' counsel for approval as to
 2 form, and we will put it on the docket. Otherwise, the court's
 3 oral ruling as reflected in the transcript will stand, and we
 4 will issue a minute order that simply reflects the fact that
 5 the motion for preliminary injunction has been denied as to all
 6 defendants.

7 Thank you all.

8 MS. MILLER: Thank you, Your Honor.

9 MR. SPINELLI: Thank you, Your Honor.

10 (Off the record at 4:30 p.m.)

11 (Whereupon, the matter was concluded.)

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13

14

15 REPORTER'S CERTIFICATE

16 ---o0o---

17

18 STATE OF CALIFORNIA)
 COUNTY OF SACRAMENTO)

19

20 I certify that the foregoing is a correct transcript
 21 from the record of proceedings in the above-entitled matter.

22 IN WITNESS WHEREOF, I subscribe this certificate at
 Sacramento, California.

23

24 /S/ Catherine E.F. Bodene
 25 CATHERINE E.F. BODENE, CSR NO. 6926
 Official United States District Court Reporter