

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THOMAS E. PEREZ [now
R. ALEXANDER ACOSTA],
Secretary of Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL
FLIGHT ATTENDANTS,

Defendant.

Civil Action No. 4:16-CV-1057-A

APPENDIX TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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Respectfully submitted,

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Attorneys for Plaintiff,
the Secretary of Labor

Certificate of Service

On August ____, 2017, I served the foregoing document on defendant, the Association of Professional Flight Attendants, by mailing it by prepaid first-class mail to defendant's counsel of record, addressed as follows:

Andrew D. Roth
Bredhoff & Kaiser, P.L.L.C.
805 Fifteenth St., N.W., Tenth Floor
Washington, D.C. 20005

Brian W. Stoltz
Assistant United States Attorney

ELECTION NOTICE

Pursuant to Article VI, Section 2 of the APFA Constitution, Notifications of WILLINGNESS-TO-SERVE are now being accepted for the **NATIONAL OFFICER** positions of **NATIONAL PRESIDENT, NATIONAL VICE PRESIDENT, NATIONAL SECRETARY** and **NATIONAL TREASURER**.

CANDIDATE INFORMATION

This election is open to all members in good standing. Each candidate must be a member in good standing by **0900 CT, November 20, 2015**. Any member in good standing may self-nominate her/himself or may nominate another member. Candidates **not** self-nominated will be contacted by the National Ballot Committee to confirm their Willingness-to-Serve. Withdrawals must be made within three (3) days after the Willingness-to-Serve due date.

VOTER INFORMATION

In order to be able to vote, each APFA member must be a member in good standing (no more than sixty (60) days in dues arrears) no later than five (5) days prior to the date the votes are counted ("balloting date") by **January 4, 2016**, for the primary election and by **February 16, 2016**, for any run-off election. A member will also be eligible to vote if he or she is on an official APFA payment plan that was executed at least thirty (30) days prior to the balloting date by **December 10, 2015**, for the primary election and by **January 19, 2016**, for any run-off election.

ELECTION TIMETABLE

Willingness-to-Serve Notifications must be received in the designated P.O. Box by **1000 CT, November 20, 2015**. The National Ballot Committee accepts no responsibility for the failure of the U.S. Postal Service to deliver Express Mail, Certified Mail, or proper notification thereof, to the P.O. Box. **Regular mail, posted in a timely fashion, is recommended.**

Ballots will be mailed **December 10, 2015**. Ballots must be cast by **1000 CT, January 9, 2016**. If no candidate receives a majority (50% plus one) of the valid votes cast for a national office, the National Ballot Committee will mail a run-off ballot to all members no later than **January 19, 2016**. Ballots for the run-off election must be cast by **1000 CT, February 18, 2016**.

The newly elected National Officers will assume office on April 1, 2016 for a four-year term of office ending on March 31, 2020.

INSTRUCTIONS FOR WILLINGNESS-TO-SERVE

Only this form or a photocopy will be accepted. All information should be **typed or printed**. Each candidate's information will be reprinted with a consistent format, and **no** graphics will be included.

All candidate information is optional, including personal statements and references. **There will be no corrections made to spelling, punctuation, grammar, capitalization, intent or content.** If limitations are exceeded, personal statements will be cut off at the limit and biographical information will be brought into compliance by deleting the oldest items. **It is the responsibility of the candidate to inform references that their names will be printed in the ballot packet.** As a reminder to all prospective candidates, the use of the APFA or the American Airlines logo, symbol or insignia on campaign material is prohibited.

All Willingness-to-Serve Notifications must be received in the following P.O. Box by **1000 CT, November 20, 2015**:
APFA National Ballot Committee, P.O. Box 907, Euless, Texas 76039-0907

TO DOWNLOAD A WILLINGNESS-TO-SERVE GO TO: WWW.APFA.ORG

NATIONAL OFFICER ELECTION

VOTING NOTICE & INSTRUCTIONS

10 10 1 *****MIXED AADC 480



NATIONAL OFFICER ELECTION

December 10, 2015

Dear APFA Member,

******* ATTENTION: MAJOR CHANGE *******
YOU WILL NOT BE ABLE TO CHANGE YOUR VOTE

The National Officer Election is being conducted by secret ballot using the telephone and Internet, through the BallotPoint Election Services voting system. To vote, follow the instructions shown below. *You may vote only once.* If you have any questions, please contact National Ballot Committee by phone at 817.540.0108 ext. 8311.

Voting opens: 10:00 AM CT on Thursday, December 10, 2015
Voting closes: 10:00 AM CT on Saturday, January 9, 2016



Access Code: 4860 7508 5447

LOGIN and VOTING INSTRUCTIONS

You will have about 15 minutes to cast your vote once you have logged in to the BallotPoint system. To help you cast your vote successfully, you can prepare your selections before logging in by reviewing the Voting Guide.

1. **To vote by phone:** Call 1.800.698.3789 toll-free within the US, Canada, and Puerto Rico. Outside these toll-free areas call 1.503.419.1145. Enter the Access Code shown above when prompted.
To vote by Internet: Go to: <https://BallotPoint.com/APFA> – be sure to type the s in https. Click the **CLICK TO LOG IN** button, which takes you to the BallotPoint MRNS (Member Registration and Notification Server). Enter the Access Code shown above and click *Log In*.
2. Follow the directions to cast your vote. Done!

Questions? Please contact National Ballot Committee.
817.540.0108 ext. 8311



NATIONAL OFFICER ELECTION

VOTING GUIDE



YOU WILL NOT BE ABLE TO CHANGE YOUR VOTE.

To vote, please follow the instructions provided in the Voting Notice & Instructions.

Welcome APFA member.

Please select one of the following candidates for APFA National President:

- Lori Bassani *(phone: press 1)*
- Steven Baumert *(phone: press 2)*
- Kimberly Goesling *(phone: press 3)*
- Patrick Hancock *(phone: press 4)*
- Andrea S. Jones *(phone: press 5)*
- Brian Morgan *(phone: press 6)*
- Bob Ross *(phone: press 7)*
- Rock Salomon *(phone: press 8)*

Please select one of the following candidates for APFA National Vice President:

- Marcus Gluth *(phone: press 1)*
- Nena Martin *(phone: press 2)*
- Samuel Morales *(phone: press 3)*

Please select one of the following candidates for APFA National Secretary:

- Nicole Darak *(phone: press 1)*
- Marcy Dunaway *(phone: press 2)*
- Jacob Fuller *(phone: press 3)*
- Donald LeBlanc *(phone: press 4)*
- Jaana Lehtola *(phone: press 5)*

Please select one of the following candidates for APFA National Treasurer:

- Craig Gunter *(phone: press 1)*
- Roe Rio Harrari *(phone: press 2)*
- Stefany Jones *(phone: press 3)*
- Nestor Quecuty *(phone: press 4)*
- Eugenio Vargas *(phone: press 5)*





THE
CONSTITUTION
OF THE
ASSOCIATION
OF
PROFESSIONAL
FLIGHT
ATTENDANTS

As amended by the APFA Membership
JUNE 18, 2014

- (7) The National Vice President shall be authorized to hire, retain and employ legal counsel as may be required to provide members with representation in the grievance and arbitration process, subject to the approval of the Executive Committee.
 - (8) The National Vice President shall ensure the training and continuing education of all representatives involved in the grievance and arbitration process.
 - (9) The National Vice President shall coordinate and chair a Grievance Review Committee to oversee the disposition of grievances.
- D. Duties of the National Secretary shall include but not be limited to the following:
- (1) The National Secretary shall be responsible for all administrative records of the Association.
 - (2) The National Secretary shall cause to be kept an administrative record of all officers, representatives and appointees.
 - (3) The National Secretary shall notify the Board of Directors, the Executive Committee and the OAL Operation Advisory Panel of any convention or meeting.
 - (4) The National Secretary shall cause to be kept a record of all proceedings at any convention or meeting of the Board of Directors, or at any meeting of the Executive Committee and the OAL Operation Advisory Panel.
 - (5) The National Secretary shall submit a written report of all meetings of the Executive Committee and the OAL Operation Advisory Panel to the Board of Directors within fifteen (15) days following such meeting.
 - (6) The National Secretary shall oversee the National Balloting Committee.
 - (7) The National Secretary shall assist the National President in the preparation of any Annual Report to the members of the APFA.
 - (8) The National Secretary shall administer Article VII procedures.
 - (9) The National Secretary shall update and ensure distribution of the APFA Policy Manual.
 - (10) The National Secretary shall assist in establishing regular training and continuing education programs for representatives of the APFA, and shall maintain the APFA training records of all representatives.

- H. In any balloting for National Officer, the candidate receiving the majority of the valid votes cast for an office shall be deemed elected to that office and shall be so notified by the National Secretary.
- (1) If no candidate receives a majority of the valid votes cast for a national office, the NBC shall, within ten (10) days following the Canvassing Date, prepare and send to the membership a run-off ballot containing the names of the two (2) candidates receiving the highest number of valid votes cast.
 - (2) The candidate receiving the majority of valid votes cast for an office in the runoff election shall be deemed elected to that office and be so notified by the National Secretary.
- I. In any balloting for Base Representative, the candidate receiving the highest number of valid votes cast for a position shall be deemed elected to that position and be so notified by the National Secretary.
- J. In the event that a tie exists in the balloting for a Base Representative, a runoff balloting shall be accomplished pursuant to the procedures in H of this Section 5.
- K. An issue will be considered ratified by the membership if it receives a plurality of the valid votes cast.
- L. All ballots and other election materials, notes and records shall be sealed after being counted and certified as provided for herein, and shall remain in the possession of the National Secretary for at least one (1) year from the balloting date in accordance with all appropriate time limits required by Federal law.
- M. Should the margin of victory in a ballot count be ten percent (10%) or less and in the event a candidate challenges the accuracy of such ballot count in writing to the National Secretary within fourteen (14) days following the Canvassing Date, a recount shall occur and the APFA shall assume all related costs. Should the margin of victory be greater than ten percent (10%), the cost related to any such recount shall be borne by the candidate challenging the accuracy of the ballot count.

Section 6. ELECTION CONTEST FOR OFFICE:

- A. Only candidates may contest an election for office.
- B. The contestant must file a written complaint with the National Secretary, directed to the NBC, within fifteen (15) days following the Canvassing Date of the ballots.
- C. The NBC shall investigate such complaint, and must render its decision concerning the disposition of such complaint no later than thirty (30) days following the Canvassing Date of the ballots.

- D. The contestant may appeal any decision rendered by the NBC to the Executive Committee no later than forty-five (45) days following the Canvassing Date of the ballots.
- E. The Executive Committee shall consider such appeal and must render its decision concerning such appeal no later than sixty (60) days following the Canvassing Date of the ballots.
- F. Should the NBC or the Executive Committee fail to respond to the contestant in the designated time periods, the contestant will be free to pursue his/her LMRDA rights. In any event, the contestant will have satisfied the internal remedies provisions of the LMRDA following the sixty (60) day period provided for in this Section 6.

Section 7. VACANCY IN OFFICE, NATIONAL OFFICERS:

- A. In the event of a vacancy in the office of the National President, the National Vice President shall assume the office for the balance of the unexpired term.
- B. In the event of a vacancy in the office of the National Vice President, if the unexpired term from the date of the vacancy is more than eighteen (18) months, a membership election shall be held to fill the vacancy in accordance with the time limits provided in Section 2 and Section 5 of this Article VI. The Board of Directors shall appoint an interim National Vice President to serve until the result of the election is known. If the unexpired term of the National Vice President is eighteen (18) months or less, the office shall be filled by appointment by the Board of Directors.
- C. In the event of a simultaneous vacancy in the office of the National President and National Vice President, if the unexpired terms from the date of the vacancies are more than eighteen (18) months, a membership election shall be held to fill the vacancies in accordance with the time limits provided in Section 2 and Section 5 of this Article VI. The Board of Directors shall appoint an interim National President and an interim National Vice President to serve until the results of the elections are known. If the unexpired terms are eighteen (18) months or less, the offices shall be filled by appointments by the Board of Directors.
- D. In the event of a vacancy in the offices of National Secretary or National Treasurer, if the unexpired term from the date of the vacancy is more than eighteen (18) months, a membership election shall be held to fill the vacancy in accordance with the time limits provided in Section 2 and Section 5 of this Article VI. The Board of Directors shall appoint an interim National Secretary or

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 FORT WORTH DIVISION
4 - - - - - X
5 R. ALEXANDER ACOSTA, :
6 Secretary of Labor :
7 Plaintiff, : Civil Action No.
8 v. : 4:16-cv-1057-A
9 ASSOCIATION OF PROFESSIONAL :
10 FLIGHT ATTENDANTS, :
11 Defendant. :

12 - - - - - X

13 Washington, D.C.

14 Thursday, July 27, 2017

15 Deposition of CINDY HORAN, a witness
16 herein, called for examination by counsel for
17 Plaintiff in the above-entitled matter, pursuant to
18 notice, the witness being duly sworn by ANGELA K.
19 MCCULLOUGH, RPR, a Notary Public in and for the
20 District of Columbia, taken at the offices of
21 Bredhoff & Kaiser PLLC, 805 15th Street, Northwest,
22 Suite 1000, Washington, DC, at 9:52 a.m., Thursday,

1 PROCEEDINGS

2 Whereupon,

3 CINDY HORAN,

4 called as a witness by counsel for the Plaintiff, and
5 having been duly sworn by the Notary Public, was
6 examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR PLAINTIFF

8 BY MR. STOLTZ:

9 Q. Good morning. My name is Brian Stoltz.
10 And I am the attorney for the Secretary of Labor,
11 which is the Plaintiff in this case.

12 Can you please tell us your name?

13 A. Cindy Horan.

14 Q. Thank you. And, Ms. Horan, have you ever
15 given testimony at a deposition before?

16 A. No.

17 Q. I'm going to cover just a few of the sort
18 of deposition 101. You understand that the court
19 reporter, just before we started, swore you in under
20 oath?

21 A. Yes.

22 Q. And you understand that that means that

1 that's fine. Just let me know, and we'll arrange
2 that. Okay?

3 A. Okay.

4 Q. Is there any reason, as we sit here this
5 morning, that you are not able to give truthful and
6 accurate testimony?

7 A. No.

8 Q. Are you an employee of American Airlines?

9 A. Yes.

10 Q. And what's your job at American Airlines?

11 A. I'm a flight attendant.

12 Q. How long have you been a flight attendant?

13 A. 25 1/2 years.

14 Q. All for American Airlines at that time?

15 A. Yes.

16 Q. Now, this lawsuit -- one of the parties to
17 the lawsuit is the Association of Professional Flight
18 Attendants; is that right?

19 A. Yes.

20 Q. Also known as APFA?

21 A. Yes.

22 Q. **And tell me, what is the relationship**

1 between American Airlines and APFA?

2 A. APFA is the union for the flight
3 attendants at American Airlines.

4 Q. And are you a member of APFA?

5 A. Yes.

6 Q. Is every flight attendant a member of
7 APFA?

8 A. No.

9 Q. So how does that work? You have to agree
10 to become a member?

11 A. Yes. You have to sign a membership card.

12 Q. And do you know what percentage of the
13 flight attendants at American Airlines are members of
14 the union?

15 A. I do not.

16 Q. The union, though, engages, I take it, in
17 collective bargaining on behalf of all the flight
18 attendants; is that right?

19 A. Yes, they do.

20 Q. Now, so you've been a member of the APFA
21 essentially since you started as a flight attendant;
22 is that right?

1 membership, what is the highest governing authority
2 for the union? Is it the board of directors?

3 A. Not sure how to answer that because the
4 board of directors meet, and they vote on things that
5 will affect the members. But as far as ratifying a
6 contract, that's done by the membership. And the
7 national officers have meetings with the company, you
8 know, like, the -- the executive people of the
9 company, presidents, vice presidents.

10 Q. Okay. So certain things might be
11 negotiated by the officers and then submitted to the
12 union membership for ratification?

13 A. Correct.

14 Q. What is the -- I understand there's
15 something called the National Balloting Committee; is
16 that right?

17 A. The National Ballot Committee.

18 Q. National Ballot Committee. Thank you.
19 And what is the National Ballot Committee?

20 A. The committee consists of five members who
21 have been elected by the board of directors to
22 oversee any vote that the membership has to have.

1 Q. And the -- the five members of the board,
2 is one of those persons a chair of the board?

3 A. Correct.

4 Q. And is that you?

5 A. Yes.

6 Q. And the other four members are at-large
7 members, essentially?

8 A. Correct.

9 Q. And when the National Ballot Committee
10 acts, does it -- for instance, if it's -- the
11 National Ballot Committee is going to conduct an
12 election, does it act by voting amongst itself? How
13 does it make decisions?

14 A. When there is a vote to be had, we are
15 told by -- from -- the national secretary informs the
16 National Ballot Committee that they will need to have
17 an election whether it's an election for officers or
18 whether it's a referendum.

19 Q. And once the National Ballot Committee is
20 told that there need to be an election -- and
21 let's -- let's focus here on, say, for officers.
22 There needs to be an election for officers. The

1 Q. But, at the same time, nobody ever
2 explained to them what it meant, so, as a practical
3 matter, they didn't do it; is that right?

4 A. Correct.

5 Q. So is there anybody else at the union
6 besides you and the other four members of the
7 National Ballot Committee that had a login to the
8 MRNS that had a capability of collecting these vote
9 digests?

10 A. No.

11 (Exhibit No. 1 was marked for
12 identification.)

13 BY MR. STOLTZ:

14 Q. Ms. Horan, I've given you a document that
15 will be Exhibit 1 for this deposition. And it's
16 called "Defendant APFA's Answers to Plaintiff DOL's
17 First Set of Interrogatories."

18 Do you see that?

19 A. Yes.

20 Q. And if you flip to the eighth page of
21 Exhibit 1, there's a verification. Do you see that?

22 A. Yes.

1 Q. And it says, "I, Cindy Horan, do verify
2 under penalty of perjury that I've read Defendant's
3 answer to Plaintiff's Interrogatory No. 3 and know
4 its contents."

5 Do you see that?

6 A. Yes.

7 Q. And you signed this verification, correct?

8 A. Correct.

9 Q. Now, if you flip back to page 5 of
10 Exhibit 1, it lists interrogatory No. 3, which asks
11 to describe the ways in which candidates' observers
12 were permitted to observe any aspect of the election
13 essentially.

14 And let me ask you this: What does it
15 mean to be a candidate's observer during a union
16 election such as this January 2016 election?

17 A. There are two different types of candidate
18 observers. We offer one type which is to be at the
19 ballot count. So a candidate can be at the ballot
20 count along with two other people that he designates.
21 Or if the candidate cannot be at the ballot count,
22 they can have three designated observers.

1 The other type of candidate observer would
2 be for the e-mails that I send out daily with the
3 members that have gone from an ineligible to an
4 eligible status. A candidate or a slate, if they do
5 not wish to receive the daily e-mails, they can
6 designate someone -- another member in good standing
7 to be their observer to receive these e-mails.

8 Q. Interrogatory No. 3 in the answer, there's
9 a numbered list of five items here. In my
10 understanding, these are five different ways that
11 observers were permitted to observe some different
12 aspect of the election; is that right?

13 A. Correct.

14 Q. And I want to make sure. Is this -- is
15 this the complete list of observer activities that
16 were provided? Is there anything else that observers
17 were allowed to do that's not on this list under
18 interrogatory No. 3 on Exhibit 1?

19 A. No.

20 (Exhibit No. 2 was marked for
21 identification.)

22 BY MR. STOLTZ:

1 system?

2 A. Correct.

3 Q. And one of those capabilities that you can
4 bestow is the ability for that administrator to, in
5 turn, log in and collect these vote digests?

6 A. Yes.

7 Q. But during the January 2016 election, you
8 did not activate that capability for any other
9 persons?

10 A. Correct.

11 Q. And was there a reason for not doing that,
12 or is it just something that didn't ever occur to
13 anybody?

14 A. Never occurred.

15 Q. In Exhibit 1, the interrogatory response,
16 on page 6, item 4 is a discussion that says,
17 "Observers were permitted to attend the APFA ballot
18 county at APFA headquarters."

19 Do you see that?

20 A. Yes.

21 Q. And when you say "headquarters," that's
22 the building in Euless, Texas; is that right?

1 A. Correct.

2 Q. And can you just describe for me -- on
3 the -- the day or the night when the election period
4 is concluding, describe the scene there at the -- at
5 the candidate headquarters. What's going on?

6 A. The ballot closes at 10 a.m., Central
7 Time. We have a fairly large room that's called the
8 "Unity Pays" Room where we hold the ballot count.
9 Any member in good standing may attend this. And we
10 did have several.

11 When they enter into the building to begin
12 with, they have to sign in. And then they're allowed
13 to go into the "Unity Pays" Room where there are two
14 sheets. One is a sign-in sheet. And we do have a
15 committee member there checking to make sure that
16 they are a member in good standing, they're
17 dues-eligible, you know. And then we also have a
18 rules and conduct of an election that they read and
19 they sign that we maintain.

20 At 10 o'clock, the system cuts off all
21 voting. And, shortly thereafter, the committee
22 members all gather into that room. I have my

1 APFA-issued laptop computer that is connected to a
2 huge screen so that anyone in the room then can see
3 the results. I log into it as -- as a chairperson.
4 I then have to have a second committee person co-log
5 in with their special login for this. And then I can
6 hit "officiate results."

7 At which time, it shows me a screen that
8 just gives me a place where I can put observers'
9 names. The names that are usually put on that is any
10 candidate that is there that's listed for -- for
11 that, their observer, the committee members, the
12 National Ballot Committee members that are there. I
13 do have an IT person there with me in case I have a
14 problem with the computer to the -- to the monitor up
15 there.

16 And then I hit "ballot count," and it
17 shows up on my screen and immediately then pops up on
18 the big screen. And it gives the official results.
19 I then go through and I read the results. And then I
20 let the galley know that we will be making copies. I
21 send one of the committee members to one of the
22 printers. We print off the official results. We

1 have any person who is listed as an observer sign and
2 date it. We keep that one for our records. And then
3 the rest are handed out to any galley -- gallery
4 members.

5 And there's two forms that we can do. We
6 do the official one. And then we can also break it
7 down by base. So those are available.

8 After all of that is done and everyone
9 leaves, then I start the creation of a hotline to go
10 out that gets sent out to any member that's signed up
11 for it. And it also gets posted on the APFA website.

12 Q. Okay. Thank you.

13 A. Mm-hmm.

14 Q. I'm going to ask just a few questions
15 about what you said. The room you're actually in,
16 the "Unity Pays" Room; is that right?

17 A. Mm-hmm.

18 Q. Is that -- how big is it? Is it, like, as
19 big as a racket ball court? Is it --

20 A. It's probably a little shorter than this,
21 but it's wider than this room.

22 Q. Okay. And we're in a big conference room.

1 A. Okay. So -- yeah, you know -- I'm sorry.

2 MR. ROTH: Should have done a video
3 deposition.

4 BY MR. STOLTZ:

5 Q. I'm just trying to get a sense --

6 A. I didn't think about that.

7 We do meetings in there. We will set up.
8 It's a room that's big enough to hold four or five
9 large tables across with chairs. And then we can put
10 chairs around the circumference of the room. And in
11 the very front is where I sit with my laptop. And
12 then there is a big white screen that we can project
13 onto.

14 Q. So for the ballot count during the January
15 2016 election, how many people would you estimate?
16 Were there a couple dozen people?

17 A. I would say approximately -- we -- we
18 probably had around 20 -- between 20 and 30 people.

19 Q. Okay. So at the very least, it's a room
20 that can comfortably hold 20 or 30 people?

21 A. Yes.

22 Q. And you sit at the front. And is there

1 some kind of desk there or a table?

2 A. There is. During this election, I sat
3 facing the gallery with my computer like this, so
4 that they could -- with the back of my computer
5 towards the gallery because of inputting my user and
6 my pins so that the gallery could not ever see that.

7 Q. Okay. And so that -- you mentioned that
8 your laptop was shared with a large screen so that
9 the members could then see what was on your laptop.

10 I take it, from what you just said,
11 though, that you didn't share your laptop with the
12 screen during this whole process while you were, for
13 example, inputting your own password, did you?

14 A. No, I did not.

15 Q. Okay. So you went through the process.
16 And you -- eventually the process resulted in a --
17 some kind of image that had names of candidates and
18 votes, correct?

19 A. Correct.

20 Q. Is that the -- is that when you shared
21 your laptop with the screen so that everybody could
22 see?

1 A. Yes.

2 Q. So in terms of what a person in the
3 audience -- an observer in the "Unity Pays" Room
4 would have seen during this process, they would have
5 seen you up at a table with your laptop typing on
6 your laptop, right?

7 A. Correct.

8 Q. They couldn't actually see what were you
9 typing or what screen you were at because the laptop
10 was turned toward you, though, correct?

11 A. Correct.

12 Q. And I take it probably, during this time,
13 you gave some -- or somebody probably gave some
14 explanation of, We're in the process of pulling the
15 results or something like that?

16 A. What I do is I explain. And I would tell
17 them I'm now going to be logging in. Then I need a
18 co-log in. Then that's when I ask, Okay, who wants
19 to be listed as an observer. I put their names in,
20 ask them to spell it. And then I'm like, Okay, now,
21 I'm going to officiate the results. I hit the
22 button, and then I hit this -- another little button

1 that they've set up for me. And it throws it right
2 up.

3 Q. Okay. So the -- the observers see you
4 doing this. They see another person come log in.
5 You say that you're going to hit the button. And
6 then after you hit the button, you then transfer it
7 onto the screen, correct?

8 A. Correct.

9 Q. And the members then can see how many
10 votes each candidate got, correct?

11 A. Correct.

12 (Exhibit No. 4 was marked for
13 identification.)

14 BY MR. STOLTZ:

15 Q. I've handed you a document that will be
16 marked as Exhibit 4. And it says -- at the top, it
17 says "BP - APFA Voting System" at the very top. And
18 then it says "APFA National Officer Election Official
19 Results."

20 Do you see that?

21 A. Yes.

22 Q. So do you recognize -- what is this

1 document, Exhibit 4?

2 A. This is the official result page that
3 comes up when I hit for the result of the ballot
4 count that projects then up onto the big screen.

5 Q. Okay. So Exhibit 4 -- and I realize that
6 the copy we have has signatures at the bottom.

7 A. Yes.

8 Q. But let's assume that those signatures are
9 not there.

10 Is Exhibit 4 the -- the actual thing that
11 people see on the screen in the "Unity Pays" Room
12 during the vote count?

13 A. Yes.

14 Q. And is there anything other than Exhibit 4
15 that observers see on the screen in the "Unity Pays"
16 Room during the vote count?

17 A. After we show them this, they usually like
18 to see the base-by-base breakdown. And then we will
19 pull that up, and then we will also print that for
20 them.

21 Q. So the base-by-base breakdown, is it a
22 similar sheet to Exhibit 4 except instead of just

1 giving the total results, it shows how many votes
2 each candidate received in each of the bases?

3 A. Correct.

4 Q. So then, if I understand correctly,
5 Exhibit 4 has been projected on a screen from your
6 laptop. These names down at the bottom of the first
7 page of Exhibit 4, where it says Nena Martin,
8 witness, Marcy Dunaway, witness -- it goes on --
9 these are the names that you typed in during this
10 process who were present, and you say, Who wants to
11 be an observer, and you type those in; is that right?

12 A. Correct.

13 Q. So after Exhibit 4 is projected onto this
14 screen, you then print copies of Exhibit 4; is that
15 right?

16 A. Correct.

17 Q. And you hand out copies to people who want
18 them in the room; is that right?

19 A. That's correct.

20 Q. And then there's one copy that you
21 actually have the observers sign, correct?

22 A. Correct.

1 Q. And Exhibit 4 is that document that you
2 actually have the observers sign, correct?

3 A. Correct.

4 Q. Is there anything else that you can think
5 of that's noteworthy that happens in the "Unity Pays"
6 Room? Anything else that observers do in that room?

7 A. Observers are then allowed, after the
8 ballot count, to ask the ballot committee to see who
9 voted, who did not vote, the ineligible list. And no
10 one did.

11 Q. So other than obviously seeing the results
12 and then the ability to at least ask for the -- the
13 who voted, who did not vote, anything else that
14 observers can do in this "Unity Pays" Room?

15 A. No.

16 Q. Now, the union has a process for
17 candidates to protest an election result; is that
18 correct?

19 A. Yes.

20 Q. Okay. And can you tell us just very
21 generally what is that process.

22 A. A candidate has 15 days following the

1 Q. I've handed you a document marked
2 Exhibit 5. Do you recognize what Exhibit 5 is?

3 A. Let's see. Samuel Morales' election
4 complaint.

5 Q. So one thing that's confusing to me at
6 least about Exhibit 5 is it's dated January 22nd,
7 2015. But the election that is referenced in
8 paragraph 1 is the January 9th, 2016 election. Do
9 you see that?

10 A. Yes. He's misdated.

11 Q. Okay. So Mr. Morales submitted this --
12 would it have been on January 22nd, 2016?

13 A. Correct.

14 Q. And so this document, Exhibit 5,
15 ultimately ended up in your hands as the chair of the
16 National Ballot Committee; is that right?

17 A. Correct.

18 Q. And, at that point, I think you -- you
19 told me earlier what the general procedure was. But,
20 at that point, you commenced an investigation; is
21 that right?

22 A. Yes.

1 Q. Is Exhibit 6 the -- the National Ballot
2 Committee's letter stating what its decision was with
3 respect to Mr. Morales' protest?

4 A. Yes.

5 Q. And if you look at page 4 of Exhibit 6,
6 you signed this letter, correct?

7 A. Correct.

8 Q. And let me ask you. On page 1 of
9 Exhibit 6, you state that, "The National Ballot
10 Committee has completed its investigation of your
11 national vice president election complaint that was
12 received by the APFA national secretary on January
13 22nd, 2016."

14 Do you see that?

15 A. Yes.

16 Q. So can you tell me specifically about what
17 occurred in the investigation of Mr. Morales'
18 complaint that is referenced on -- in the first
19 sentence of Exhibit 6.

20 A. I don't understand what you're asking.

21 Q. I'm sorry. There's -- what happened in
22 the investigation of Mr. Morales' complaint? You've

1 example, if you had your laptop at your house and you
2 had another -- say, you decided to do this at your
3 house. Could you log in from your house, and have
4 somebody else there, and obtain the results from your
5 house if, for someone reason, the "Unity Pays" Room
6 wasn't available?

7 A. I could.

8 Q. That's -- my question is when you log in,
9 you're talking about logging into the election
10 server, correct?

11 A. Correct.

12 Q. And to do that, you go -- you get on a
13 computer, and you type in your -- whatever address
14 you go to, and then you input your credentials,
15 correct?

16 A. Correct.

17 Q. And I'm just trying to confirm. My
18 understanding is you can do that from any computer,
19 correct?

20 A. Correct.

21 Q. You don't have to be in the "Unity Pays"
22 Room to do that. You could have -- if somebody said,

1 Hey, let's do the -- the election count at a bar just
2 instead, we could have done it there, correct?

3 A. Correct.

4 Q. So the counting of the ballots, though --
5 are the ballots counted -- BallotPoint counts the
6 ballots, correct -- or performs the computer
7 functions that tally the ballots; is that right?

8 MR. ROTH: You have to give a verbal
9 response.

10 THE WITNESS: I know. I would say, yes,
11 it's their program that counts it.

12 BY MR. STOLTZ:

13 Q. Okay. In other words, you don't
14 actually -- you and nobody else at the union actually
15 counts the ballots, correct?

16 A. Correct.

17 Q. As far as you know, that's done at
18 Portland or wherever BallotPoint's computers are
19 located?

20 A. Correct.

21 Q. And then they essentially send the results
22 to you to whatever computer you've logged in on?

1 Q. And do you recall any discussion at that
2 meeting of these vote digests?

3 A. No.

4 Q. Turning back to Exhibit 7 of page -- page
5 8, there's a paragraph that says, "After the ballot
6 tally, the 'Who Voted' and 'Who Did Not Vote' lists
7 were available for users to view. No one asked to
8 view the lists. Samuel Morales did not request to
9 view the list. Morales left the union hall
10 immediately after the ballot count was certified."

11 Is that accurate?

12 A. Yes.

13 Q. Were the candidates' observers in this
14 January 2016 election provided any opportunity to
15 conduct logic or accuracy tests on the BallotPoint
16 system?

17 A. No.

18 Q. Were candidate observers provided any
19 opportunity to physically inspect the BallotPoint
20 system?

21 A. No.

22 Q. Exhibit 4 is the official results from the

1 January 2016 election. Do you see that?

2 A. Yes.

3 Q. Were candidates' observers provided any
4 opportunity to obtain an assurance that the results
5 listed on this Exhibit 4 did, in fact, come from
6 BallotPoint?

7 A. I don't really understand.

8 Q. Well, let me ask it this way: You earlier
9 explained that, in the "Unity Pays" Room, on the
10 final day of the election, Exhibit 4 was projected
11 onto a screen. And that's how the observers and the
12 candidates found out who won or didn't win the
13 election, right?

14 A. Correct.

15 Q. And I'm just asking you, were the
16 candidates' observers provided any way to know that
17 this Exhibit 4 actually did come from BallotPoint?
18 In other words, how did they -- did they have any way
19 of knowing whether this was just something that
20 somebody else typed up and put up on the screen?

21 A. No.

22 MR. STOLTZ: Can we go off the record for

1 CERTIFICATE OF REPORTER

2 UNITED STATES OF AMERICA) ss.:

3 DISTRICT OF COLUMBIA)

4 I, ANGELA MCCULLLOUGH, the officer before whom
5 the foregoing proceedings were taken, do hereby
6 certify that the foregoing transcript is a true and
7 correct record of the proceedings; that said
8 proceedings were taken by me stenographically to the
9 best of my ability and thereafter reduced to
10 typewriting under my supervision; and that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to this case and have no interest,
13 financial or otherwise, in its outcome.

14

15

Angela K. McCullough

16

Notary Public in and for

17

The District of Columbia

18

19

20 My commission expires: 1/31/2020

21

22



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

R. ALEXANDER ACOSTA, Secretary of
Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL
FLIGHT ATTENDANTS,

Defendant.

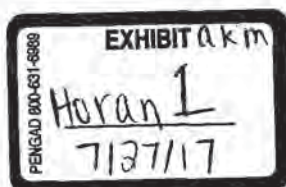
Civil Action No. 4:16-cv-1057-A

**DEFENDANT APFA'S ANSWERS TO PLAINTIFF DOL'S FIRST SET OF
INTERROGATORIES**

Defendant, the Association of Professional Flight Attendants ("APFA"), hereby answers the first set of interrogatories propounded on it by the Plaintiff, R. Alexander Acosta, acting in his official capacity as the Secretary of Labor.

APFA has not completed its investigation of all the facts relating to this litigation. All of the objections and answers contained herein are based only on the information, documents, and sources that are presently available and known to APFA, based on a reasonable and ongoing investigation of available sources. APFA expressly reserves its right to supplement, clarify, revise, or correct any or all of the objections and answers, and to supplement its objections, and answers, as well as its assertions of privileges, as appropriate.

APFA objects generally to Plaintiff's interrogatories to the extent they call for information protected by the attorney-client privilege or the attorney work-product doctrine.



Each of Plaintiff's interrogatories is set forth in bold preceding APFA's answer and/or objections to that interrogatory.

INTERROGATORY NO. 1: Describe in detail the complete factual basis for the APFA's denial of the contention in paragraph 27 of Plaintiff's original complaint that the violation of 29 U.S.C. § 481(a) alleged by Plaintiff in the original complaint may have affected the outcome of the APFA's election for the offices of National President, National Vice President, National Secretary, and National Treasurer at issue in this action.

At this point in time, the facts known to APFA which support this denial are as follows:

1. In his internal union complaint, *see* DOL 0087, Samuel Morales stated no basis for his "feel[ing]" that APFA violated the ballot secrecy provision of the LMRDA. Nor did he assert (much less point to any evidence) that the secrecy of any union member's vote had actually been compromised, or that any member had claimed that a concern about ballot secrecy impacted how, or if, that member voted.

2. In his subsequent complaint to the DOL, *see* DOL 0001, Mr. Morales likewise stated no basis for his "belie[f]" that APFA violated the ballot secrecy provision of the LMRDA. Nor did he assert (much less point to any evidence) that the secrecy of any union member's vote had actually been compromised, or that any member had claimed that a concern about ballot secrecy impacted how, or if, that member voted.

3. The Complaint Interview Questionnaire prepared by DOL investigator Keith King, *see* DOL 0139, states that Mr. Morales was interviewed by the DOL on March 8 and 17, 2016, and that in his interview Mr. Morales stated "that he couldn't single out any particular evidence to support his statement that he felt that APFA violated . . . the ballot secrecy provision of [the LMRDA]."

4. In his deposition, Stephen J. Willertz testified that, to his knowledge, during the course of the DOL's investigation, neither Mr. Morales nor any other union member expressed a

concern that—to quote paragraph 21 of the DOL’s Complaint in this matter—“[t]he [BallotPoint] system stores and maintains member identifying information and voting records on two servers in a way that could allow individuals with access to both of the servers to identify how a member voted.” *See* Willertz Dep. at 45-47.

5. In his deposition, Mr. Willertz further testified that based on the evidence “noted” in the DOL’s investigation, “[t]here is just no way” that voters in the challenged APFA election could have made “any sort of assessment as to whether or not votes and voters could be connected.” *See* Willertz Dep. at 41-42.

6. Along the same lines, an Interrogatory Response signed by Mr. Willertz states that “BallotPoint’s election system is not accessible for inspection by members or their agents; moreover, its complicated highly-technical design makes it highly unlikely that a union member could discern whether it was functioning to only count votes from eligible voters and to accurately count those votes,” *see* Responses at pp. 9-10, and Mr. Willertz admitted in his deposition testimony that the same considerations make it “highly unlikely, if not impossible, that a member could discern that there is data on the two servers that could be connected up to link a voter with the vote,” *see* Willertz Dep. at 226-27.

7. A Statement of Reasons disposing of a prior election challenge brought by Mr. Morales, *see* Willertz Dep., Exh. 18, coupled with the two election complaints filed by Mr. Morales in this matter, *see* subparagraphs 1-2 above, show that Mr. Morales challenged the national officers’ election at issue here on secret ballot grounds because the DOL had planted a seed in Mr. Morales’ head that the BallotPoint system did not adequately ensure ballot secrecy, and not because Mr. Morales had an independent feeling or belief that such was the case.

Discovery in this action is ongoing, and APFA anticipates that it will be able to develop additional facts in support of its denial in the course of that discovery.

INTERROGATORY NO. 2: Describe in detail the complete factual basis for the APFA's denial of the contention in paragraph 27 of Plaintiff's original complaint that the violation of 29 U.S.C. § 481(c) alleged by Plaintiff in the original complaint may have affected the outcome of the APFA's election for the offices of National President, National Vice President, National Secretary, and National Treasurer at issue in this action.

At this point in time, the facts known to APFA which support this denial are as follows:

1. The facts and opinions set out in Part III.B of Curt Stapleton's expert report, which APFA provided to the Secretary on June 30, 2017, and which Mr. Stapleton likely will be called upon to elaborate on in his forthcoming deposition.

2. The facts and opinions summarized in Part (ii)(6) of the Rule 26(a)(2)(C) Disclosure pertaining to Gerry Feldkamp's anticipated expert testimony, which APFA provided to the Secretary on June 30, 2017, and which Mr. Feldkamp likely will be called upon to elaborate on in his forthcoming deposition.

3. Mr. Feldkamp, Mike Baum, and Bob Thompson, the three BallotPoint engineers with privileged access to the BallotPoint system, are anticipated to confirm that they did not engage in any form of misconduct or tampering with the software application related to the recordation and counting of votes in the challenged APFA election. And BallotPoint's business reputation and track record, among other factors, stand as independent confirmation of this fact.

4. In his deposition, Mr. Willertz testified that "I don't have any evidence that the results [of the election] are inaccurate or wrong." *See Willertz Dep. at 249.*

5. In his deposition, Mr. Willertz further testified that a "spot check" of the underlying vote data in the election disclosed nothing irregular. *See Willertz Dep. at 265-66.*

6. There are no facts, and the DOL has cited none, that raise a reasonable possibility that the alleged violation of 29 U.S.C. § 481(c) may have affected the outcome of the challenged APFA National Officer Elections.

Discovery in this action is ongoing, and APFA anticipates that it will be able to develop additional facts in support of its denial in the course of that discovery.

INTERROGATORY NO. 3: Describe in detail all ways in which candidates' observers were permitted to observe any aspect of the APFA's election for the offices of National President, National Vice President, National Secretary, and National Treasurer at issue in this action, including how and when the candidates and/or their observers were notified of any observer opportunities.

1. Candidates were permitted to inspect (but not copy) the membership list once within the thirty (30) days prior to the mailing of the ballots. Candidates are permitted to inspect (but not copy) the membership list and a list of the voting members from the previous National Officer elections once within forty-five (45) days prior to the mailing or electronic availability of the ballots. Candidates were informed of these opportunities through the form candidate letter sent by Cindy Horan to all candidates. *See* DOL0397-DOL0401. In addition, the complainant in this matter, Samuel Morales, was advised, in a December 24, 2015 email from National Ballot Committee Chairperson Cindy Horan, that he could review a list of eligible voters and a list of ineligible members at the ballot count. *See* APFA-00000252, APFA-00000262.

2. Observers were permitted to observe the preparation and mailing of the ballots (that is, the voting credentials prepared and mailed by Allied Media). Candidates were informed of this opportunity through the form candidate letter sent by Cindy Horan to all candidates. *See* DOL0397-DOL0401.

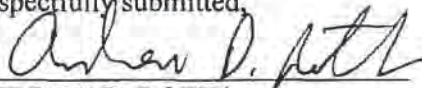
3. Observers were provided by the APFA National Ballot Committee with a daily list of the APFA members who became eligible to vote after the ballots (that is, the voting

credentials prepared and mailed by Allied Media) had been mailed. Observers had 48 hours to challenge the eligibility of any newly eligible member. Candidates were informed of this opportunity through a candidate letter sent by Cindy Horan to all candidates on December 10, 2015. *See* APFA-00000290-APFA-00000291. Candidates were also informed of this opportunity in the APFA Policy Manual, § 14.O. *See* APFA-00000216.

4. Observers were permitted to attend the APFA ballot count at APFA Headquarters. Candidates were informed of this opportunity through the form candidate letter sent by Cindy Horan to all candidates. *See* DOL0397-DOL0401. Candidates were also informed of this opportunity in the APFA Policy Manual, § 14.Q. *See* APFA-00000218- APFA-00000219. In addition, any member in good standing was permitted to observe the ballot count from gallery space. Members were informed of this opportunity in the APFA Policy Manual, § 14.Q. *See* APFA-00000219.

5. Candidates were permitted to request to view the Who Voted and Who Did Not Vote Reports after the ballot count. Information regarding a candidate's right to view these reports was not communicated to candidates in a formal communication, but would be shared with candidates in response to candidate inquires regarding which members voted. In addition, the complainant in this matter, Samuel Morales, was advised, in a December 24, 2015 email from National Ballot Committee Chairperson Cindy Horan, that he could review a list of the members who voted at the ballot count. *See* APFA-00000252, APFA-00000262.

Respectfully submitted,



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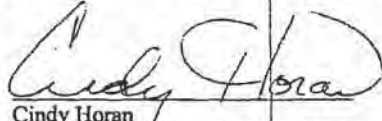
Attorneys for Defendant Association
of Professional Flight Attendants

* Admitted Pro Hac Vice

Dated: July 12, 2017

Verification

I, Cindy Horan, do verify under penalty of perjury that I have read Defendant's Answer to Plaintiff's Interrogatory No. 3 and know its contents. I am informed and believe that the factual matters set out in the above response are true and accurate to the best of my knowledge, information, and/or belief.*



Cindy Horan
APFA National Ballot Committee Chairperson

* The APFA's Answers to Interrogatories 1 and 2, which are in the nature of contention interrogatories, have been prepared by undersigned counsel on the preceding page.

DATED: July 10, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of July, 2017, the above and foregoing document was served on Plaintiff's counsel of record electronically by email transmission and by USPS, First Class mail, postage prepaid, as authorized by Federal Rule of Civil Procedure 5(b), addressed to the following:

Brian W. Stoltz
Assistant United States Attorney
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214-659-8626
Facsimile: 214-659-8807
brian.stoltz@usdoj.gov


ADAM BELLOTTI

APFA

ASSOCIATION OF PROFESSIONAL FLIGHT ATTENDANTS

National Officer Election

Official Results

Ballot ending: 01/09/2016 10:00:00 (Central)

The ballots were cast and tallied as follows.

TOTAL		
Please select one of the following candidates for APFA National President:		
Lori Bassani	Total	Percent
Steven Baumert	599	6.41
Kimberly Goesling	1168	12.50
Patrick Hancock	449	4.80
Andrea S. Jones	1750	18.72
Brian Morgan	53	0.57
Bob Ross	1143	12.23
Rock Salomon	3151	33.71
Total	1034	11.06
Please select one of the following candidates for APFA National Vice President:		
Marcus Gluth	Total	Percent
Nena Martin	2632	28.91
Samuel Morales	4779	52.49
Total	1693	18.60
Please select one of the following candidates for APFA National Secretary:		
Nicole Darak	Total	Percent
Marcy Dunaway	2572	28.16
Jacob Fuller	3301	36.14
Donald LeBlanc	1892	20.71
Jaana Lehtola	375	4.11
Total	994	10.88
Please select one of the following candidates for APFA National Treasurer:		
Craig Gunter	Total	Percent
Roe Rio Harrari	3344	36.52
Stefany Jones	147	1.61
Nestor Quecuty	1582	17.28
Eugenio Vargas	935	10.21
Total	3148	34.38

- There were 20656 eligible voters, of which 9355 cast a ballot, representing 45.3% of the eligible voters.
- Of the 9355 ballots cast, 5433 (58.1%) were by phone, and 3922 (41.9%) were by web.
- There were 0 ballots cast in which the voter did not make a selection.

These Official Results witnessed and certified by Nena Martin, Marcy Dunaway, Kimberly Goesling, Sam Morales, Michael Truan, Liz Geiss, Marie Plevritis, Lena Gale, Cindy Horan, Leatha Harding-Berry and Avis Rives.

Nena Martin witness		signature / date
Marcy Dunaway witness		signature / date
Kimberly Goesling witness		signature / date
Sam Morales witness	 1/19/16	signature / date
Michael Truan witness	 1/9/16	signature / date
Liz Geiss witness	 1/9/16	signature / date

EXHIBIT akm
Horan H
7/27/17
PENGAD 800-631-6988

Marie Plevritis witness	<u>Am Plevritis</u>	<u>Am Plevritis</u> 1/9/16
Lena Gate witness	<u>ROTH</u>	<u>Am Roth</u> 1/9/16
Cindy Horan witness	<u>Cindy Horan</u>	<u>Cindy Horan</u> 1/9/16
Leatha Harding-Berry witness	<u>L Harding Berry</u>	<u>L Harding Berry</u> 1/9/16
Avis Rives witness		<u>Avis Rives</u> 1/9/16

Report generated: 01/09/2016 10:09:07 (Central)

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January 22, 2015

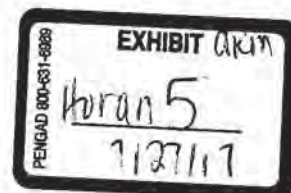
In accordance with Article VI, Section 6 of the APFA Constitution and Bylaws. I, Samuel Morales, a member in good standing, am officially filing an Election Contest/Protest to the secretary of APFA, Mr. Jeff Pharr, to be forwarded to the National Balloting Committee, Cindy Horan, to overturn my National Vice President Election, canvassed on January 09, 2016 at APFA Unity Headquarters, and I call for a new election to be run under the observation and direction of the Department of Labor (DOL), and in accordance with provisions outlined in section 401(e) of the LMDRA, See 29 C.F.R. Subsection 452.97.

The Association of Professional Flight Attendants, herein after referred to as the "APFA," utilized an Internet and telephone voting system which is designed by a 3rd party company, called Ballot Point, which is located in a different state, where as each member is required to enter an employee identification number (VIN) and a (PIN) number, which could be monitored by certain employees of the third-party Company, which is cast by telephone and whereas votes during this election process can no longer be changed as in previous elections. APFA arbitrarily made changes to electronic voting without providing an explanation as to why changes were made.

Moreover, no record of undelivered/returned ballot envelopes was published or provided for any of the observers who observed at APFA Headquarters. Where did the returned ballots go and who receives them when they're returned undelivered? What safeguards and/or protections members we have if the so-called "Official Tallies" arrive in one room at APFA (a room off limits to ballot count observers) and are forwarded to the main Unity Pays room where the observers are and the tally is counted. This procedure is both unsterile and unsecure.

Section 401(c) of the LMRDA requires that "adequate safeguards to take place in order to insure that a fair election be provided, which includes the right of any candidate to have an observer at each of polls and at the counting of the ballots." Since APFA is in one state and Ballot Point is in another, its is practically impossible for me (or any observer) to view the balloting process, which I believe violates LMDRA 29 U.S.C. 481(c).

The Department of Labor's (DOL) regulations at 29 CFR 452.107(a) state that under the provisions of section 401(c), each candidate must be permitted to have an observer (1) at the polls and (2) at the counting of the ballots. That right also encompasses every phase and every level of the counting and tallying process, including the counting and tallying of the ballots and the totaling, recording, and reporting of the tally sheets. Furthermore, if there is more than one polling place, the candidate may have an observer at each location. If ballots are being counted at more than one location or at more than one table at a single location, a candidate is entitled to as many observers as necessary to observe the actual counting of the ballots. The observer may note the names of those voting so that the candidates may be able to ascertain whether unauthorized persons voted in the



election. The observers should be placed so that they do not compromise, or give the appearance of compromising, the secrecy of the ballot.

On January 09, 2016, the day I observed my balloting race for APFA National Vice President there was nothing to view or challenge. No eligible membership voters list was provided, however APFA provided the names of those who became dues current within the required statutory voting deadline, a new change never provided before and was sent via email, but not the entire eligible list .

During this National election, the final tallies came to a laptop in the Unity Pays room and not a fax machine. There is no way to verify if the results came directly from Ballotpoint, which is in another State, or if the Tallies came from a different room within APFA. Ballotpoint has stated that it does not certify our elections, only APFA does, which means there's absolutely no way to verify any of the results because it's all done in secret. Unlike previous paper ballots that were certified by an outside accounting firm, electronic ballots are certified by the APFA alone with no second verification as to the authenticity.

Furthermore the DOL's regulations at 29 CFR 452.107(c) states that "In any secret ballot election which is conducted by mail, regardless of whether the ballots are returned by members to the labor organization office, to a mail box, or to an independent agency such as a firm of certified public accountants, candidates must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots."

Moreover, the DOL's regulations at 29 CFR 452.110(a) states, in part, that "the Act contains a general mandate in Section 401(c), that adequately safeguards to insure a fair election be provided. ... A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness."

Also with regard to Preservation of Records Section 401(e) of the LMRDA which provides that "[t]he election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election." 29 U.S.C. 481(e). I was handed a piece of paper(s) with regard to my election, which only stated the names of the candidates (3) and the final numbers, with absolutely no certification whatsoever from Ballotpoint.

It is for the above aforementioned, I am calling for the NBC to overturn the National Vice President election, and I also demand that a new election balloting process begin which utilizes a paper ballot with a neutral third-party balloting company to count the ballots. I demand that APFA use a balloting process that can be authenticated and verified.

Please note with regard to this protest, I feel APFA violated the integrity and ballot secrecy provision of section 401(e) of the LMDRA, 29. C.F.R subsection 452.97 and I incorporate the LMDRA act into this said election complaint.

Respectfully Submitted,

Samuel Morales -DFW- 80485
5600 Shady Hill Lane
Arlington, TX 76016
817-683-5988



Association of Professional
Flight Attendants

Representing the Flight Attendants of American Airlines

Certified Return Receipt #70033110000333300061

January 29, 2016

Samuel Morales
5600 Shady Hill Lane
Arlington, TX 76016

Dear Sam:

The National Ballot Committee (NBC) has completed its investigation of your National Vice President election complaint that was received by the APFA National Secretary on January 22, 2016. You contend that the election violated the Labor-Management Reporting and Disclosure Act (LMRDA). **For the reasons we now describe, the NBC finds no basis for setting aside the election.** The paragraph numbers below refer to the paragraphs in your complaint, and the claims you make are in italics.

1. Electronic Balloting

In paragraph 2, you state that, "each member is required to enter an employee identification number (VIN) and a (PIN) number, which could be monitored by certain employees of the third-party Company [BallotPoint], which is cast by telephone and whereas votes during this election process can no longer be changed as in previous elections. APFA arbitrarily made changes to electronic voting without providing an explanation as to why changes were made."

Members were not given a VIN and a PIN.

APFA did make changes in the electronic (internet and telephone) voting system, but those changes were not arbitrary. Instead, they were made in direct response to concerns raised by the U.S. Department of Labor during its investigation and litigation of a complaint that was filed by a member of the Allied Pilots Association alleging that electronic balloting – with the use of BallotPoint and the same procedures APFA used in past elections – did not satisfy the requirements of the LMRDA.

Under the revised system, only eligible candidates were permitted to log in and access a ballot. Once the member logged in, the connection between the voter and the ballot was severed. This meant that a voter could not change his or her vote after it was cast. In addition, the LMRDA does not require that a voter be allowed to change his or her vote.

1004 West Eules Blvd • Eules, Texas 76040

Tel: (817) 540-0108 • Fax: (817) 540-2077 • www.apfa.org



APFA 000025019
App: 2019

Contrary to your assertion, APFA explained to the membership the reasons for the changes in a December 1, 2015 hotline and reiterated in a December 8, 2015 hotline. Copies of those hotlines are Attachment 1 to this letter. Moreover, these hotlines remained posted on the APFA website, www.apfa.org, throughout the balloting period, as did the resolution passed by the Board of Directors adopting the changes and explaining why they were being made.

2. Undelivered/returned ballot packets

In paragraph 3, you claim that "no record of undelivered/returned ballot envelopes was published or provided for any of the observers who observed at APFA Headquarters. Where did the returned ballots go and who receives them when they're returned undelivered?"

APFA does keep records of undelivered/returned ballot packets. You never made any request to review those records or for an explanation of the process for handling undelivered/returned ballot packets.

3. Observer Rights – Vote Tallies

- a. *In paragraph 3, you state, "What safeguards and/or protections members we have [sic] if the so-called "Official Tallies" arrive in one room at APFA (a room off limits to ballot count observers) and are forwarded to the main Unity Pays room where the observers are and the tally is counted. This procedure is both unsterile and unsecure."*

The tallies "arrived" only on a computer in the Unity Pays room, where the observers were; they did not arrive in, nor were they forwarded from, any other room at APFA.

- b. *In paragraph 7, you assert: "During this National election, the final tallies came to a laptop in the Unity Pays room and not a fax machine. There is no way to verify if the results came directly from Ballotpoint, which is in another state, or if the Tallies came from a different room within APFA."*

There is no requirement that final tallies come in by fax machine. The tally results did come from BallotPoint, not from a different room in APFA. You did not request verification of that fact.

- c. *You also state in paragraph 7 that "Ballotpoint has stated that it does not certify our elections, only APFA does, which means there's absolutely no way to verify any of the results because it's all done in secret. Unlike previous paper ballots that were certified by an outside accounting firm, electronic ballots are certified by the APFA alone with no second verification as to the authenticity." In paragraph 10, you state, "I was handed a piece of paper(s) with regard to my election, which only stated the*

names of the candidates (3) and the final numbers, with absolutely no certification whatsoever from Ballotpoint."

We do not understand what you mean by a "verification as to the authenticity" of the results. In any event, you did not make a request for any such verification, much less for a second verification. Furthermore, there is no requirement of a "second verification." Nor is there any requirement that BallotPoint certify the "final numbers."

4. Other Observer Rights

- a. *In paragraph 4, you state that: "Since APFA is in one state and Ballot Point is in another, its is [sic] practically impossible for me (or any observer) to view the balloting process, which I believe violates LMDRA 29 U.S.C. 481(c)."*

The fact that APFA and BallotPoint are in different states did not prevent you from observing all stages of the balloting process. You did not ask to have an observer present at the preparation of the ballot, the preparation of the ballot packets or the mailing of the ballot packets. You did observe the ballot count.

- b. *In paragraph 6, you complain that on the day of the ballot count, "there was nothing to view or challenge. No eligible membership voters list was provided, however APFA provided the names of those who became dues current within the required statutory voting deadline, a new change never provided before and was sent via email, but not the entire eligible list."*

During the balloting period, you emailed the NBC and asked to be provided with "the entire list of eligible voters prior to election day." (Attachment 2.) The NBC sent an email in response, informing you that:

APFA doesn't provide any candidate or other observer with a list of eligible voters during the balloting period. We have been sending you (and other observers who have asked) daily emails with a list of newly-eligible voters and giving observers an opportunity to challenge the voters' new eligibility before those voters can cast a ballot.

The NBC went on to advise you:

You do have the right at the ballot count to review the list of eligible voters, as well as a list of ineligible members and a list of those who voted.

However, at the ballot count you did not ask to see any of those lists.

Letter to Samuel Morales
January 29, 2016
Page 4

In light of these facts, there was no LMRDA violation, much less one that may have affected the outcome of the National Vice President election. **Therefore, the NBC will not set aside the election results.**

Per Article VI, Section 6.D. of the APFA Constitution, you may appeal this decision to the APFA Executive Committee no later than forty-five (45) days following the canvassing date (date the ballots were counted) which was January 9, 2016, that is no later than February 8, 2016. If you have any questions, please feel free to contact us at ballot@apfa.org or (817) 540-0108 extension 8311.

Sincerely,



Cindy Horan
NBC Chairperson

Attachments

ATTACHMENT 1

Email not displaying correctly? View it in your browser.



Tuesday, December 1, 2015

Like Tweet

Important Changes to APFA Election Balloting - LAA/LUS

Due to a potentially landmark settlement between the Allied Pilots Association (APA) and the US Department of Labor (DOL), on November 30, 2015, the APFA Board of Directors made two important changes to APFA's internet and telephone (electronic) balloting process for ALL upcoming elections:

1. **Members will no longer be able to change votes.** In all upcoming elections, members will only have one opportunity to vote and that ballot cannot be changed later.
2. **Only members in good standing will be allowed to cast a ballot.** Members in bad standing must become dues-eligible no later than the fifth day before the close of the balloting period in order to vote in that election.

To read the Board of Directors resolution, [click here](#).

Why is APFA Making This Change Now?

Last year, the DOL brought a lawsuit against the APA challenging the electronic balloting system the Union used for Officer elections. Negotiations between APA and DOL stretched for nearly a year. Today, it is clear that the DOL believes that an electronic balloting system will violate the Labor Management Reporting and Disclosure Act (LMRDA) – which governs all Union Officer elections – if it allows voters to change their votes or if it allows ineligible voters to cast a ballot. Here's why.

All electronic balloting must satisfy the LMRDA's requirement of secrecy, that is, the vote cannot be connected to the voter. The DOL believes that in order for a voter to change his or her vote, an electronic balloting system must maintain a connection between the voter and the ballot cast. Similarly, in order for an electronic balloting system to void the ballot of a voter who is determined to be ineligible, a connection between voter and vote would need to be maintained. Therefore, according to the DOL, an electronic balloting system that includes those features violates the LMRDA's secrecy requirement.

Can APFA Continue Balloting the Way We Always Have?

No. BallotPoint, APFA's longtime electronic balloting vendor, is the same vendor APA used in the elections challenged in the lawsuit. To address the DOL's concerns, BallotPoint already has changed its process for all electronic balloting to a new system called "One Vote, No Void." APFA was unable to find an electronic balloting vendor that conducts elections at a major carrier and uses the same system APFA used. But even if there were a vendor that would be willing to redesign its system to match APFA's former one, that could not be accomplished before the ballots go out on December 10. More important, it is clear that the DOL would find that ANY electronic balloting system that allows votes to be changed or voided violates the LMRDA. Therefore, unless APFA eliminates members' ability to change their vote or to cast a ballot until they are in good standing, the DOL would likely uphold a challenge to the process and seek to overturn the election results.

Is There a Reason This Change Is Being Made Now, So Close to the Mailing of the Ballots?

Yes. It was not until the DOL/APA settlement that the need for the change became clear.

Does This Change Comply with the APFA Constitution?

Yes. The APFA Board of Directors has made the necessary changes to the APFA Policy Manual in compliance with the APFA Constitution. To see those Policy Manual changes, [click here](#).

Can Previous APFA Elections be Challenged Due to this Change?

No. This change and the DOL's interpretation of the LMRDA will apply only to the current and future elections. They do not affect previous elections. It is too late to challenge those elections.

Cindy Horan
APFA National Ballot Committee Chair
ballot@apfa.org



You received this e-mail as an APFA Member. If you no longer wish to receive this Weekly Hotline Update via e-mail, unsubscribe information is available below.

[Unsubscribe mgilson@bredhoff.com](mailto:mgilson@bredhoff.com) from this list | [Forward to a friend](#) | [Update your profile](#)

Our mailing address is:

APFA
1004 W. Euless Blvd.
Euless, TX 76040

[Add us to your address book](#)

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Tuesday, December 8, 2015

Like Tweet

APFA National Elections Balloting - LAA/LUS

Recently, the Department of Labor (DOL) and the Allied Pilots Association (APA) reached a potentially landmark settlement which has led APFA to modify its balloting procedures. For more information on the changes, [click here](#). Below is a helpful guide for members ahead of the coming National Officer election:

New Access Code

Each APFA member will be mailed a new "access code." The activation code and PIN you may have received in a past election no longer are valid. A new access code will be issued every time there is an election.

No Changing of Votes

Make sure you have all of the information you need before you vote. Double-check the names of the candidates you have chosen to ensure no mistakes are made on your ballot. **ONCE YOU CAST YOUR BALLOT, YOU WILL NOT BE ABLE TO CHANGE YOUR VOTE.**

Duplicate Ballots

If you do not receive the ballot packet that APFA mailed to you, or if you received the packet but have misplaced your access code, please contact the National Ballot Committee (NBC) at ballot@apfa.org or (817) 540-0108 ext. 8311. Please be aware that if the

electronic balloting system shows that your access code was already used to cast a vote, no duplicate will be issued.

Eligibility to Vote

In order to be eligible to vote, you must be a member in good standing. If you are not yet an APFA member and would like to vote in the National Officer elections, you must join **BY THIS THURSDAY, December 10, 2015**, the day the ballots are mailed. To join APFA, [click here](#).

In order to be eligible to vote, you must be in good standing – not more than sixty (60) days in dues arrears. You must be in good standing no later than the fifth (5th) day before the close of the balloting period: **BY January 4, 2016**.

As in the past, the NBC will mail ballot packets, now including access codes, to all APFA members. **The balloting system will not allow members in bad standing to log in.** Instead, a message will appear (or in a recording if you are voting by telephone) instructing you to contact the Election Administrator/NBC. You can reach the NBC at ballot@apfa.org or (817) 540-0108 ext. 8311.

If you are ineligible because you are in dues arrears, you can become a member in good standing by contacting the APFA Dues Department at dues1@apfa.org or (817) 540-0108 ext. 8151. You can pay over the telephone by credit card, send in a check or pay in person at APFA Headquarters. A check must be **received by APFA no later than January 4, 2016**, the fifth (5th) day before the close of the balloting period. **If you are unsure of your dues status, contact the Dues Department as soon as possible in order to become voting-eligible before the deadline!**

Challenges to Eligibility

The Labor-Management Reporting and Disclosure Act (LRMDA) – the federal law that governs Union Officer elections – requires Unions to give candidates or their designated observers an opportunity to challenge a member's eligibility to vote. This will apply when the NBC changes your membership status from bad standing to good standing. Therefore, members who catch up on their dues may not be able to cast a ballot immediately.

Upon request, the NBC will notify a slate of candidates, and a candidate who is not running

on a slate, that you are now eligible to vote. The candidate or observer will have 48 hours to challenge your eligibility. If no challenge is brought forward, the NBC will upload an updated eligibility list to the electronic balloting system and you will be able to access the system and cast a ballot.

If a candidate or observer notifies the NBC by email that he or she is challenging your new eligibility, the NBC will notify you and then promptly review the matter. If it sustains the challenge, the NBC will notify you that you still are ineligible to vote and will give you the reason. If the NBC confirms your eligibility, you will be added to the eligibility list and the NBC will notify you that you can now cast your ballot.

Cindy Horan

APFA National Ballot Committee Chair

ballot@apfa.org



ATTACHMENT 2

From: Cindy Horan
Sent: Thursday, December 24, 2015 7:32 AM
To: SAMUEL MORALES
Subject: RE: ineligible to eligible

Sam,

All candidates had the right to view the membership list once within the 45 days before the ballots were mailed.

APFA doesn't provide any candidate or other observer with a list of eligible voters during the balloting period. We have been sending you (and other observers who have asked) daily emails with a list of newly-eligible voters and giving observers an opportunity to challenge the voters' new eligibility before those voters can cast a ballot.

You do have the right at the ballot count to review the list of eligible voters, as well as a list of ineligible members and a list of those who voted.

Thank you,

Cindy Horan
APFA National Ballot Committee

From: SAMUEL MORALES [miadolphins@sbcglobal.net]
Sent: Tuesday, December 22, 2015 1:38 PM
To: Cindy Horan
Subject: Re: ineligible to eligible

Hi Cindy,

Can you provide me the entire list of eligible voters prior to election day?

Thanks, Sam....

Liz Marko

From: Jeff Pharr
Sent: Monday, February 8, 2016 9:17 PM
To: Samuel Morales; Liz Marko
Subject: RE: Typo on appeal letter

Sam - there is nothing attached to the email. Will you send an updated letter?

Thanks,
Jeff

Jeff Pharr
APFA National Secretary
817.540.0108 ext 8221
Association of Professional Flight Attendants (APFA) Proudly Representing the Flight Attendants of American Airlines
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-----Original Message-----

From: Samuel Morales [<mailto:miadolphins@sbcglobal.net>]
Sent: Monday, February 8, 2016 8:56 PM
To: Liz Marko
Cc: Jeff Pharr
Subject: Typo on appeal letter

Dear Liz and Jeff,

My VP appeal letter to EC was inadvertently dated January 7, 2016, when it should have been dated February 7th , 2016. Please attach this email to amend said date.

Thanks,

Samuel Morales

January 7, 2016

Dear Mr Jeff Pharr,

I am in receipt of the NBC's 4 page answer to my complaint and I deny all of the NBC's assertions and interpretation of their findings. I am sure you have a record of Cindy Horan's interpretation, asserations and allegations dated on January 29,2016.

Please forward this letter and my appeal and reincorporate my original complaint to the Executive Committee for further consideration, which you have on file.

Respectfully Submitted,

Samuel Morales
5600 Shady Hill Lane
Arlington, TX 76016
817-683-5988



*Association of Professional
Flight Attendants*
Representing the Flight Attendants of American Airlines

Certified Return Receipt #70151730000184850455

February 10, 2016

Samuel Morales
5600 Shady Hill Lane
Arlington, TX 76016

Dear Sam:

Per Article VI, Section 6.E. of the APFA Constitution, the Executive Committee, at its February 9, 2016 meeting, considered your appeal of the National Ballot Committee's findings regarding your National Vice President election complaint.

After careful consideration, the Executive Committee denied your appeal.

Sincerely,

Jeff Pharr
APFA National Secretary

cc: Executive Committee
Board of Directors

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THOMAS E. PEREZ, [now)
R. ALEXANDER ACOSTA],)
Secretary of Labor,)
Plaintiff,)
)
VS.) NO. 4:16-CV-1057-A
)
ASSOCIATION OF PROFESSIONAL)
FLIGHT ATTENDANTS,)
Defendant.)

DEPOSITION OF GERRY FELDKAMP

TAKEN ON BEHALF OF PLAINTIFF

* * *

BE IT REMEMBERED THAT, pursuant to the Federal
Rules of Civil Procedure, the deposition of
GERRY FELDKAMP was taken before Paula D. Tieger, a
Registered Professional Reporter and Notary Public for
the State of Oregon, on July 14, 2017, commencing at the
hour of 9:29 a.m., in the office of McKanna, Bishop,
Joffe, 1635 NW Johnson Street, Portland, Oregon.

* * *

	1	people can look at the back of the book and find out
	2	where that content occurred.
	3	Q What came next after -- when you were working on your
	4	own doing the text processing work?
09:37:31	5	A It wasn't an after. In 1994, we started that, and
	6	that product lasted for about 14 years, 14, 15 years.
	7	And during that time, we had very little need to go back
	8	and fix it up. We did a great job to start with. We
	9	ended up with 2,000 companies using our software. And
09:37:59	10	so, I just let the royalties come in from that. And at
	11	the same time -- or around that same time, 1995-1996, I
	12	and a few others formed what we called at the time Black
	13	Rose, Limited, which became Telservice, which became
	14	CCComplete over time, name changes.
09:38:25	15	And so, starting in 1996 is when it incorporated
	16	in the state of Oregon. There were, I think, seven of us
	17	at the time, something like that. And that's where we
	18	are today.
	19	Q What business was the entity that's now known as
09:38:43	20	CCComplete -- was it all in -- or describe what kind of
	21	business it was in starting then.
	22	A We started by putting together custom applications
	23	for what's called IVR, or interactive voice response,
	24	telephone systems so that companies, for instance, that
09:39:03	25	were doing automated telephone calling or receiving

	1	automated -- or people calling in to leave their names,
	2	addresses and that sort of thing, that it could be done
	3	on an automated basis. And so, there were a number of
	4	companies -- for instance, Bear Creek down in Medford --
09:39:21	5	that needed an automated system to reduce the costs
	6	associated with somebody calling in to a human, because
	7	you got to pay the human all the time; you don't have to
	8	pay the computer all the time. So, the idea was to
	9	provide custom applications. And we did that 1996-ish to
09:39:46	10	2001.
	11	We now have -- a reasonable portion of the
	12	CCComplete business still uses or is really still
	13	oriented toward non-balloting customers. So...
	14	Q What was your title or position at this entity
09:40:10	15	beginning in 1996?
	16	A We don't really have titles, but I've been the
	17	software architect for certainly all of the balloting
	18	operations. Prior to that, I was just really the
	19	software development engineer, because IVR processing
09:40:29	20	wasn't my favorite thing to do.
	21	Q Now, you mentioned getting into the balloting work.
	22	Tell me about that.
	23	First of all, is BallotPoint Election Services --
	24	I've seen that name. Is that a separate entity, or is
09:40:43	25	that just sort of a trade name that CCComplete uses for

	1	its balloting business?
	2	A It's a doing business as type name.
	3	Q So, here, if we refer to BallotPoint, we can -- do
	4	y'all refer to it like that?
09:40:54	5	A We often, with clients, balloting clients, refer to
	6	ourselves as BallotPoint. They understand that.
	7	Q Okay.
	8	A Others still call us CCComplete. And we're good at
	9	listening to either.
09:41:08	10	Q Okay. So, BallotPoint or CCComplete, as it exists
	11	today, can you just tell me how many people work there?
	12	A We have five people on the staff.
	13	Q And who are those people?
	14	A Dan Hilderbrand is COO/president; myself, Robert
09:41:33	15	Thompson, software engineer; Michael Baum, B-A-U-M,
	16	software engineer; and Jeffrey Bachofner, or Jeff
	17	Bachofner, B-A-C-H-O-F-N-E-R, and he is our
	18	hardware/infrastructure person. We also have a part-time
	19	person on staff, and that would be James Devine,
09:42:08	20	D-E-V-I-N-E, and he lives in Phoenix.
	21	Q Could you please, real briefly, give me just a very
	22	short explanation of what these people do? You've
	23	already described yourself. Dan Hilderbrand, who is
	24	here, he is, I think you said, the COO or the CEO or the
09:42:29	25	president?

	1	A	I repeat it again, titles.
	2	Q	Is it fair to say that Mr. Hilderbrand is not a
	3		technical guy?
	4	A	That's very fair to say.
09:42:36	5	Q	Okay. So, he handles the business side of things
	6		more?
	7	A	That is correct.
	8	Q	Okay. You've talked about yourself.
	9		How about Robert Thompson? What is his job
09:42:45	10		duties, or what does he do?
	11	A	He's a software engineer. And I can be fairly broad
	12		about this, that all of -- myself, Mike, and Bob deal
	13		directly with clients, new clients, existing clients, and
	14		we develop software for the BallotPoint system, all three
09:43:06	15		of us, and we -- well, Bob is the primary one who deals
	16		with new clients, and on a sort of client service basis,
	17		he deals with them more often than Mike or I do.
	18	Q	And you also mentioned Jeff Bachofner?
	19	A	Bachofner.
09:43:32	20	Q	And what is his role?
	21	A	He keeps all of our equipment -- he's put together
	22		all of our equipment through purchases and configuration.
	23		He maintains that equipment. And so, if there are any
	24		questions about the physical equipment or our services
09:43:54	25		through LightPoint or services through RackSpace, Jeff is

1 the person who is responsible for looking into and
2 handling those things.

3 Q And what does James Devine do in Phoenix?

4 A He is formerly Department of Labor. And I don't
09:44:13 5 remember the year that we hired him, but we talked with
6 him about various kinds of election systems, and he has a
7 background in -- on the financial side, but we appreciate
8 his judgment on how the Department of Labor thinks about
9 things. It's helpful to us.

09:44:42 10 Q Is Mr. Devine a full-time employee?

11 A No, not a full-time employee.

12 Q Would you estimate, does he do work for BallotPoint
13 every month or more of an on-needed basis?

14 A More of an on-needed basis.

09:44:56 15 Q You mentioned the Department of Labor.

16 And I take it -- and you tell me -- are you
17 familiar with the Labor Management Reporting and
18 Disclosure Act?

19 A I am familiar with it, yes.

09:45:08 20 Q And can we refer to that as the LMRDA here?

21 A Please do.

22 Q Okay. Can you tell us, just very basically, what is
23 your understanding of what the LMRDA is or does as
24 relevant to the BallotPoint business?

09:45:29 25 MR. ALEXANDER: Object to the form of the

	1	explanations here is your explanation?
	2	A Yes.
	3	Q So, you adopt this document, essentially, as if it
	4	were your own testimony?
09:51:27	5	A Correct.
	6	Q Can you provide a brief -- and we will get back to
	7	that document later.
	8	Can you provide us a brief overview of how the
	9	BallotPoint system works for the type of election that is
09:51:53	10	at issue here -- well, specifically -- let me start over.
	11	When we're talking about the BallotPoint system
	12	here, can we agree that we're talking about the
	13	BallotPoint system as it existed and was used at the time
	14	of the APFA national officer elections?
09:52:08	15	A Yes. Let's do.
	16	Q Can you give us a brief overview in broad terms, how
	17	did that system function?
	18	A Are you looking for an explanation beginning to end
	19	of an election, or...
09:52:25	20	Q Well, how about this. Physically, what is the system
	21	comprised of? Is it a single computer? Is it multiple
	22	computers? That sort of thing.
	23	A Okay. We'll start there. The hardware consists of
	24	two -- and we'll call them virtual entities here. One's
09:52:43	25	called the MRNS for member registration and notification

	1	server, and the other major entity is the election
	2	server. And the MRNS itself consists of two computers
	3	with fire wall in front of them. There is a Web server
	4	and a database server; physically different machines.
09:53:12	5	The election server comprises a Web server, which
	6	is where administrators and voters go, log in to that.
	7	There are subsidiary processors or -- not really servers
	8	but extra computers there which support things like
	9	connecting to the telephone, the public telephone system,
09:53:43	10	database server, and support servers which activate
	11	background jobs. All of that -- all of those entities
	12	make up the election server.
	13	The election server is not an individual
	14	computer; it's a number of machines working together.
09:54:07	15	Q When you say a computer here -- for example, you said
	16	the MRNS consists of two computers. For those computers,
	17	can you describe in layman's terms for somebody like me,
	18	are we talking the same thing as a desktop computer,
	19	similar to a desktop computer that I might have in my
09:54:25	20	house?
	21	What is it exactly?
	22	A The Web server is a stand-alone computer running the
	23	Windows server operating system. The database server is
	24	another stand-alone Windows-based machine which provides
09:54:48	25	the SQL server services necessary to maintain databases

	1	within the MRNS.
	2	Q So, each of those two stand-alone computers that
	3	comprise the MRNS physically -- and I understand they may
	4	have different programs on them or be configured
09:55:08	5	differently.
	6	But physically, are those any different than the
	7	type of computer that somebody may have at their office
	8	or their house?
	9	A They're very different in the sense of, the kinds of
09:55:18	10	applications that run on them are extremely limited to
	11	what a desktop computer may have on it. Desktop
	12	computers have email on them and games and whatever else,
	13	and these servers don't have that breadth of capability,
	14	intentionally so.
09:55:39	15	They have a certain job to do.
	16	Q But are they -- does it consist of a hard drive?
	17	A Standard hard drives, memory, connections to an
	18	internal network, connections to a fire wall and,
	19	thereby, to the Internet.
09:55:56	20	Q Do these computers have -- tell me about them
	21	physically. I mean, is it a -- is there a disk drive
	22	associated with them? Is there a -- are there ports
	23	where you can plug in thumb drives? Are there cables
	24	like I would see on my computer at home?
09:56:15	25	Tell me about that.

	1	A	They have internal disk drives. There are USB ports
	2		on them, and the -- again, the database server and the --
	3		what we call the MRNS, but the Web server and the
	4		database server are connected on a local area network.
09:56:45	5		And then two of them can -- or they -- the Web server can
	6		see the outside world through a fire wall.
	7	Q	And these two machines, do they have a screen
	8		connected to them? Do they have a keyboard? Do they
	9		have a mouse?
09:57:03	10	A	They have those. At the time when someone needs
	11		to -- or when Jeff Bachofner needs to access them, he
	12		wheels a keyboard and a mouse and a screen over to them.
	13	Q	So, we've been talking about the two machines that
	14		make up the MRNS.
09:57:22	15		Is the same basic description true of the
	16		machines that make up the ES?
	17	A	There are more of them, but yes.
	18	Q	Okay.
	19	A	Yeah.
09:57:33	20	Q	And tell me where -- you mentioned LightPoint
	21		earlier.
	22		Can you tell us, who is LightPoint?
	23	A	LightPoint Communications is a company here in
	24		Portland, offices on 6th Avenue, and they run a
09:57:48	25		co-location facility. Our machines, our servers are

	1	stored at that co-location facility, are resident there.
	2	Inside that co-location facility, there are also
	3	computers supporting government operations, financial
	4	institutions, and so on.
09:58:07	5	So, it's a -- you know, it's a large business, a
	6	Portland-based business, co-location facility.
	7	Q So, just so we have a picture in our mind, if you
	8	were to go to LightPoint, they have a room somewhere.
	9	And is it fair to say they have a cage or some
09:58:25	10	kind of chain link type fence, and behind that are a
	11	bunch of computers set up; is that accurate?
	12	A It's a large room with, actually, multiple cages, one
	13	cage of which we're in, along with computers from we
	14	don't know who else.
09:58:42	15	There is a lot of other computers in that same
	16	cage area.
	17	Q So, if you want to physically go access the ES, I
	18	understand that it's in the LightPoint building.
	19	Tell me how you go and actually get to that
09:58:54	20	machine.
	21	A To get to the ES requires us to -- someone from
	22	BallotPoint or CCComplete to use cards, palm prints, to
	23	get into that facility. There is a key to the cage.
	24	There is a key to our rack.
09:59:18	25	And so, there is, you know, physical access

	1	required there that runs through LightPoint.
	2	Q If I can back up, I take it you have some sort of
	3	contractual arrangement with LightPoint where you pay
	4	them to house these servers; is that correct?
09:59:36	5	A That's correct.
	6	Q Okay. And LightPoint, then, do they, essentially,
	7	ask you, who do you want to have access to these? And
	8	for each person you do, they get their palm scanned, and
	9	they get a key?
09:59:49	10	Is that how it works?
	11	A We all have a palm card, yeah, a palm key.
	12	Q So, if you or somebody else who is on the approved
	13	list at BallotPoint wanted to go to the ES, you would get
	14	in with your palm card.
10:00:02	15	And then you physically have the key that you can
	16	unlock the rack; is that correct?
	17	A I don't physically have the key. There is only one
	18	such key. Jeff Bachofner maintains those.
	19	But they would be accessible to us.
10:00:12	20	Q Okay. So, Jeff Bachofner, or somebody at
	21	BallotPoint, can, essentially, take the key that
	22	BallotPoint has and then go unlock the cages and
	23	physically access the ES; is that accurate?
	24	A That's correct.
10:00:23	25	Q Okay. Now, tell me how it works for the MRNS. I

	1	understand it's slightly different.
	2	A It is different. There are -- entry by palm print is
	3	still necessary, but in addition, the rack that holds the
	4	MRNS has two keys, one of which we maintain and one of
10:00:47	5	which is maintained by LightPoint. So, we can't get into
	6	that particular cage without our key and LightPoint
	7	producing their key and unlocking their half of the card
	8	cage or the rack in which the MRNS is stored.
	9	Q And is this two key system for the MRNS, is that
10:01:08	10	because you wanted to do it that way? In other words,
	11	did you tell LightPoint, we want it in a two key cage?
	12	A That's correct.
	13	Q So, it was your decision to house the MRNS in this
	14	manner; correct?
10:01:20	15	A We did that in 2007, yes.
	16	Q And here's a -- just to back up, this whole idea of
	17	storing the servers at LightPoint, that is BallotPoint's
	18	decision that y'all made; correct?
	19	A Entirely proactive on our part, following no
10:01:41	20	guidelines from the Department, correct.
	21	Q So, if BallotPoint wanted to, they could go retrieve
	22	the servers from LightPoint and, instead, house them in
	23	your own office if you wanted to; correct?
	24	A Correct.
10:01:51	25	Q And I understand for business reasons, you --

	1	whatever reasons, you've chosen not to do that; correct?
	2	A Correct.
	3	Q All right. Now, in terms of accessing the MRNS
	4	physically, I think you told me that, once you get into
10:02:05	5	the facility through your palm reader or card,
	6	BallotPoint has one key that needs to be turned, but then
	7	LightPoint has a second key that needs to be turned;
	8	correct?
	9	A That is correct.
10:02:15	10	Q Okay. And what's the procedure for getting
	11	LightPoint to go retrieve their key and turn it?
	12	How do you do that?
	13	A That's been done exclusively by Jeff Bachofner. None
	14	of the rest of us have ever gone through that process.
10:02:30	15	But he will go into the LightPoint business office area
	16	and say, I need to get in; and, assuming that one of
	17	their people is around to get the key and unlock it, then
	18	that's the process. They walk with him. They use their
	19	key. Jeff uses his key. He's into the physical MRNS.
10:02:57	20	Q And is that -- I take it that LightPoint wouldn't do
	21	that for just somebody who walked in off the street.
	22	But do they know Jeff?
	23	A They know Jeff, yes.
	24	Q And is he on some sort of approved list of people who
10:03:11	25	can access the MRNS?

	1	A	I believe he is. I can't say for sure.
	2	Q	Does LightPoint have the ability to tell Jeff, or
	3		anybody else at BallotPoint, no, I'm not going to let you
	4		in the MRNS? And I understand there might be a staffing
10:03:26	5		issue if the person might not be around.
	6		But do they exercise any sort of independent
	7		judgment in terms of whether or not they're going to let
	8		somebody into the MRNS, or do they simply do what they're
	9		asked to do by the appropriate person at BallotPoint?
10:03:39	10	A	I can't speak for them.
	11	Q	Who would be the right person to speak for them?
	12	A	The main contact is a fellow named Alden, A-L-D-E-N,
	13		and I don't know his last name.
	14	Q	And this is Alden at LightPoint?
10:03:55	15	A	Yeah.
	16	Q	Do you know, has LightPoint ever told BallotPoint, or
	17		Jeff, or anybody at BallotPoint, that you cannot get into
	18		the MRNS?
	19	A	No, not to my knowledge.
10:04:10	20	Q	And if, for some reason, LightPoint took the position
	21		that BallotPoint could no longer get to the MRNS, what
	22		would BallotPoint do?
	23		MR. ALEXANDER: Calls for speculation.
	24		THE WITNESS: Try to figure out what's the
10:04:24	25		issue.

	1	MR. STOLTZ: All right.
	2	Q BY MR. STOLTZ: And, obviously, at any time, you
	3	could, essentially, terminate your contractual
	4	arrangement with LightPoint; correct, and, as you said
10:04:34	5	earlier, move the servers back to your own office; right?
	6	A Yeah. Easier -- the answer is yes, but far easier
	7	said than done.
	8	Q Now, I understand that each of these servers has some
	9	kind of programs on it that run whatever operations that
10:04:56	10	the software -- or whatever operations the server is
	11	tasked to do.
	12	Is that fair to say?
	13	A Yes.
	14	Q Okay. So, let's talk about the ES.
10:05:03	15	Who is the one who developed or wrote or created
	16	whatever programs exist on the ES to enable it to do what
	17	it needs to do?
	18	A Myself, Mike Baum, and Bob Thompson.
	19	Q And what, in very broad terms, is the task or the --
10:05:28	20	what is the task that ES is supposed to do?
	21	A To provide members with ballots -- the appropriate
	22	ballot to their voting attributes, and to record their
	23	ballots. That's the primary task. It's also used by
	24	administrators to upload the definition of a ballot;
10:05:50	25	meaning, what questions, what answers are available on

	1	vote, can you explain to me what sort of information is
	2	captured on the ES with or in connection with the voting?
	3	MR. ALEXANDER: Object to the form of the
	4	question, vague as to the term captured.
10:07:44	5	THE WITNESS: Please restate the question so
	6	I can give you an answer.
	7	Q BY MR. STOLTZ: I'm just looking to find out, what
	8	kind of information does the ES collect whenever a member
	9	comes in to vote? Obviously, it collects what their
10:07:57	10	actual vote is.
	11	But is there other information that it stores and
	12	collects?
	13	A With respect to the election in question?
	14	Q Yes.
10:08:06	15	A There are -- there was information about where
	16	they -- where they came from in terms of IP address, if
	17	they were voting by Web. Telephone, we didn't include
	18	that -- didn't have that kind of information because it's
	19	not an Internet-based process. We collected time stamps
10:08:32	20	about when a vote was cast. We collected the actual vote
	21	string as submitted by the browser. And then we also, in
	22	that election, went through a process of taking the
	23	unencrypted vote string and going through an encryption
	24	process that left, effectively, a validated or second
10:09:04	25	copy, but now encrypted, of the vote within the system.

	1	Q	Now, this information, is it -- is the database or
	2		the table where it's stored, is that something that's
	3		referred to as the votes table?
	4	A	It would have been stored there, yes.
10:09:23	5	Q	And this votes table, is it fair to say that every
	6		time a new voter arrives, does that, essentially, create
	7		a new line on the votes table where it then logs where --
	8		if there is an IP address, what IP address, what the vote
	9		string is, and these other...
10:09:42	10	A	That's correct.
	11		(Exhibit No. 2 was marked)
	12	Q	BY MR. STOLTZ: Now, for the election in question
	13		here, BallotPoint provided the Department of Labor with a
	14		copy of the votes table for that election; correct?
10:10:15	15	A	Correct.
	16	Q	And that would have been an Excel file; is that
	17		right?
	18	A	I believe it was.
	19	Q	Now, I'll represent to you that I did not print the
10:10:29	20		entire Excel file because it is --
	21	A	Lengthy.
	22	Q	Yes, sir, very lengthy. It would be hundreds of
	23		pages. What I've done here, and what I would like to ask
	24		you to confirm, is, I've printed off, essentially, the
10:10:41	25		first page of that votes table, and it has the votes

	1	arranged in chronological order from the earliest vote
	2	received. So, it's about the first 25 or 30 votes.
	3	Do you see that?
	4	A I do.
10:10:52	5	Q Okay. And does this appear to you to be the -- a
	6	paper representation of the information that's from the
	7	votes table for this election?
	8	A For that election, yes.
	9	Q And I'm referring again to Exhibit 2.
10:11:10	10	On Exhibit 2, there is a number of columns. And
	11	can we go through and just explain what each column
	12	means? The first one is EID.
	13	What is EID?
	14	A Election ID.
10:11:22	15	Q Okay.
	16	A Election ID 15 was this particular election.
	17	Q So, that's an internal BallotPoint thing to
	18	distinguish this election from some other election you
	19	may be running for a different union?
10:11:31	20	A Or for the same union but a different election at the
	21	same time.
	22	Q Okay. The second column on Exhibit 2 is a unique ID
	23	column.
	24	What is that?
10:11:39	25	A Those were just randomly generated numbers. We need,

	1	in that column, a unique ID so that -- well, because
	2	that's the way that things were done. A unique ID so
	3	that every one of the things, all 9,300 or whatever
	4	votes, ended up with a unique ID in that column.
10:12:05	5	Q So, is this unique ID generated at the time the vote
	6	is made or recorded?
	7	A It was generated at the time that the member was
	8	transferred from the MRNS during the login process to the
	9	election server.
10:12:21	10	Q And is this unique ID used anywhere else in the
	11	system, outside of the election server?
	12	A It's created by the election server. It's a thing
	13	that we call the one-time password, and it's created by
	14	the election server during the login process, and it's
10:12:44	15	retained here. It's not retained -- it's known to the
	16	MRNS during the time that the person is voting and does
	17	not -- it's not retained beyond that time.
	18	Q Okay. So, for a brief period of time, this unique ID
	19	is transferred to the MRNS.
10:13:01	20	But is it fair to say that, once the voting is
	21	completed, the MRNS deletes or no longer holds that
	22	information?
	23	A That is absolutely correct, yes.
	24	Q Okay. Time stamp is the next column on Exhibit 2.
10:13:16	25	Is it fair to say that the time stamp shows the

	1	date and time that the vote is recorded?
	2	A) Either recorded or when the person came in to the
	3	system, and I don't know which of the two.
	4	They won't be very different.
10:13:31	5	Q) And it appears to be -- for example, the first one is
	6	2015-12-12.
	7	That would refer to December 12th, 2015; is that
	8	correct?
	9	A) Correct. Right.
10:13:41	10	Q) And then, after that, it says 21:34:17.
	11	I guess, in military time, that would be 11 --
	12	no, 9:34 p.m., roughly; is that right?
	13	A) Yes. Pacific time, yes.
	14	Q) Okay. The next column is CONFNUM.
10:14:07	15	Can you explain what that is on Exhibit 2?
	16	A) When a vote is cast, we produce a unique ID to
	17	present to the user. If voting by Web, the confirmation
	18	number is shown on the screen. If voting by phone, it's
	19	spoken to the voter. And that confirmation number can be
10:14:29	20	carried through so that, when the election is completed,
	21	if I've got -- for instance, in row 1, there is the
	22	confirmation number 152317194. If this table were made
	23	available to me, I could look and see that my vote string
	24	corresponds to what it is I actually -- how I actually
10:14:51	25	voted.

	1	So, the intent of the confirmation number is to
	2	provide a mechanism where the voter can confirm that
	3	that's really the vote that they cast.
	4	Q And the next column on Exhibit 2 says Medium.
10:15:07	5	And can you explain what that is?
	6	A IVR means that was a vote cast by phone. Web means
	7	it's a vote cast over the Internet.
	8	Q The next column on Exhibit 2 is Vote String.
	9	Can you please tell me what that is?
10:15:23	10	A It's an encoded version of responses to that voter's
	11	questions. So, for instance, in the first one, the 1-8
	12	says that choice 8 was made on question 1. And then
	13	the -- to separate the responses to different questions,
	14	we use a colon and then an up arrow or hat, circumflex.
10:15:57	15	And so, after the first one there, it says 2-2,
	16	meaning selection 2 on question 2, and so on.
	17	Q So, is it fair to say that, on this Exhibit 2, vote
	18	string represents the actual content of the person's
	19	vote; is that accurate?
10:16:13	20	A That is correct.
	21	Q And taking the first row that has information in it
	22	on Exhibit 2, where it says 1-8, we can derive from that
	23	that, in the first question that was presented to the
	24	voter, the voter chose the 8th option or the 8th choice;
10:16:31	25	is that what you said?

	1	A	That is correct.
	2	Q	So, for example, is it your understanding in this
	3		election that the first question was who to vote for for
	4		national officer president?
10:16:41	5		Would that have been accurate?
	6	A	I don't have a copy of the election in front of me.
	7		I would assume so.
	8	Q	And assuming that's the case, since this person voted
	9		for choice number 8, it would stand to reason that there
10:16:54	10		were at least 8 different candidates for that?
	11	A	Yes.
	12	Q	And we can go down, and the next person appears to
	13		have voted for the 7th candidate; correct?
	14	A	Correct.
10:17:07	15	Q	And the third row, the person voted for the fourth
	16		candidate; is that right?
	17	A	Correct.
	18	Q	Okay. And if we had a copy of the notice that was
	19		mailed to the union members for voting where he has
10:17:21	20		instructions to vote, and it says, For national officer
	21		election, press 1 to vote for candidate Joe; press 2 to
	22		vote for candidate Bob, et cetera, et cetera, do those
	23		1s and 2s correspond here to the number that's chosen to
	24		show the vote?
10:17:37	25		Is that your understanding?

	1	A	Correct.
	2	Q	And it's the same if the vote comes in by Internet?
	3		In other words, if somebody votes by Internet and
	4		they select choice 8, is that the same candidate as if
10:17:51	5		you selected choice 8 on the phone?
	6	A	Correct.
	7	Q	Okay. Now, in this particular election -- and I
	8		understand it may have changed going forward.
	9		But in this particular election, the vote
10:18:02	10		string, i.e., the content of the vote, was stored in
	11		plain text on the election server; is that correct?
	12	A	Correct.
	13	Q	In other words, it was not encrypted?
	14	A	That is not correct.
10:18:16	15	Q	It may have been encrypted elsewhere, but there was
	16		an encrypted version of it stored; correct?
	17	A	There were both versions of it during this election,
	18		correct.
10:18:30	19	Q	The next column on Exhibit 2 says ATTR1, which I
	20		think means Attribute 1; is that right?
	21	A	That is correct.
	22	Q	And what does this refer to?
	23	A	Attributes 1 through 4 are provided to us by the
	24		union, and they identify -- for this particular election,
10:18:43	25		Attribute 1 identifies the so-called base of operation

	1	for a particular voter. ORD, meaning O'Hare, I guess. I
	2	think that's right.
	3	Q So, these are airports?
	4	A They use airport designations. And FA was used as
10:19:03	5	Attribute 2 in all cases to mean flight attendant,
	6	because there was no use for a secondary attribute in
	7	this election.
	8	Q So, we're talking about the column that's labeled
	9	Attribute, or ATTR2?
10:19:18	10	A Correct.
	11	Q Every voter in this election was a flight attendant;
	12	correct?
	13	A That's correct, yes.
	14	Q And that's why they all say FA?
10:19:27	15	A Correct.
	16	Q Okay. The next column that's filled in says TRKID.
	17	Can you explain what that is?
	18	A Tracking ID is what that stands for. TRKID, tracking
	19	ID. And this is an identifier generated by the telephone
10:19:45	20	system. So, you will see there are tracking IDs for any
	21	vote which is listed as Medium equals IVR.
	22	So, if you went back to the Medium column, you
	23	would see IVR, and then over on the right-hand side is a
	24	tracking ID. That corresponds to a particular telephone
10:20:08	25	log record that was created for this particular vote.

	1	Q	And where -- so, there is a copy of the tracking ID
	2		on the ES in the votes table, and then there is a
	3		separate log where the tracking ID also is?
	4	A	A textual log was maintained by the phone system
10:20:27	5		where the tracking ID would have appeared.
	6	Q	And where is this log located? Also on the ES?
	7	A	It's located on the ES, correct.
	8	Q	Okay. Does the tracking ID number appear anywhere
	9		outside of the ES?
10:20:43	10	A	No.
	11	Q	Is the tracking ID number used at any point during
	12		this process of transferring somebody from the ES to the
	13		MRNS and then back to the --
	14	A	No. No.
10:20:59	15	Q	The next column on Exhibit 2 is the From column.
	16		And can you explain what that is, please?
	17	A	The From column for telephone votes indicates the
	18		area code that the call came in from.
	19	Q	So, for example, for the first row where it says 708
10:21:21	20		then it has some asterisks after that, that means this
	21		was a telephone vote that was received from area
	22		code 708; is that right?
	23	A	That is correct.
	24	Q	Okay. And why are there asterisks after the 708?
10:21:34	25	A	We don't retain any data beyond the area code.

	1	And I went through a rather lengthy explanation of that.
	2	The Department actually has that email in their hands at
	3	this moment. But the term certify is one of those legal
	4	terms. I'm not sure what he meant by it. I'm not sure
10:33:52	5	the right way to interpret it. But, essentially, he
	6	wanted to know, I believe, do we stand by the results of
	7	the election. The answer is yes.
	8	There were no such emails or contact from
	9	Mr. Morales for the election of interest.
10:34:15	10	MR. STOLTZ: Okay. Thank you. We had
	11	talked about the ES. Let's shift to the MRNS. And I
	12	understand that, like the ES, there is some kind of
	13	software and programs that run the operations that the
	14	MRNS performs or is tasked with performing.
10:34:35	15	Q BY MR. STOLTZ: Can you tell us who developed those?
	16	A I did.
	17	Q Okay. And just briefly, what is the purpose of the
	18	MRNS as far as the software that's on it?
	19	What is the MRNS designed to do in the context of
10:34:58	20	an election?
	21	A What it's designed to do is to sequester member
	22	information into a sequestered server so that member
	23	information is retained on that to permit us things like
	24	uploaded -- we have administrators upload rosters which
10:35:17	25	necessarily have personal information in them; and to

1 allow members to log in to get to vote.

2 So, the MRNS is used from an administrative point
3 of view and from a voting point of view as well.

4 Q Can you describe the process that BallotPoint uses if
10:35:43 5 it wants to modify or change or update or revise the
6 software on the MRNS?

7 A When I see that there is something that needs newly
8 creating or a modification of an existing module, I work
9 in a test environment to develop or make that module to
10:36:07 10 make the changes to it. And so, we have a parallel MRNS
11 not used for officer elections where I develop that code,
12 test that code.

13 When the code is tested, I produce an encrypted
14 disk, CD, which contains the modules that I need to have
10:36:34 15 uploaded to the MRNS. I don't physically access -- I
16 don't access the MRNS in any way for voting software.

17 Instead, that encrypted disk is carried over to
18 LightPoint, handed to Alden, whatever his last name is,
19 and Alden has a login to the MRNS specific to him that
10:37:01 20 allows him to take that encrypted disk and get the
21 software that resides on that installed into the system.

22 Q And the disk is encrypted.

23 So, I take it that Alden, or whoever it is at
24 LightPoint, they don't actually read what's on the disk;
10:37:16 25 is that correct?

	1	retain physical copies of all the software that's ever
	2	been installed.
	3	So, long story, but that's how it came about that
	4	LightPoint was involved in the software installation.
10:42:47	5	Q So, is using LightPoint to do the software
	6	installation, is that something that, if you or
	7	BallotPoint had a change of heart or a new idea, you
	8	could stop doing that if you wanted to; is that right?
	9	A That's correct.
10:43:04	10	Q And as far as software installation, if you wanted
	11	to, could BallotPoint just get LightPoint to open up the
	12	cage to the MRNS and then do a software update directly?
	13	And I understand that's not your practice. But
	14	if you wanted to change your practice, is that a way you
10:43:20	15	could do it?
	16	A Not with those disks, no. Not using present
	17	structure.
	18	Q Okay. So, instead of using a disk that's encrypted,
	19	you would have to tell me what you would have to do.
10:43:37	20	A That's -- as an engineer, there were a lot of
	21	different things that you could do. But certainly, one
	22	of them would be to put software on a thumb drive, stick
	23	in your interchange, plug it in, copy it into the code
	24	base area, and be done with it.
10:44:00	25	Q Let's talk about the information that is recorded on

	1	the MRNS. And I understand there is something on the
	2	MRNS that is called the OEM table, standing for the
	3	officer election member table; is that right?
	4	A That's correct.
10:44:21	5	Q And you can -- can you tell us -- the OEM table, is
	6	it fair to say it stores member identifying information
	7	for the voters; is that right?
	8	A That's correct.
	9	Q Now, BallotPoint --
10:44:34	10	(Exhibit No. 4 was marked)
	11	Q BY MR. STOLTZ: Now, when the Department of Labor was
	12	investigating this case, at one point, BallotPoint
	13	provided a picture file, I think, showing the structure
	14	of the OEM table; is that correct?
10:45:08	15	A Yes.
	16	Q Okay. And the Exhibit 4, which you've just received,
	17	is this the picture of the structure of the OEM table
	18	that BallotPoint provided?
	19	A I believe it is. Without comparing it to the actual
10:45:24	20	original they sent, I can't say for sure.
	21	But it looks like -- very much like the right
	22	one.
	23	Q There is a -- on Exhibit 4, there is a folder that
	24	say Columns, and then under that column, there is a
10:45:40	25	series of little boxes that say -- the first one says

	1	oem_cl_id. The second one says oem_eid.
	2	A Uh-huh.
	3	Q Is it fair to say that each one of these blue boxes
	4	represents a column in this table?
10:45:56	5	A That is correct.
	6	Q All right. And can we go through -- and they all
	7	begin with oem_. So, for our purposes, is it okay if we
	8	just say -- sort of skip that, but the first one on
	9	Exhibit 4 says cl_id.
10:46:14	10	What does that refer to?
	11	A That's the client ID. cl_id is the client ID. So,
	12	every client that we have -- every distinct client that
	13	we have, when added to the MRNS, is assigned a random
	14	number which happens to be the client ID.
10:46:31	15	Q And next on the Exhibit 4 , there is oem_eid.
	16	And is that the election number that's also on
	17	the votes table?
	18	A Correct. Right. So, for the contested election,
	19	it's 15.
10:46:41	20	Q And the next item on Exhibit 4 is oem_mid.
	21	What is that?
	22	A M-I-D stands for member ID. And the member ID is a
	23	unique identifier provided by the union in a roster to
	24	identify an individual member.
10:47:00	25	So, it's their internal or external ID, if you

	1	will.
	2	Q And the next item on Exhibit 4 says oem_mtype.
	3	What is that?
	4	A Mtype stands for member type, and these have one of
10:47:16	5	really four values. One would be a P, means -- if this
	6	member is listed in the roster with mtype set to P, it
	7	means that's an eligible participant who, when the
	8	election opens, is free to vote. It might be set to an I
	9	to indicate ineligible to vote. So, if that person tried
10:47:39	10	to log in, the login would be rejected for ineligibility.
	11	There are also two other administrative values called
	12	A and C; A meaning election server administrator, and
	13	C meaning election server chair.
	14	Q Okay. The next item on Exhibit 4 is oem_access_code.
10:48:02	15	What is that?
	16	A Access code is the -- is a 12-digit unique ID
	17	randomly generated by the MRNS and provided to a member
	18	through the U.S. mail in the documents that get mailed to
	19	each member in each election.
10:48:22	20	And that access code is used to log in to vote.
	21	Q Following that on Exhibit 4, there is a number of
	22	attributes starting at oem first name going all the way
	23	down through attributes, address, city, state, country,
	24	ZIP.
10:48:42	25	Is it fair to say that these columns collectively

	1	give each of the members' name, address, whether they're
	2	a flight attendant, what base they're at, the city,
	3	state, and ZIP code; is that fair?
	4	A) Correct. The mailing information would be the name
10:48:58	5	data, the address data, city, state, country, ZIP. And
	6	the attributes would be the attributes that we saw on a
	7	previous exhibit.
	8	Q On the votes table?
	9	A On the votes table.
10:49:09	10	Q Okay. Those attributes being what base or airport
	11	the particular flight attendant is located at, and also
	12	the fact that they are a flight attendant, or an FA?
	13	A For this election, correct.
	14	Q Okay. Moving down on Exhibit 4, there is oem_eaddr.
10:49:24	15	Is that an email address?
	16	A) That is an email address, correct.
	17	Q Okay. So, if the member has an email address that's
	18	listed, it would be here. Next on Exhibit 4 is
	19	oem_accessed.
10:49:38	20	And what does that refer to?
	21	A Accessed is a flag -- a logical flag within the
	22	member record here. It's either a 0 or it's a 1. If
	23	it's a 0, it means this member has not yet accessed the
	24	system for this election, as indicated by the eid. If
10:49:57	25	it's set to 1, it means the member has accessed the

	1	system.
	2	Q Next on the Exhibit 4 is a column oem_access_from.
	3	Can you tell us what that means?
	4	A Access from indicates, for the election in question,
10:50:15	5	what IP address the member came in from, if voting by
	6	Web. And if it's voting by phone, there was a generic
	7	IP address which would not be distinguishable from one
	8	member to the next.
	9	Q So, every member who votes by phone, though, OEM does
10:50:40	10	log an IP address for that member but it's -- they're all
	11	the same IP address?
	12	A It's an IP address of a portion of the local area
	13	network on which the MRNS resides.
	14	Q So, it's, essentially, logging the IP address of --
10:51:01	15	A One of our pieces of equipment.
	16	Q The next column on Exhibit 4 is oem_access_when.
	17	And can you tell us what that is?
	18	A Access when, in the election in question here, was a
	19	time stamp with eight-hour resolution. So, it either
10:51:22	20	showed midnight, 8:00 a.m., or 4:00 p.m. on it.
	21	And it indicates an eight-hour window during
	22	which this member accessed the system.
	23	Q So, just so I understand, if the access when stamp
	24	shows midnight, does that mean that the member accessed
10:51:41	25	between midnight and 8:00 a.m.?

	1	A	Midnight and 7:59, correct.
	2	Q	And if it shows 8:00 a.m., it means between 8:00 a.m.
	3		and 3:59 p.m. on that day?
	4	A	That's correct.
10:51:53	5	Q	And then, likewise, if it shows 4:00 p.m., it would
	6		mean between 4:00 p.m. and 11:59 p.m. that day?
	7	A	Correct.
	8	Q	Okay. The next column on Exhibit 4 is oem_vote_cast.
	9		Can you tell us what that means, please?
10:52:07	10	A	Vote cast is also what we call a logical flag or a
	11		flag having values either 0 or 1; and, when combined with
	12		the oem_accessed field, tells us the state of this voter
	13		with respect to accessing the system.
	14		So, it's possible that somebody has accessed the
10:52:33	15		system but is still in the middle of voting, in which
	16		case the vote has not yet been cast. If the vote gets
	17		cast, then accessed and vote cast both get set to 1 --
	18		are both set to 1 at that time.
	19		And a subsequent attempt by that member using
10:52:52	20		that access code to get in will be rejected, saying,
	21		you've already voted.
	22	Q	Now, if -- in order for the OEM table for a voter's
	23		vote cast column to be switched from 0 to 1, is it fair
	24		to say that that requires the ES to notify the MRNS that
10:53:10	25		that voter has now voted?

	1	A	That is correct.
	2	Q	And can you explain, what information does the ES
	3		transmit to the MRNS to tell the MRNS to switch the vote
	4		cast to 1?
10:53:25	5	A	There is a process that we call vote notify. When a
	6		voter has cast the vote, the election server knows that.
	7		It's now recorded a vote, okay. And so, it sends a
	8		message to the MRNS that says, notify the voter that a
	9		vote has been cast in his or her account. And that
10:53:55	10		process sends the -- this quantity we've called the
	11		one-time password which goes back to Exhibit 1, I
	12		believe, the votes table --
	13	Q	Exhibit 2?
	14	A	That's 2. Okay. The -- so, that one-time password
10:54:12	15		gets passed from the election server to the MRNS along
	16		with the vote notify request. So, the vote notify, first
	17		of all, says, okay, this member is done, and any internal
	18		recollection of that one-time password is erased, okay.
	19		It's never gone to disk. It's never gone to a database.
10:54:34	20		It's strictly an in-memory variable.
	21		And then, the secondary part of that vote notify
	22		operation is, the MRNS says, does this member have a
	23		valid email address in his record, at which point the
	24		email is sent to the member.
10:54:54	25	Q	So --

	1	A	I'm sorry. So, at that point, then, the vote cast
	2		field has been set to 1.
	3	Q	Okay. Now, the document that you're referring to,
	4		Exhibit 2, where there is a unique ID number for each
10:55:09	5		vote, also referred to as a one-time password. So, just
	6		so I understand, the unique ID number sits on the
	7		election server, and we still have it today.
	8		So, we know what the unique ID number was for
	9		each vote; correct?
10:55:23	10	A	For that election, correct.
	11	Q	At some point, the MRNS -- excuse me. At some point,
	12		the ES sends a message to the MRNS. And if we look at,
	13		for example, Exhibit 2, the first vote, the unique ID
	14		number is DEFAULT_825723100.
10:55:45	15		So, is it correct that, at some point after this
	16		person has voted on the ES, the ES sends a message to the
	17		MRNS that says DEFAULT_825723100 has now voted
	18		successfully? And I understand it will be in some sort
	19		of code.
10:56:04	20		But that's the content of the message?
	21	A	The portion which is that one-time password will have
	22		been sent, correct.
	23	Q	Now, the ES does not also say, and by the way, they
	24		voted for these people; correct?
10:56:17	25	A	There is no vote information passed at that time.

	1	Correct.
	2	Q So, all the ES sends is the fact that this voter
	3	identified by this unique ID has voted, but we're not
	4	going to tell you who they voted for; correct?
10:56:29	5	A That is correct, yeah.
	6	Q And then the MRNS is designed to receive that unique
	7	ID, use it in some way to change the vote cast column
	8	from 0 to 1; is that correct?
	9	A Correct. There is an in-memory data structure in
10:56:50	10	cold fusion called application level variables that
	11	retains an association for the period of that voting
	12	session between the one-time password and the member ID
	13	so that we can close off that voter's session.
	14	That in-memory variable or application level
10:57:14	15	structure is consulted, indexed into by the one-time
	16	password, corresponding member ID is picked out, and then
	17	the member's record is modified by -- as the vote cast
	18	gets set to 1.
	19	Q And at that point, does the MRNS then discard or
10:57:34	20	erase -- or what's the best word for -- how does the MRNS
	21	get rid of the unique ID?
	22	A It deletes that element of the structure of that
	23	in-memory structure.
	24	So, it's gone.
10:57:46	25	Q And I take it this all happens in less than a snap of

	1	for each member?
	2	A The access code is created at the time that the
	3	member is determined to not be in there for this
	4	particular election.
11:10:01	5	So, when the record is created, an access code is
	6	created at the same time.
	7	Q So, essentially, instantaneously with when the MRNS
	8	has presented to it by the union administrator a new
	9	member, the MRNS puts that member into the OEM table and
11:10:17	10	creates an access code for that member?
	11	A That's correct.
	12	Q Now, these other fields later, such as oem_accessed,
	13	access from, access when, vote cast, obviously, these
	14	things are then filled in later, depending on whether or
11:10:36	15	not the member does or does not vote, where he votes
	16	from, that sort of thing; is that correct?
	17	A That's correct.
	18	Q Okay. Now, as far as the access code getting mailed
	19	to the member, I understand that that's handled by a
11:10:46	20	printing company out of Michigan; is that right?
	21	A That's correct.
	22	Q So, how does that printing company in Michigan get
	23	the information it needs in order to mail out the access
	24	codes?
11:10:59	25	A The -- we call that role PMSP, printing and mailing

	1	that are available to us during that voting.
	2	(Exhibit No. 5 was marked)
	3	Q BY MR. STOLTZ: Mr. Feldkamp, I'm showing you
	4	Document 5, which is a printout of a text file.
11:14:24	5	And to back up, at some point after the election
	6	in question, the Department of Labor asked BallotPoint to
	7	send it the contents of the OEM table; is that correct?
	8	A This refers to item 21.
	9	Do you have a description from Ms. Hussar's
11:14:44	10	request for item 21?
	11	Q Let me just ask you this: Do you remember when the
	12	Department of Labor said we want you to give us the --
	13	whatever info is in the OEM table?
	14	Do you remember that?
11:15:01	15	A Yes.
	16	Q And what did you -- what was y'all's -- what was
	17	BallotPoint's response to the Department of Labor's
	18	request for the information in the OEM table?
	19	A That we didn't have access to that table.
11:15:32	20	Q And in this readme file, it says, what we interpret
	21	membership data or table to mean is the data stored in
	22	the officer election members table in the MRNS database.
	23	Do you think that this readme file relates to the
	24	request from the Department of Labor?
11:15:52	25	A I'm still waiting for item 21 request.

	1	(Exhibit No. 6 was marked)
	2	Q BY MR. STOLTZ: Is Exhibit 6 that you now have in
	3	front of you the request that you're referring to that
	4	you were waiting for?
11:16:29	5	(The witness reviews the document)
	6	THE WITNESS: Yes, it is.
	7	Q BY MR. STOLTZ: Now, having seen Exhibit 6, do you
	8	feel that Exhibit 5 was BallotPoint's response to the
	9	Department of Labor's request for the data in the
11:16:50	10	membership table?
	11	A That is our response.
	12	Q And in Exhibit 5, there is a sentence that says,
	13	Neither BallotPoint engineers nor APFA election
	14	administrators have direct access to this table.
11:17:14	15	Do you see that?
	16	A I do.
	17	Q And, in fact, that mirrors what you just told me a
	18	minute ago, was that you told the Department of Labor you
	19	didn't have direct access to the officer election members
11:17:23	20	table; is that correct?
	21	A Correct.
	22	Q Okay. And my question to you is: The reference to
	23	direct access, what -- that sort of implies that you have
	24	indirect access, maybe.
11:17:36	25	But why did you say that you did not have direct

	1	access to this table?
	2	A That was explained in the sentence following. The
	3	only way that we can get data out of that table is by
	4	providing software to the MRNS, which extracts it from
11:17:57	5	the table.
	6	We did not have any such software that would
	7	permit that to occur.
	8	Q Okay. And you're referring to here the idea of
	9	extracting or getting data out of the officer election
11:18:08	10	member table over the Internet; is that fair to say,
	11	through some sort of Web interface?
	12	A Yes.
	13	Q So, when you said you did not have direct access to
	14	the table, is it fair to say that you said that because
11:18:29	15	the software that, at that time, existed did not have a
	16	function whereby somebody, either an administrator or a
	17	voter or anybody, could log in to the MRNS and extract
	18	this data; you hadn't designed the software to allow
	19	that?
11:18:43	20	A That's correct.
	21	Q Now, what about if you had just walked up to the
	22	MRNS, gotten LightPoint to bring their key and unlocked
	23	it and then just plugged in a thumb drive to the MRNS?
	24	Could you have --
11:19:00	25	A I would not have been able to do that.

	1	Q	And why would you have not been able to do that?
	2	A	I could not get into the MRNS. I couldn't log in to
	3		the MRNS. I don't have passwords for the MRNS. I can't
	4		get into that server.
11:19:17	5		You could sit me in front of it all day, and I
	6		can't get into it.
	7	Q	Now, when you say you do not have passwords to the
	8		MRNS, you're talking about, for example, when I open up
	9		my -- turn on my desktop computer at my office, there is
11:19:32	10		a screen that comes up and I have to type in my name and
	11		password, and then it lets me into the computer.
	12		Is that what you're referring to?
	13	A	That's what I'm referring to, yes.
	14	Q	Okay. Did anybody at BallotPoint have a password to
11:19:45	15		the MRNS?
	16	A	Yes. Jeff Bachofner is the only one.
	17	Q	So, if somebody had wanted to just walk up to the
	18		MRNS, get LightPoint to open the cage, and plug in a
	19		thumb drive, it would have had to have been Jeff
11:20:04	20		Bachofner; isn't that correct?
	21	A	Bachofner, yes.
	22	Q	So, Jeff Bachofner is the only person who could have
	23		done that?
	24	A	Correct.
11:20:10	25	Q	Okay. So, I guess, at the time, you -- BallotPoint

	1	knew that the Department of Labor wanted the information
	2	in the officer election member table.
	3	Why not just go pull it off on a thumb drive?
	4	A Violated every security policy that we had, which was
11:20:31	5	we don't get to data that we don't deserve to get to and
	6	we don't want to get to.
	7	Q So, to be clear, Jeff Bachofner could have walked up
	8	to the MRNS, got it unlocked, put in the thumb drive, and
	9	extracted the data, but that just would have been a
11:20:53	10	violation of a BallotPoint policy?
	11	A No. No. That is -- your statement about Jeff is
	12	incorrect.
	13	Q What's incorrect about my statement?
	14	A He would not be able to get into the database server
11:21:04	15	because he doesn't have a password to the database
	16	server. He couldn't get in there.
	17	It would take both of us.
	18	Q Okay. So, if I'm understanding correctly, Jeff
	19	Bachofner would have had to go to the MRNS, take you
11:21:24	20	along, you would have asked LightPoint to unlock it, and
	21	he could have logged on to the computer.
	22	Then once you're in the computer, you could have
	23	accessed the actual database; is that correct?
	24	A That's correct.
11:21:35	25	Q Okay. And you say, though, that would have violated

	1	a BallotPoint security policy?
	2	A We strongly believe in the secret ballot process.
	3	And getting into data which has no value whatsoever in
	4	the process of doing -- storing and counting the ballots
11:22:13	5	is data that we restrict ourselves from getting to.
	6	It's a compartmentalization.
	7	Q Now, my understanding is that, in order to -- once
	8	the Department of Labor, essentially, said no, we really
	9	want that data, we don't care if it's against your
11:22:33	10	security policy, we'll subpoena you, essentially, the
	11	Department of Labor said, we really want that data;
	12	correct?
	13	A Yes.
	14	Q And so, BallotPoint eventually said, okay, we'll give
11:22:46	15	it to you, albeit reluctantly; correct?
	16	A Correct.
	17	Q And the way you decided to get the data to the
	18	Department of Labor was by writing a new program and
	19	having LightPoint install it; correct?
11:23:00	20	A That is correct.
	21	Q And then, based on that program, is it true that that
	22	program, essentially, sets up the Department of Labor as
	23	somebody who was an authorized person to log in to the
	24	MRNS and receive an encrypted version of the office
11:23:18	25	election member table; is that accurate?

	1	A	No. It's inaccurate.
	2	Q	Okay. How did the program work to facilitate getting
	3		the data to the Department of Labor?
	4	A	The program was one that -- I initiated the pulling
11:23:37	5		of the data, and the program itself collected the data,
	6		encrypted it in a zip file. There was an 86-character
	7		encryption key for that, 43 characters of which were
	8		emailed directly to Michelle Hussar at the time the
	9		program executed. The other 43 characters of the
11:24:10	10		encryption key were sent to me. She was the only one who
	11		received the actual data. I received the other -- she
	12		had 43 characters of the key plus the data. I received
	13		the other 43 characters. I sent that in an email to
	14		APFA, who transmitted it to Ms. Hussar.
11:24:35	15		She was not set up as -- the Department of Labor
	16		was not set up as somebody to get in -- who could get
	17		into the system thereafter.
	18	Q	Okay. So, the system sent -- it was configured for
	19		the system to send it to them, and then they could,
11:24:51	20		essentially, decrypt it using the code that has been
	21		disbursed between them and you via APFA; is that correct?
	22	A	Correct.
	23	Q	Okay. And was your purpose in doing this procedure
	24		where it came out in encrypted form and then required two
11:25:06	25		parties to put their key together, did you do that --

	1	well, that's not the only way it could have been done;
	2	correct?
	3	A Correct.
	4	Q You could have just done it in unencrypted plain
11:25:18	5	text; correct?
	6	A Correct.
	7	Q But you wanted to, as best you could, preserve the
	8	confidentiality of those materials; correct?
	9	A That is correct.
11:25:30	10	Q Now, I understand that it -- and I understand -- is
	11	it true that you personally have never actually seen the
	12	data that was delivered to the Department of Labor from
	13	the officer election member table; is that correct?
	14	A Except for that exhibit you showed me earlier, which
11:25:48	15	I presumed was derived from that.
	16	Q I'm sorry. Which exhibit are you referring to?
	17	A Oh, this is the votes table. I'm sorry.
	18	Yes, you're correct.
	19	Q Okay. Now, I understand that, in addition to the
11:26:12	20	officer election member table that exists on the MRNS,
	21	there is also some kind of other information that the
	22	MRNS has; and, specifically, some kind of log of MRNS
	23	activity; is that correct?
	24	A This is a log of MRNS activity, correct.
11:26:32	25	Q And describe for me, what is that log?

	1	numbered paragraph 35.
	2	Have you ever seen this before?
	3	A I received a copy of it. I have not read it.
	4	Q Okay. Do you -- what, if anything, is your
11:48:19	5	understanding of what this is?
	6	A Since I haven't read it, I don't have an
	7	understanding of what it is.
	8	Q Are you aware of the Department of Labor's claim in
	9	this litigation that, using the data that was from the
11:48:37	10	officer election member table and the votes table, the
	11	Department of Labor was able to look at things like IP
	12	addresses and match up specific voters to their votes?
	13	A Yes.
	14	Q Okay. And as we sit here today, given that that
11:48:59	15	information was provided to the Department of Labor, and
	16	setting aside for the moment the question of how it was
	17	provided or who -- whether it was required to be provided
	18	or any of that, just setting all that aside, given that
	19	that information was provided, do you dispute that, with
11:49:14	20	that information in hand, the Department of Labor was
	21	able to match up a number of votes to the voters in that
	22	manner?
	23	A No.
	24	Q Are you aware of any other person at BallotPoint who
11:49:32	25	would be -- would dispute that claim?

	1	A	I can't speak for others.
	2	Q	Well, I'm just asking: Are you aware of anybody --
	3		is there anybody else at BallotPoint who -- that you're
	4		aware of that thinks, well, no, there is no way the
11:49:44	5		Department of Labor could have done that?
	6	A	That discussion hasn't occurred.
	7	Q	And do you agree that, as we know from the exhibits
	8		we've talked about today, Exhibit 4 is the officer
	9		election member table structure, and it shows that there
11:50:07	10		is a column that shows the IP address that a voter has
	11		accessed from; correct?
	12	A	Correct.
	13	Q	All right. And we also know from Exhibit 2 that the
	14		votes table has a -- I'm sorry. Scratch that.
11:50:29	15		We're also aware from Exhibit 2 that, in the From
	16		column of the votes table, if a person voted over the
	17		Web, there is an IP address listed there; correct?
	18	A	Yes.
	19	Q	Okay.
11:51:04	20		MR. WARMAN: You let me know if you need any
	21		of those back to refer back to. I'll pull those up.
	22		THE WITNESS: All right.
	23		MR. STOLTZ: If you want to look at
	24		Exhibit 2, we can use that one.
11:51:13	25		MR. WARMAN: What was the one you referred

	1	to a few moments ago?
	2	MR. STOLTZ: Exhibit 4.
	3	MR. WARMAN: 4.
	4	Q BY MR. STOLTZ: So, on Exhibit 2, if you go down the
11:51:20	5	From column and you see an IP address -- the first vote
	6	that occurred over the Web, and there is an IP address
	7	listed, 71.175.54.91.
	8	Do you see that?
	9	A Yes.
11:51:31	10	Q Okay. And let's assume that, if you look through the
	11	whole rest of the votes table, that's the only time that
	12	number appears.
	13	Just assume that, okay?
	14	A Yes.
11:51:40	15	Q Okay. If that IP address appears only one time on
	16	the votes table in Exhibit 2 and that same IP address
	17	appears once on the officer election member table, would
	18	you then agree that that enables somebody -- in this
	19	case, the Department of Labor -- to link the voter to his
11:51:59	20	or her vote?
	21	A Yes.
	22	(Exhibit No. 9 was marked)
	23	Q BY MR. STOLTZ: Do you recognize Exhibit 9,
	24	Mr. Feldkamp?
11:53:14	25	(The witness reviews the document)

	1	Q	And is there a reason for that?
	2	A	Yes.
	3	Q	What's the reason?
	4	A	It's -- there are problems with such elections right
12:28:39	5		from the beginning, starting with registration and
	6		knowing what a valid roster is. We like union elections
	7		because the roster comes from the union, which comes from
	8		the company, typically. And so, you can count on the
	9		people who are voting being properly registered voters.
12:29:06	10	Q	I want to ask about the -- we talked earlier about
	11		the information that's on the officer election member
	12		table and how it's accessible or not accessible. Tell me
	13		about the election support requests, though, that can be
	14		submitted during the course of an election.
12:29:31	15		What is an election support request?
	16	A	An election support request is issued by an election
	17		admin from the union, and it's a -- the admin logs in to
	18		the MRNS, pulls up the submit support request command,
	19		and fills out a form. And that form is -- asks for the
12:30:02	20		member ID of the person in question that it's inquiring
	21		about, asks for what election are we talking about, and
	22		provides a box that can be filled out by the admin
	23		describing the problem. There are admonitions in there
	24		about including any personally identifying information.
12:30:24	25		The member ID value is used to obtain data from

	1	the officer election member table that we historically,
	2	over 16 years, would have found to be helpful to an
	3	administrator in describing to the member, in turn,
	4	whether there was really a problem or not a problem.
12:30:49	5	Q So, in terms of the type of data during this
	6	election, my understanding is that -- let's take a voter
	7	who had already voted -- or a vote had been cast on that
	8	voter's account already and, for whatever reason, there
	9	is an election support request. So, the administrator,
12:31:08	10	as I understand it, would go and enter the member ID
	11	number onto the website.
	12	That's the first step; yes?
	13	A Correct.
	14	Q And then, once the administrator has entered that
12:31:20	15	member ID and whatever message she wants to transmit,
	16	then the system automatically pulls certain information
	17	about that member ID from the officer election member
	18	table; is that correct?
	19	A That's correct. Right.
12:31:32	20	Q And that information for a member who had voted --
	21	and let's assume it was a vote over the Internet --
	22	included the IP address that the member voted from; is
	23	that correct?
	24	A That's correct.
12:31:43	25	Q And did it also include the IP address -- or the time

	1	that the access was made?
	2	A It included the eight-hour time stamp, which is all
	3	that's available on the OEM table at that time.
	4	Q And it also pulls the information from the MRNS that
12:32:00	5	indicates whether or not the member has, in fact, voted?
	6	A Well, you assumed that the member had voted.
	7	So, yeah.
	8	Q Assuming they did, it would say vote cast?
	9	A Whoever it was that was being identified, whether it
12:32:13	10	was a vote cast -- whether the person had accessed the
	11	system, whether a vote was cast.
	12	And the When and the From fields, those would be
	13	portrayed in that email.
	14	Q So, there is an email generated that has the message
12:32:32	15	from the union administrator that's prompted this support
	16	request, along with information of where they voted from,
	17	if they voted, you know, did they vote, that sort of
	18	thing.
	19	Where does that email go?
12:32:47	20	A It goes to me, Mike Baum, and Bob Thompson.
	21	Q And then do you typically -- you then follow up with
	22	the election administrator to explain how you either
	23	resolved the problem, or why it's not a problem, or
	24	whatever?
12:33:05	25	A Correct.

	1	Q	Now, has the system whereby the election support
	2		request feature -- as I understand it, correct me if I'm
	3		wrong, but at the time of this election, the election
	4		support feature could be used to extract data from the
12:33:22	5		officer election member table about what IP address a
	6		member voted from; correct?
	7	A	That's correct.
	8	Q	Okay. And has that subsequently been changed?
	9	A	Yes.
12:33:32	10	Q	So, after this election, the election support
	11		request, you tweaked the code so that it no longer pulls
	12		that information from the officer election member table;
	13		is that fair to say?
	14	A	No.
12:33:45	15	Q	Okay. What happened?
	16	A	Okay. We have changed it so that, at this moment in
	17		time, when a person accesses the system, all we put in
	18		the From field is whether it's by Web or by IVR. The
	19		When field is, literally, left parentheses, not logged,
12:34:15	20		right parentheses.
	21		And so, we made the -- we basically incapacitated
	22		those two data fields.
	23	Q	So, the MRNS is no longer logging IP addresses at
	24		all; is that what you're saying?
12:34:29	25	A	That is correct.

	1	Q	And, therefore, of course, it can't, then, send those
	2		to you as part of an election support request; correct?
	3	A	Correct.
	4	Q	Was that change that you just described to how the
12:34:48	5		MRNS logs IP addresses, was that accomplished by
	6		presenting an encrypted disk to LightPoint through the
	7		process?
	8	A	Yes, of course.
	9	Q	Now, I understand from the expert disclosure that we
12:35:33	10		discussed earlier that had the -- your opinions and
	11		explanations in this case, which is Exhibit 1, one of
	12		your explanations is that it's not physically possible
	13		for a person to observe the counting of votes in the
	14		system; is that fair to say?
12:35:54	15	A	What opinion are you pointing to?
	16	Q	Exhibit --
	17	A	What page?
	18	Q	I'm sorry. Exhibit 1, page 7. For example, you say
	19		that these operations occur at space and time scales far
12:36:10	20		too small for direct human observation.
	21	A	Yes.
	22	Q	So, in terms of observing the counting, a union
	23		member or candidate or observer is, obviously, able to
	24		observe somebody flashing up a completed tally sheet on a
12:36:38	25		screen somewhere. And I'm showing you Exhibit 3, which

	1	is the tally sheet; right?
	2	So, a union member can, presumably, see this when
	3	the results are announced; right?
	4	MR. ALEXANDER: What exhibit are you holding
12:36:50	5	up?
	6	MR. STOLTZ: Exhibit 3.
	7	MR. ALEXANDER: Thank you.
	8	THE WITNESS: Yes. Or published in any
	9	other number of ways.
12:36:58	10	Q BY MR. STOLTZ: Is there any other mechanism that
	11	you're aware of whereby an observer observes any aspect
	12	of counting, other than just seeing this Exhibit 3
	13	published?
	14	MR. ALEXANDER: Object to the form of the
12:37:11	15	question, misstates prior testimony; mischaracterizes
	16	Exhibit 3.
	17	THE WITNESS: Okay.
	18	Q BY MR. STOLTZ: You can still answer the question.
	19	A Okay. I mean, since I'm not used to the process, I
12:37:27	20	don't -- I kind of lose my track.
	21	MR. ALEXANDER: Would you read the question?
	22	(The reporter reads the question)
	23	THE WITNESS: That would be up to the
	24	individual observer. With the vote digests and access to
12:38:01	25	the -- what I believe I called tally records table or

	1	something like that, to the entire data that results from
	2	the decrypted -- the double encryption, okay, and MRNS
	3	observer type -- an MRNS qualified observer could take
	4	the vote digests, make sure that they actually appeared
12:38:29	5	in the decrypted table. The decrypted table could be
	6	compared, in the January 2016 election, to the votes
	7	table or the data that votes -- the plain text strings
	8	that were stored in the votes table to corroborate the --
	9	what was stored in encrypted form with the data that was
12:38:54	10	stored in plain text form. We, in fact, did that
	11	ourselves for that verification.
	12	So, somebody who was both interested and
	13	knowledgeable could have performed exactly the same
	14	function, okay, so that the -- the important thing there
12:39:14	15	is that the votes that existed in plain text matched up
	16	to the ones in the tally records table. So, if an
	17	observer had access to both, then they could corroborate
	18	that the count was done correctly. Further, if the votes
	19	table just plain text strings were done -- had been made
12:39:41	20	available to an observer, then a simple Excel program
	21	could be written to count from those, okay, and those
	22	could be compared against the count.
	23	Early on in our association with the Department
	24	of Labor --
12:39:58	25	MR. WARMAN: Just answer his question.

	1	THE WITNESS: Did that answer the question?
	2	MR. STOLTZ: Yeah.
	3	Q BY MR. STOLTZ: I think I asked, yeah, what -- other
	4	than Exhibit 3, what other ways can an observer observe
12:40:07	5	things. And you mentioned the vote digests; correct?
	6	And also, they could tally up the vote strings -- the
	7	unencrypted vote strings on the vote table; correct, if
	8	they're given access to that?
	9	A (The witness nods head.)
12:40:18	10	Q Is there anything else that you can you think of?
	11	A Those would be the items that are critical in the
	12	design.
	13	Q And out of those three items, obviously, we know that
	14	Exhibit 3 was given to union members and observers.
12:40:32	15	The vote digests may or may not be available,
	16	depending on what the union decides to do; correct?
	17	A Correct.
	18	Q And, likewise, the vote table itself, does the union
	19	get to decide whether to give that to observers?
12:40:45	20	A It's generally -- that's generally not produced,
	21	okay. It was something specifically requested on
	22	3/21/2016. And so, we pulled the data out for that. But
	23	you know, there are a lot of ifs here.
	24	And so, if somebody had that data, they could see
12:41:06	25	it and do the counting on their own.

	1	Q	Let me ask you -- I understand how comparing the vote
	2		digests to the doubly encrypted votes is a way to verify
	3		that the vote hasn't been changed or altered or dropped,
	4		you know, since it's been digested.
12:41:21	5		But prior to when a vote is really digested, in
	6		that split second when a vote is initially cast, let's
	7		say an observer wants to have some way to observe or
	8		verify that the vote is actually recorded in the
	9		BallotPoint system consistent with what the voter
12:41:41	10		actually intended to cast; in other words, the voter is
	11		looking at a screen and intends to vote for candidate 1.
	12		Is there a way that an observer can verify that
	13		that vote is actually logged as for candidate 1 in the
	14		system?
12:41:57	15	A	I'm not sure that that's a role of an observer.
	16		There is no way that an observer can get to the
	17		individual screen for a member or to the individual phone
	18		call for a member.
	19		That seems like a violation of secrecy.
12:42:17	20	Q	Right.
	21		And I'm not -- for example, in an election that
	22		occurs just at a physical polling site, an observer can
	23		watch a voter mark a ballot, not looking over the
	24		shoulder, but they can watch from a distance that an
12:42:34	25		observer -- that the voter marks the ballot and then

	1	deposits it into the ballot box. And then they can watch
	2	that ballot box until it's opened and then the votes are
	3	counted. So, my question is: Here -- and that way they
	4	have some assurance that the vote that went into the
12:42:46	5	ballot box is the one that the voter intended to go in.
	6	Is there a similar way that an observer -- let's
	7	just call them a person here -- can verify that the vote
	8	that is recorded in the ballot box is actually the vote
	9	that was intended?
12:43:00	10	A No.
	11	Q The --
	12	A May I add something?
	13	Q Sure. If you'd like to add something, go ahead.
	14	A That's the point of the confirmation numbers. It's
12:43:14	15	our view it's not the business of the observer -- an
	16	observer under an LMRDA kind of an environment to be able
	17	to look at how an individual has cast his vote. That's a
	18	violation of secrecy. Providing that information via the
	19	confirmation number in a post-election structure of some
12:43:35	20	kind so the individual voter could see that his vote was
	21	cast as intended is critical to the system.
	22	I think that's an important part of what the
	23	BallotPoint system has.
	24	Q Now, I understand there is something called a who
12:43:52	25	voted report that is generated after the election.

	1	A	Correct.
	2	Q	And that is literally just a list of every person who
	3		voted; right?
	4	A	Correct.
12:43:59	5	Q	So, an observer, if they want to go look and see,
	6		okay, these are the 100 or 1,000 or however many people
	7		who voted; correct?
	8	A	Yes.
	9	Q	Now, at a physical polling site election, in
12:44:11	10		practice -- in theory, an observer could literally sit
	11		there and watch voters come up and see who they are, and,
	12		thereafterwards, compare that to the list of people who
	13		voted and say, yeah, I saw John walk up and vote, and
	14		here he is on the list.
12:44:26	15		How can a person in this election here, how can
	16		they assure themselves that the who voted list accurately
	17		reflects who did, in fact, vote?
	18		MR. ALEXANDER: Objection, calls for
	19		speculation.
12:44:38	20	THE WITNESS:	Yeah. I can't answer that.
	21		But I will say that the same is not true in -- the same
	22		concern would be available to mail ballots.
	23	Q	BY MR. STOLTZ: So, you said you couldn't answer.
	24		Are you -- is it you couldn't answer because
12:45:07	25		you're not aware of any way for a person to verify that;

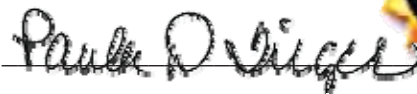
	1	is that fair to say?
	2	A There is no way to verify -- that an observer can
	3	verify that that individual cast a vote from his kitchen
	4	or on the phone or on a Web browser.
12:45:23	5	There is no way to do that.
	6	Q The -- getting back to the servers, the MRNS server
	7	and the ES server, do those contain a trusted platform
	8	module?
	9	A I don't know what we're talking about there.
12:46:01	10	Q Okay. Do those contain an integrated lights out
	11	management system?
	12	A I don't know what the term refers to.
	13	Q When you access -- the ES, I understand, can be
	14	accessed over the Internet, for example, to update the
12:46:19	15	software; correct?
	16	A Correct.
	17	Q How is that Internet access accomplished? Is it a
	18	remote access? Is it some other feature?
	19	What is it?
12:46:27	20	A It's a remote access.
	21	Q Is it a VPM?
	22	A It uses the Team Viewer software.
	23	Q Team Viewer software?
	24	A Viewer. It's a commercial product.
12:46:37	25	Q Any other features or things that are associated with

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CERTIFICATE

I, Paula D. Tieger, a Registered Professional Reporter and Notary Public for the State of Oregon, hereby certify that said witness personally appeared before me at the time and place set forth in the caption hereof; that at said time and place I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were transcribed through computer-aided transcription, under my direction; and that the foregoing pages constitute a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

Witness my hand at Portland, Oregon, this 27th day of July, 2017.




























Paula D. Tieger, RPR 49286
Expires 9/30/19
Notary Public 957195
Expires 12/8/20

eid	unqid	timestamp	confnum	medium	votestring	attr1	attr2	attr3	attr4	trkid	from	dev
15	DEFAULT_825723100	2015-12-12 21:34:17.000	152317194	IVR	1-8:v2-2:v3~2:v4~3:	ORD	FA			00003F23	708*****	InpFEVUB81rgKSJEMFns
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15	DEFAULT_917615056	2015-12-13 16:10:16.000	150000610	IVR	1-8:v2-3:v3~5:v4~4:	ORD	FA			000043A7	773*****	A47q+1fGwws2F8Xp9a3
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15	DEFAULT_439875282	2015-12-14 02:03:02.000	155201411	IVR	1-6:v2-1:v3~1:v4~1:	PHL	FA			0000460B	810*****	YM5bPSTGvDTCBz/ZY7P
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15	DEFAULT_191642525	2015-12-14 10:03:37.000	152460028	IVR	1-3:v2-2:v3~1:v4~1:	CLT	FA			00004793	815*****	NMfAZCiwYH59VwY5Hn
15	DEFAULT_858636758	2015-12-14 10:08:26.000	155329675	WEB	1-8:v2-3:v3~5:v4~1:	PHL	FA			00004820	352*****	hPDPe0pdazM3WKKCMp
15	DEFAULT_681048855	2015-12-14 10:09:31.000	150078731	IVR	1-7:v2-2:v3~2:v4~5:	DFW	FA			0000483D	847*****	Rv37hOvwe/ly2T+RPY
15	DEFAULT_345184302	2015-12-14 10:18:27.000	151248168	IVR	1-8:v2-3:v3~5:v4~4:	ORD	FA			00004835	678*****	hbDIdbWKGH1m8K8hbz
15	DEFAULT_281860103	2015-12-14 10:19:02.000	154712525	IVR	1-6:v2-1:v3~3:v4~1:	PHL	FA			00004835	678*****	hgEad4re0SEwEj09aZwC
15	DEFAULT_887194458	2015-12-14 10:23:02.000	155311160	WEB	1-4:v2-1:v3~1:v4~1:	DFW	FA			00004835	678*****	ScQKNcUtlUlvbEH2WvV
15	DEFAULT_367923009	2015-12-14 10:31:23.000	154434245	WEB	1-3:v2-2:v3~1:v4~1:	CLT	FA			00004835	678*****	Jy090lDmGRIQ8bpGVfE
15	DEFAULT_563449300	2015-12-14 10:42:28.000	151529831	WEB	1-4:v2-1:v3~1:v4~1:	LAX	FA			00004835	678*****	N5tE7+gzoTH/Tw84pf
15	DEFAULT_990992638	2015-12-14 10:59:35.000	155221864	IVR	1-2:v2-1:v3~1:v4~5:	MIA	FA			00004835	678*****	KOY0xw8Tb5ulpdWvV
15	DEFAULT_712813348	2015-12-14 11:03:06.000	151304896	WEB	1-2:v2-2:v3~3:v4~5:	STL	FA			00004835	678*****	JRpQa6I/KDcWvwmIDf5
15	DEFAULT_360058060	2015-12-14 11:06:26.000	159946391	WEB	1-4:v2-1:v3~1:v4~1:	MIA	FA			00004835	678*****	+uCTZLQklqgmVSnZyUc
15	DEFAULT_666263907	2015-12-14 11:13:04.000	150577344	WEB	1-8:v2-3:v3~5:v4~4:	MIA	FA			00004835	678*****	NAO4KCFgm4GRwVaog
15	DEFAULT_224823364	2015-12-14 11:16:21.000	154642623	WEB	1-4:v2-1:v3~1:v4~1:	DFW	FA			00004835	678*****	9Bb7vAlUmykwtDcP5u5f
15	DEFAULT_867758767	2015-12-14 11:39:05.000	153079835	IVR	1-4:v2-1:v3~1:v4~1:	CLT	FA			00004835	678*****	SlkmyANaIO3ddIRa24VE
15	DEFAULT_253884921	2015-12-14 11:44:24.000	152552864	IVR	1-6:v4~2:	PHL	FA			00004835	678*****	HmK83fQcFIEltTOW4VE
15	DEFAULT_548039748	2015-12-14 11:44:38.000	152987970	IVR	1-4:v2-1:v3~1:v4~1:	ORD	FA			00004835	678*****	legazNsp7RaL2LHMb4N
15	DEFAULT_556702447	2015-12-14 11:44:41.000	155288087	IVR	1-4:v2-1:v3~1:v4~1:	MIA	FA			00004835	678*****	cpssWSxddd6T7p7gtMvEC
15	DEFAULT_556702447	2015-12-14 11:44:41.000	155288087	IVR	1-4:v2-1:v3~1:v4~1:	MIA	FA			00004835	678*****	tpMOn0G3thDR2lv0sXQj



[-]  dbo.OfficerElectionMember

[-]  Columns

-  oem_cl_id (int, not null)
-  oem_eid (int, not null)
-  oem_mid (varchar(20), not null)
-  oem_mtype (varchar(8), not null)
-  oem_access_code (char(12), not null)
-  oem_firstname (nvarchar(30), not null)
-  oem_middlename (nvarchar(30), not null)
-  oem_lastname (nvarchar(30), not null)
-  oem_attr1 (varchar(32), not null)
-  oem_attr2 (varchar(32), not null)
-  oem_attr3 (varchar(32), not null)
-  oem_attr4 (varchar(32), not null)
-  oem_addr1 (nvarchar(50), not null)
-  oem_addr2 (nvarchar(50), not null)
-  oem_addr3 (nvarchar(50), not null)
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-  oem_eaddr (varchar(150), not null)
-  oem_accessed (int, not null)
-  oem_access_from (varchar(20), not null)
-  oem_access_when (varchar(20), not null)
-  oem_vote_cast (int, not null)
-  oem_smartphone (varchar(20), not null)



 Keys

Item 21 README.txt

IMPORTANT: What we interpret "membership database or table" to mean is the data stored in the **OfficerElectionMembers table in the MRNS database**. No membership information is stored on the ES.

Neither BallotPoint engineers nor APFA election administrators have direct access to this table. To do so would require BallotPoint to make additions to the application software in the MRNS. We will not add such software.

What IS provided for this Item is the structure of the OfficerElectionMember table.

The membership data imported by the MRNS to this table is provided at Item-1.



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 FORT WORTH DIVISION
4 - - - - - X
5 R. ALEXANDER ACOSTA, :
6 Secretary of Labor :
7 Plaintiff, : Civil Action No.
8 v. : 4:16-cv-1057-A
9 ASSOCIATION OF PROFESSIONAL :
10 FLIGHT ATTENDANTS, :
11 Defendant. :
12 - - - - - X
13 Washington, D.C.
14 Friday, July 28, 2017
15 Deposition of CHARLES STAPLETON, a witness
16 herein, called for examination by counsel for
17 Plaintiff in the above-entitled matter, pursuant to
18 notice, the witness being duly sworn by ANGELA K.
19 MCCULLOUGH, RPR, a Notary Public in and for the
20 District of Columbia, taken at the offices of
21 Bredhoff & Kaiser PLLC, 805 15th Street, Northwest,
22 Suite 1000, Washington, DC, at 9:59 a.m., Friday,

1 PROCEEDINGS

2 Whereupon,

3 CHARLES STAPLETON,

4 called as a witness by counsel for the Plaintiff, and

5 having been duly sworn by the Notary Public, was

6 examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR PLAINTIFF

8 BY MR. STOLTZ:

9 Q. Good morning, sir. My name is
10 Brian Stoltz, and I'm the attorney for the Plaintiff
11 in this case, which is the Secretary of Labor.

12 I understand you have been retained by the
13 Defendant; is that correct?

14 A. Yes.

15 Q. And can -- can you please tell us your
16 full name for the record.

17 A. Charles Curtis Stapleton.

18 Q. And, Mr. Stapleton, you've been retained
19 as an expert witness by the Association of
20 Professional Flight Attendants, also known as the
21 APFA; is that right?

22 A. I was retained by Bredhoff & Kaiser.

1 Q. So you're retained by the APFA's law firm
2 on behalf of the Defendant?

3 A. Yes.

4 Q. And I understand that you've reached some
5 opinions in this case; is that correct?

6 A. Yes.

7 Q. Okay. What -- what opinions have you
8 reached in this case?

9 A. They're in the report, obviously. Are you
10 asking me to tell you what's in the report?

11 Q. I'm not looking for a word-by-word
12 recitation. I'm just saying -- what are your
13 opinions? What are your main opinions?

14 A. Well, one is that, in general, the -- I
15 believe the election that was held in January --
16 there's no reason to believe it was incorrectly
17 tallied.

18 Q. Okay. So there's no reason to believe the
19 January -- you're talking about the January 2016
20 election for the APFA, right?

21 A. Yeah.

22 Q. Okay. So you -- you have one opinion that

1 was given to you on a flash drive?

2 A. Yes.

3 Q. And then using some kind of standard tool
4 that you have, you were able to then physically look
5 at the code and see what it says essentially; is that
6 right?

7 A. Yes.

8 Q. And where did this review occur?

9 A. In Portland.

10 Q. And where in Portland?

11 A. At the BallotPoint office or a BallotPoint
12 office, I suppose.

13 Q. And is this in the office where
14 BallotPoint has, like, Dan Hilderbrand -- you know
15 Dan Hilderbrand, right?

16 A. Yes.

17 Q. He's got kind of his own little area that
18 has a door, and then there's kind of a bullpen-type
19 area where some of the other personnel have their
20 work areas. Is that the office you're thinking of?

21 A. That sounds like where I was, yes.

22 Q. I've been there, too. I just want to make

1 A. I mean, it might be obvious to some.

2 Q. Well, you could -- you could look at the
3 IP address from the ES, find the same IP address from
4 the MRNS, find who they voted for, and find their
5 name, right?

6 A. Yeah. Potentially.

7 Q. Is it your impression -- you talked to the
8 folks at BallotPoint, correct?

9 A. Yes.

10 Q. Okay. Is it your understanding that they
11 intentionally did not allow for any such report to be
12 generated, or was it just sort of dumb luck that you
13 couldn't do this?

14 A. So I don't believe they intentionally
15 provided a facility to do that.

16 Q. So your review of the application code on
17 the ES and the MRNS confirms that no user can get on
18 the internet and generate reports from the ES and the
19 MRNS that show IP addresses from both server, right?

20 MR. ALEXANDER: Object to the form of the
21 question, asked and answered.

22 You can answer it again.

1 THE WITNESS: Yeah. That there was no way
2 that you could use the application to generate a
3 report that would link IP addresses, and timestamps,
4 and users from one to IP addresses, timestamps, and
5 votes from the other.

6 BY MR. STOLTZ:

7 Q. And, in your mind, I mean, that's a --
8 that's a fact that supports your opinion that the
9 system did not provide reports that allowed votes to
10 be linked to voters, right?

11 A. Yes.

12 Q. Are there any other facts aside from this
13 fact about what reports could be generated -- any
14 other facts that you relied on or that you believe
15 support the opinion that you can't link votes to
16 voters?

17 A. That the application didn't provide a
18 facility to do that? Is that what you're asking?
19 That -- is that what you're asking?

20 Q. Well, I think so. I think we've already
21 discussed now and, I think, confirmed that your
22 review showed that the application did not provide

1 any facility to allow users to log in and generate
2 that type of report that would link votes to voters,
3 right?

4 A. (Witness nods.)

5 Q. So we've already talked about that.

6 A. Correct.

7 Q. And that obviously supports -- in your
8 mind, that supports the opinion that, you know, the
9 system didn't allow votes to be linked to voters,
10 right?

11 A. Well, my opinion is not that it didn't --
12 the system -- that it wasn't possible to link votes
13 to voters. It was that there was no application code
14 or function that allowed users to do that.

15 Q. Okay. So you've drawn a distinction there
16 between -- you said there was no function that
17 allowed users to do it versus it wasn't possible.

18 Does that mean it is possible through some
19 other mechanism, in your mind?

20 A. Yeah, yes.

21 Q. Okay. And is that the -- you're familiar
22 with what the Department of Labor did once they

1 gathered information from both servers?

2 A. Yes.

3 Q. Okay. So is it fair to say that you agree
4 that what the Department of Labor did allows linking
5 votes to voters? Is that accurate?

6 A. Yes.

7 Q. Okay. So any other facts that you're
8 relying on or that support your opinion -- well, I
9 guess you've answered that question because you said
10 the opinion is that the system did not allow users to
11 make a report that shows IP addresses from both
12 servers. And that's based on your review of the
13 system, right?

14 A. It didn't create a report that users
15 could -- that would link voters to votes, yes.

16 Q. Now, did you, as part of your review,
17 consider other ways that people could gain access to
18 the information on the ES and the MRNS, or was that
19 outside the scope of your review?

20 A. Well, my review was primarily to
21 understand how the system worked and what protections
22 were in place. And so all things related to security

1 users interact with the server by -- by working with
2 a test system.

3 Q. Okay. Anything else?

4 A. No.

5 Q. And when you say, "Reviewing how users
6 interact with the server," do you mean that you were
7 able to sort of get your own log-in and see what a
8 user would see if they logged in as an administrator,
9 or as an observer, or as a voter? Is that what we're
10 talking about?

11 A. Yes.

12 Q. The source code that you mentioned in
13 connection with your opinion that there's no reason
14 to believe that the vote was incorrectly tallied,
15 what source code did you review?

16 A. The source code that counts ballots
17 elections.

18 Q. And is that --

19 A. And the source code that produces reports.

20 Q. Anything else? Any other specific source
21 code?

22 A. No.

1 Q. Now, this source code that you reviewed
2 that counts ballots elections and produces reports,
3 is it within the body of source code that you earlier
4 described as the voting application code?

5 A. Yeah. By voting application, I'm
6 referring to all of the code that makes up the -- the
7 BallotPoint voting system.

8 Q. So this is, again, within the same body of
9 BallotPoint-created code that exists on the ES and
10 the MRNS?

11 A. Correct.

12 Q. Okay. And, within that code, there are
13 specific subsets of code or sections that perform a
14 counting function or perform a producing-report
15 function; is that generally correct?

16 A. Yes.

17 Q. And so you specifically looked at the
18 portion of the code that performs the counting
19 operation, right?

20 A. And produced the results of that.

21 Q. And so the -- I gather that the counting
22 operation of the code, that's probably a relatively

1 basic concept in computers, a counting function. Is
2 it?

3 A. Yes.

4 Q. And you reviewed that counting function
5 just to -- well, you tell me. Why -- what did you
6 review that counting function for?

7 A. To determine if there was anything unusual
8 about it.

9 Q. And did you find anything unusual?

10 A. No.

11 Q. So your review of the counting function
12 left you with the impression that, when it counts, it
13 actually does count in the correct manner
14 essentially?

15 A. Yes.

16 Q. Okay. And as far as the producing-report
17 code, what does that code do in general terms?

18 A. Well, counting the tally is one thing, and
19 then letting users know what the result is is a
20 different thing. So producing the reports or pages
21 is -- is producing the results of the tally.

22 Q. So, if I understand correctly, once the --

1 correct?

2 A. I looked at this, but I did not consider
3 whether they were wrong or right necessarily. I was
4 just using it for background information to
5 understand. I don't remember if I agreed with
6 everything or disagreed with anything.

7 Q. And in this case, though, are you offering
8 any opinions on whether the Department of Labor could
9 or could not perform the vote-to-voter linking that
10 they describe here in Exhibit 1, interrogatory No. 1?

11 A. With regard to being able to link votes to
12 voters, I believe that they did that.

13 Q. Let me ask about your background. I
14 understand that you're the founder and CEO of a
15 company called Adept Security Consulting, LLC; is
16 that right?

17 A. Yes.

18 Q. What is Adept Security Consulting?

19 A. It's an information security consulting
20 firm.

21 Q. So just generally speaking, what kind of
22 work does the company do?

1 winner -- a human winner of a vote, or something like
2 that.

3 Q. And what have you worked on that -- it
4 sounds like there may be something in your mind.

5 A. Well, I mean, I've worked on many systems.
6 And, you know, some systems I can think of collect
7 information from people and then make determinations
8 on what to do based on, you know, how similar or
9 dissimilar that information they collect from people
10 might be.

11 Q. Okay. So you've worked on systems that
12 collect information, but just not voting specifically
13 in the -- in the context of a contested election for
14 people; fair to say?

15 A. Yes.

16 MR. STOLTZ: Do you want to go off the
17 record for a sec.

18 (Recess.)

19 BY MR. STOLTZ:

20 Q. Okay. Mr. Stapleton, I understand that
21 you visited Portland, and you were in the BallotPoint
22 office in Portland, and you had some discussions with

1 BallotPoint personnel; is that right?

2 A. Yes.

3 Q. Have you had any other discussions with
4 anybody from BallotPoint outside of your meeting in
5 Portland?

6 A. No. Maybe back in 2008 or '9.

7 Q. Good point. And I'm referring to -- for
8 purposes of this case. So your answer is no for
9 purposes of this case?

10 A. Yes. No. My answer is no for purposes of
11 this case.

12 Q. Thank you.

13 Now, when you were in Portland, did you go
14 to this LightPoint facility that BallotPoint uses as
15 a collocation facility?

16 A. Yes.

17 Q. And what, generally speaking, is a
18 collocation facility?

19 A. A facility where people can put their
20 computers that have more security, maybe better
21 internet, better power. And that's kind of run and
22 maintained by other people, the facility, as opposed

1 to housing it in their own office.

2 Q. So there's an advantage I guess, if you --
3 if you have a computer that's performing some
4 important function for your business, you can put it
5 somewhere, and maybe they have a backup power system?

6 A. Correct.

7 Q. And they may have a better fire protection
8 system or something like that?

9 A. Correct.

10 Q. And they also have security in place,
11 obviously?

12 A. In most cases, yes.

13 Q. And the use of these collocation
14 facilities, is that a common thing in the -- just in
15 business generally? Do people use these?

16 A. Yes.

17 Q. And is a -- LightPoint, I understand, is
18 the company that operates the collocation facility;
19 is that right?

20 A. That's my understanding, too. Yeah.

21 Q. Okay. And this is a thing where there's
22 companies that are in the business of operating

1 collocation facilities? I guess they charge a rent
2 or something like that?

3 A. Yes.

4 Q. And how does one -- if I run a business
5 and I want to put a computer in a collocation
6 facility, how do I go about doing that?

7 A. Call the collocation facility and ask them
8 how to do that.

9 Q. And so they'll tell you if, you know, we
10 don't have space for it, we do have space, this is
11 how much we charge, stuff like that?

12 A. I imagine.

13 Q. And collocation facilities -- I gather
14 they don't let just any member of the public in to
15 look at the computers and poke around, do they?

16 A. I don't know what policies are for
17 different collocation facilities.

18 Q. Do you have any experience yourself
19 dealing with collocation facilities?

20 A. I've worked in several collocation
21 facilities performing tests.

22 Q. And when you've -- well, for example, when

1 you visited the collocation facility in Portland with
2 BallotPoint, how did that work for you to gain access
3 to that facility?

4 A. I went over with Gerry and, you know, a
5 couple of people. And they had key card access, I
6 believe, to the facility.

7 Q. So the fact that you were with
8 BallotPoint -- BallotPoint -- some of their personnel
9 have the ability to get in this facility, and you
10 tagged along with them; is that fair to say?

11 A. Yes. I went with them to the facility.

12 (Exhibit No. 2 was marked for
13 identification.)

14 MR. ALEXANDER: Thank you.

15 BY MR. STOLTZ:

16 Q. I've handed you a document marked as
17 Exhibit 2. Do you recognize this as your expert
18 report in this case?

19 A. Yes.

20 Q. On page 3, there is a -- that's page 3 of
21 Exhibit 2. There's a section D called "Documents and
22 Other Materials Considered." Do you see that?

1 Q. LightPoint does that?

2 A. Oh, no, no. Sorry. No. BallotPoint
3 implements changes to the ES code.

4 Q. Is there any similar log on the --
5 available through the ES that shows when the ES code
6 was changed?

7 A. No.

8 Q. And obviously, if LightPoint is not
9 involved with ES code changes, LightPoint would have
10 no log of those, correct?

11 A. I don't think they would.

12 Q. On page 8 of Exhibit 2, there's a
13 paragraph at the bottom that said, "My specific
14 assessment approach was tailored based on previously
15 reported system security concerns." And then it goes
16 on to list other items. Do you see that?

17 A. Yes.

18 Q. What is the previously reported system
19 security concerns that you're referring to here?

20 A. When I -- before I conducted my
21 assessment, I was aware that an election had been
22 contested. And I was aware that votes had been

1 Q. What -- what did you consider about the
2 issue of a person who has physical access to the
3 BallotPoint servers?

4 A. Primarily whether or not they could do
5 it -- whether there would be a trail of them doing
6 it.

7 Q. So did your review -- are you giving any
8 opinions in this case about whether somebody who has
9 physical access to the ES and physical access to the
10 MRNS can extract data physically from those servers?
11 Are you giving any opinion about that?

12 A. I don't believe so. I'd have to read
13 through entirely to remember completely. But I don't
14 believe I am.

15 Q. Turning to page 12, first paragraph where
16 it says, "My review of the application source code
17 also determined that the system did not provide a
18 mechanism by which users (including BallotPoint
19 administrators, APFA election officials, and voters)
20 could access the IP address information stored on the
21 MRNS," do you see that sentence?

22 A. Yes.

1 Q. My question about that sentence, again, is
2 users here is referring to people who are accessing
3 the server over the internet, correct?

4 A. Yes.

5 Q. So you're not making any claim here that
6 people who have direct physical access to the MRNS
7 cannot access IP address information, are you?

8 A. I'm not claiming that.

9 Q. And just to confirm, I believe you said
10 earlier -- or you agreed earlier that a person --
11 certain administrators on the ES are privileged to
12 extract IP address, and timestamp, and vote data from
13 the ES over the internet, correct?

14 A. Yeah. With regard to whether it's on the
15 ES or MRNS, I mean, logging in -- overall, in the
16 system, the information that's on the ES is
17 accessible -- that information can be looked at.

18 Q. And are you making any claim about whether
19 the IP addresses, and the votes, and the timestamps
20 on the ES can be pulled by someone who just has
21 direct physical access to the ES?

22 A. Am I making -- I'm sorry.

1 Q. And based on your review of that trail,
2 you can conclude that there was no changes at the
3 time that would've made the IP addresses and voter
4 names accessible over the internet, right?

5 A. Yes.

6 Q. Now, did you conduct any similar review of
7 the -- whatever forensic trail might exist for
8 somebody who wanted to make a change to the MRNS by
9 physical access?

10 A. No.

11 Q. And, likewise, did you conduct any review
12 of whatever forensic trail might exist for somebody
13 who wanted to not make a change to the MRNS software
14 but simply plug into the MRNS and extract data from
15 it?

16 A. No.

17 Q. There's a discussion in your report of
18 communications between the MRNS and the ES using a
19 so-called one-time password. And without getting
20 specifically into the report -- but what's your
21 understanding of how this one-time password feature
22 works?

1 A. The one-time password is used to allow the
2 MRNS and the ES to understand that they're
3 communicating about a particular vote.

4 Q. So is it fair to say -- well, first of
5 all, do you know who -- who generates this one-time
6 password?

7 A. Yes.

8 Q. Okay. And who's that?

9 A. It's in the diagram. I believe it's the
10 ES.

11 Q. So the one-time password is associated --
12 it's -- excuse me. Assuming that it's generated by
13 ES, the one-time password is linked to a vote on the
14 ES; is that right?

15 A. It's linked to a voter session, basically.

16 Q. Well, do you know -- for example, if I
17 were to look at the votes table that comes from the
18 ES, would the one-time password appear on that table
19 next to the -- the specific vote, the time it
20 occurred, and all that? Do you know?

21 A. I don't believe it would.

22 Q. Okay. Do you know -- is the one-time

1 password saved in any way, -- in other words, such
2 that it continues to exist even after the election --
3 on any of the reports that are generated by the ES?
4 Do you know?

5 A. I don't believe it is, no.

6 Q. Are you aware -- is the one-time password
7 saved anywhere on the ES during and after the
8 election?

9 A. I believe during a voting session it is on
10 the ES. Yeah.

11 Q. And a voting session refers to what
12 exactly?

13 A. The interaction between the voter and the
14 voting system from the time they log in to the time
15 they cast their -- to the time the vote is recorded.

16 Q. So the voting session is the few minutes
17 or however long it takes for the voter to actually
18 work through the system, input their credentials,
19 select who they're going to vote for for each race,
20 and then finish, more or less?

21 A. Yes.

22 Q. So the voting session just refers to that

1 period of time essentially that --

2 A. Yes.

3 Q. So it's your understanding then that the
4 ES is generated on the -- I'm sorry. The one-time
5 password is generated on the ES. It exists at least
6 for some period of time in connection with a voting
7 session. But is the one-time password also sent to
8 the MRNS at some point?

9 A. Yeah, I believe the MRNS actually requests
10 that one be created by the ES and then receives one
11 from the ES.

12 Q. And is the purpose of the -- well, does
13 the MRNS associate the one-time password with a
14 specific voter?

15 A. It takes the one-time password, and it
16 associates a voter type, I suppose, with the one-time
17 password.

18 Q. And what does that mean, "voter type"?

19 A. During an election, there could be voters
20 that may have access to ten different ballot
21 selections or maybe three as an example.

22 Q. So, in this election specifically, my

1 understanding is that every voter was voting for the
2 same four races and had the same four decisions to
3 make or choices. So how does -- how does that
4 function in this race?

5 A. Because the ES has to have some way to
6 determine what type of ballot to provide the voter.

7 Q. Okay. So I think I understand. So the --
8 the MRNS says request a one-time password for this
9 voting session, and it's going to be a voter who will
10 vote in all four races, let's say?

11 A. Yeah.

12 Q. Okay. And then the ES creates a --
13 essentially records a vote during that session. And
14 you think the one-time password is not actually
15 correlated in any way with the vote, though? Is that
16 what you think?

17 A. With the vote selections, right.

18 Q. Okay. It's not correlated with the vote
19 selection?

20 A. Correct.

21 Q. So another way to ask that is -- say I
22 know one of the one-time passwords. Can I go on the

1 ES and look up what votes -- what specific votes are
2 associated with this one-time password?

3 A. No, I don't believe so.

4 Q. Now, at some point, the -- the MRNS has to
5 be informed that a known, identifiable voter has now
6 successfully cast a vote, correct?

7 A. Has to know that a vote has been
8 completed. Yeah.

9 Q. And, at that point, the MRNS then makes
10 some change in its table to show that voter John Doe
11 has now voted and can't vote again, right?

12 A. Right. Whether he can vote again or not,
13 I think, is, like, an option that can be set. But
14 whether the voter has voted, yes.

15 Q. So is it your understanding that the ES
16 transmits the one-time password to the MRNS so that
17 the MRNS can mark somebody as having voted? Is that
18 how it works?

19 A. Yes.

20 Q. Okay.

21 A. Well -- yeah, I believe so. I'd have to
22 consult the diagram again. But I believe that's one

1 of the main reasons why it exists.

2 Q. So the MRNS then by necessity --

3 MR. ALEXANDER: You want to let him review
4 his --

5 THE WITNESS: Yeah. Can I take a look
6 real quick?

7 BY MR. STOLTZ:

8 Q. Sure. Go ahead.

9 A. (Witness complies.)

10 Yeah. It's to let the voter know that --
11 it's to let the system know that a voter has
12 completed a vote.

13 Q. So the MRNS logically -- would you agree
14 that the MRNS has to know an association between a
15 one-time password and a specific voter? Correct?

16 A. Yes.

17 Q. And that's because the MRNS has to be able
18 to go down the list of voters, and find John Doe, and
19 mark that he's now voted, right?

20 A. Yes.

21 Q. So in your report on page 15 -- well,
22 first of all, just conceptually, let's assume that

1 A. There are probably a variety of different
2 ways to do it.

3 Q. Do you know the names of any such
4 companies that do that?

5 A. I mean, as an example, Gmail would almost
6 be like that. The most -- most mail services are
7 going to be like that. Microsoft.

8 Q. So do you know if this third-party mail
9 server company -- do they keep copies of all the
10 e-mails they send?

11 A. I don't know.

12 Q. If we wanted to find that out, I guess
13 we'd have to ask the -- the third-party mail server.

14 A. Yeah.

15 Q. I'm looking at Exhibit B of Exhibit 2 if
16 you wouldn't mind taking a look.

17 A. Sure.

18 Q. Is this, Exhibit B, an explanation of the
19 communications between the MRNS and the ES roughly?

20 A. Yes.

21 Q. Under -- or next to the first -- there's a
22 1 in a circle, and then there's some diagrams. And

1 there's some language that says, "The
2 One-Time-Password is a random code that is never
3 stored on disk."

4 A. Right.

5 Q. And then it says, "It allows the MRNS to
6 associate messages sent with it to a distinct voter."

7 Do you see that?

8 A. Yeah.

9 Q. So the first sentence there that says the
10 one-time password is never stored on disk, what does
11 that refer to?

12 A. Yeah. I believe it's never stored on disk
13 on the MRNS. But I think the ES does retain it for
14 some amount of time.

15 So, anyway, it's not 100 percent clear the
16 way it's written right there.

17 Q. And when you say it's never stored on disk
18 on the MRNS, storing it on disk would be -- is that
19 the hard drive?

20 A. Yeah.

21 Q. And I think you mentioned earlier that if
22 something is not stored on the hard drive but it is

1 received or possessed for some period of time, it
2 might be just in, quote, "memory." Is that what you
3 call it?

4 A. It could be.

5 Q. And what are the sort of alternative
6 places you can store something other than disk and
7 memory?

8 A. Those are the two primary -- those are the
9 two places I can think of where it would be stored,
10 you know, on an external storage device or in memory.

11 Q. And if something is stored on disk, is the
12 significance of that that, in order to remove it from
13 the disk, you have to take some affirmative action
14 such as clicking on it and choosing delete or
15 something like that?

16 A. Yeah. I guess the difference is, you
17 know, everything that gets written to any disk is
18 first in memory. Okay. And you don't have to write
19 everything in memory to a disk. And so that's what
20 this is intended to convey.

21 Q. And memory, is that the portion where, if
22 somebody is in memory but not on a disk, it can be

1 overwritten whenever the computer needs to use that
2 memory, things like that?

3 A. Yes.

4 Q. The -- let's look at page 16 of Exhibit 2
5 if you don't mind. Now, this, under heading B, is
6 your opinion that there's no reasonable possibility
7 that the tally of ballots communicated by BallotPoint
8 to APFA at the end of the election incorrectly
9 reflected the winners of the election selected by the
10 voters.

11 Do you see that?

12 A. Yes.

13 Q. Now, first, you discuss the process of
14 casting votes. And is it fair to say that the
15 BallotPoint system does not use or require that the
16 voter's device use client-side encryption? Is that
17 true?

18 A. I suppose it means -- on what specifically
19 you mean by client-side encryption because the vote,
20 as it is sent to the server from the web browser, is
21 encrypted.

22 Q. So what does "client-side" mean to you?

1 A. It means it's done on the -- on the side
2 of the web browser.

3 Q. So on page 17 of Exhibit 2, you say -- you
4 refer to a conceptual vulnerability represented by
5 client-side infection of the user's machine.

6 A. Yes.

7 Q. And explain that. What is that conceptual
8 vulnerability?

9 A. If a client's web browser or computer is
10 compromised and someone were to install, you know,
11 malware on it.

12 Q. And so is the point of that that the --
13 the voter's own computer could change or alter the
14 vote without the voter's knowledge before the vote
15 ever is sent into the sort of encrypted channel to
16 get to BallotPoint? Is that the issue there?

17 A. Yeah. That would be the -- the --
18 exactly.

19 Q. Because I think you also say that when the
20 vote is being transmitted to BallotPoint, BallotPoint
21 uses an SSL protocol to protect the vote while it's
22 in transmission; is that right?

1 A. Yes.

2 Q. So the distinction there is if there's
3 something on the voter's own computer that can alter
4 the vote before it gets into that secure
5 transmission, that's the, quote, unquote,
6 "client-side" issue?

7 A. Yeah. A client-side typically means
8 something that happens on the client's computer.

9 Q. Now, you say that although this is a risk,
10 you think, in this specific election situation, the
11 risk is pretty low; is that fair?

12 A. Yes.

13 Q. And what's -- what's the basis for that
14 assessment?

15 A. Well, a couple of things. One is if an
16 attacker were to try to compromise enough work
17 stations of people that were going to vote, they
18 would have to know who all those people were. All
19 their computers might have to be similar. They would
20 have to attack them all at a particular time maybe.
21 They would have to create some kind of malware or
22 some kind of thing that -- that knew how the system

1 worked, and what kind of information to send to the
2 system, and at what point during the voting process
3 to do that. You know, I think it would require
4 several steps.

5 Q. And so is it your -- your opinion is based
6 on the steps that would be required, that essentially
7 nobody would realistically bother doing that for this
8 type of election; is that fair?

9 A. Yeah. I think the -- the threats -- the
10 likely threats that would want to do that are
11 relatively small compared to many systems that use
12 the internet. So that's one factor.

13 The -- to do it effectively and easily,
14 someone would have to be very familiar with the
15 system. And I don't think many people are very
16 familiar with the system.

17 And identifying the voters, targeting
18 them, and then assuming that they're going to vote
19 would also be part of it. So I think it would be
20 unlikely.

21 Q. And when you talk about the likely threat,
22 is that based on any -- did you do any kind of

1 research specific to labor union elections or
2 anything like that?

3 A. Nothing specific to labor union elections.

4 Q. Is it just your sort of sense thinking
5 about it of -- of the likelihood, or is there some
6 other source that I'm missing?

7 A. What sources do you have?

8 Q. Well, I gather that part of this is just
9 in your own mind sort of just evaluating it
10 critically and thinking how likely would it be that
11 there would be a threat here.

12 A. Yeah. For example, a hostile nation-state
13 is probably not going to devote a lot of their
14 resources to creating malware to figure out who's
15 going to vote on a particular election, and then try
16 to infect each machine, and then assume they're going
17 to vote. I mean, I just -- that seems unlikely to
18 me.

19 Q. Right. And I guess that's what I'm
20 asking. This is just sort of reasoning that you've
21 conducted based on your sort of general knowledge of
22 the world, right? There's not some specific source

1 that you looked at for this issue, is there?

2 A. I mean, it's -- it's pretty
3 well-established threat modeling kind of activity.

4 Q. Right. And I'm not saying that there is a
5 source that exists. I'm just wanting to make sure
6 there's not something that you were consulting about
7 this because maybe it doesn't exist. That's all I'm
8 saying. So there -- to be clear, there was no
9 specific source that you consulted about this; it's
10 just your own sort of threat analysis based on the
11 world as we know it?

12 A. Yes. And based on my experience doing
13 similar type assessments and tests.

14 Q. And in this -- in this regard, do you draw
15 a distinction between a union officer election and
16 a -- a political election such as an election for
17 Congress or for a state office?

18 A. I didn't make any comparisons to any other
19 types of elections or anything. I based it on this
20 particular election in January.

21 Q. So on page 18 of Exhibit 2 of your report,
22 it says, "Given the relatively low notoriety of the

1 APFA 2016 national officer election (as compared to,
2 say, a national or statewide political election)" --
3 and then you go on to give your opinion.

4 What is the significance of this
5 comparison that you've drawn between the -- the union
6 election and a national or statewide political
7 election?

8 A. Primarily, the number of voters and the
9 motivation of different threat sources.

10 Q. So does this reflect a -- and I think
11 you've kind of alluded to it earlier -- a thought on
12 your part whereas a hostile government -- foreign
13 government or some other power may be motivated to
14 attempt to tamper with a national or statewide
15 political election, the likelihood of a similar
16 motivation for a union election is -- is much less
17 likely? Is that your belief?

18 A. Yes.

19 Q. And, again, you've, I guess, stated that
20 you were analyzing this particular union election.
21 You were not analyzing a national or statewide
22 political election, correct?

1 A. Yes.

2 Q. You go on to conclude, though, that
3 there's no evidence to suggest that such manipulation
4 occurred in this election.

5 So my question is what evidence -- or what
6 sources did you check to see if there was any
7 evidence of those?

8 A. There -- there's no source of evidence
9 that shows that it did not -- wait -- that it
10 occurred. And, based on what I was able to ask and
11 see, I didn't believe that there was a question as to
12 whether or not that did occur.

13 Q. Well, let me ask it this way: If I was
14 going to go about checking into that, what are some
15 of the things I would want to look at? Would I want
16 to look at the logs for changes to the election
17 server?

18 A. If you were trying to do what?

19 Q. Well, if I wanted to find out if -- if the
20 election server manipulated the content of the vote
21 at the moment it arrived, I guess I would want to see
22 the code that the election server was running,

1 correct?

2 A. Correct.

3 Q. And, I suppose, I'd also want to see some
4 sort of verification that the code that's been
5 presented to me was, in fact, the code at the time,
6 correct?

7 A. Correct.

8 Q. And, in this case, is it fair to say you
9 essentially relied on the representation of
10 BallotPoint that this was the code that they were
11 using at the time?

12 A. Correct.

13 Q. And you also discuss that, in your view,
14 there's little or no motivation for BallotPoint
15 personnel to manipulate an election in this way; is
16 that correct?

17 A. Correct.

18 Q. You said earlier that BallotPoint's
19 servers are running -- or at least the application
20 code that they use runs on a combination of Cold
21 Fusion and Perl; is that right?

22 A. Yes.

1 CERTIFICATE OF REPORTER

2 UNITED STATES OF AMERICA) ss.:

3 DISTRICT OF COLUMBIA)

4 I, ANGELA MCCULLLOUGH, the officer before whom
5 the foregoing proceedings were taken, do hereby
6 certify that the foregoing transcript is a true and
7 correct record of the proceedings; that said
8 proceedings were taken by me stenographically to the
9 best of my ability and thereafter reduced to
10 typewriting under my supervision; and that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to this case and have no interest,
13 financial or otherwise, in its outcome.

14

15

Angela K. McCullough

16

Notary Public in and for

17

The District of Columbia

18

19

20 My commission expires: 1/31/2020

21

22



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

R. ALEXANDER ACOSTA, Secretary of
Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL
FLIGHT ATTENDANTS,

Defendant.

Civil Action No. 4:16-cv-1057-A

EXPERT REPORT OF CURT STAPLETON, CEO
ADEPT SECURITY CONSULTING

I. INTRODUCTION

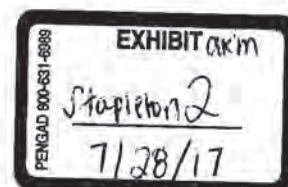
A. Retention and Scope.

I have been retained by Bredhoff & Kaiser, P.L.L.C. to serve as an expert witness in the above-captioned case. My findings and opinions are set forth in this "Report."

B. Qualifications.

I am the founder and CEO of Adept Security Consulting, LLC ("AdeptSec"), a consultancy I founded in 2015 to provide network application penetration testing, systems security training, and security consulting.

Before founding AdeptSec, I served approximately eight years as a technical director for Aerstone, a cybersecurity consultancy providing security assessment and systems enhancement and sustainment. At Aerstone, I served as the service-area lead for penetration testing and



The Association of Professional Flight Attendants (“APFA”) conducted an election of officers ending January 9, 2016, for the positions of National President, National Vice President, National Treasurer, and National Secretary (“the January 2016 National Officer Election”). APFA’s election was conducted over a thirty-day period beginning on December 10, 2015. There were over twenty thousand eligible voters. APFA members are geographically dispersed across the United States, and they are absent from their homes (and, sometimes, the United States) for periods throughout the 30-day election period depending on their flying schedules.

The APFA engaged the services of a contractor, BallotPoint Election Services, owned by CCComplete, to administer the January 2016 National Officer Election using an Internet-based and phone-based remote electronic voting system. Pursuant to its contract with APFA, BallotPoint administered the election from December 10, 2015 through January 9, 2016. At the beginning of the election, Allied Media, another third-party contractor of APFA, mailed eligible APFA members a voting credential consisting of a unique access code each voter could use to access the voting system. With that individualized credential, each voter could access a ballot on BallotPoint’s website via a computer or smart-phone web browser, or could access a ballot over the phone by dialing a toll-free number. Once voters successfully voted, BallotPoint maintained their votes on one computer server, the Election Server (“ES”), and maintained member identifying information on another server, the Member Registration and Notification Server (“MRNS”). Both servers were owned by BallotPoint but physically located in a secure co-location facility in Portland, Oregon operated by Lightpoint, an independent company. Once a voter successfully cast a ballot, the BallotPoint system presented the voter with a confirmation code and emailed the voter a message informing the voter that his or her vote had been cast successfully, or, alternatively, read out a confirmation code over the phone if the voter had cast

his or her ballot via phone. A **chart summarizing the interactions between voters and the BallotPoint voting system is attached to this report as Exhibit A.**

On January 9, 2016, at the end of the election, the BallotPoint system electronically tallied the cast ballots and transmitted the results to the APFA Union Hall.

C. My Security Assessment of the BallotPoint System

I performed a qualitative security assessment of the BallotPoint election system based on a predefined scope and over the period of two (2) weeks. In particular, I assessed the confidentiality and integrity of voter selections made using the electronic voting system; the development, operations, and maintenance of the voting system; and the integrity of the application and its source code. I conducted my assessment against the background of the assessment methods published by the National Institute of Standards and Technology (“NIST”), in NIST Special Publication (“SP”) 800-30, *Guide for Conducting Risk Assessments*, and NIST SP 800-53A, *Assessing Security and Privacy Controls in Federal Information Systems and Organizations*. These standards are used by the federal government to secure information systems and they provide detailed guidance for systems and data of all risk levels. In addition to this general NIST guidance on risk assessments, my assessment of the BallotPoint electronic voting system was conducted against the background of NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*.

My specific assessment approach was tailored based on previously reported system security concerns, professional experience as an auditor of government and non-government computing systems, and professional experience conducting numerous penetration tests of government and non-government systems.

the MRNS timestamped users' votes in 8-hour windows, while the ES provided timestamps of cast ballots to the second.

My review of the application source code also determined that the system did not provide a mechanism by which users (including BallotPoint administrators, APFA election officials, and voters) could access the IP address information stored on the MRNS. By way of explanation, an information system can collect and store data, but, without a software mechanism for accessing that data, or physical access to the server combined with a software tool to compile the data stored on that server, the data will remain internal to the system, and users will not be able to access that information. There are ways in which stored data can be made accessible to a user of the system without physical access to the server, including display via a web page or inclusion of that data in a report that the software is designed to generate. By searching for references to the "oem_access_from" and "oem_access_when" data fields and the "addr" variable in the MRNS application source code, I was able to determine that the software, as it existed at the time of the 2016 APFA National Officer Election, did not include such a mechanism. Therefore, although this data was being collected by the system, it would not have been accessible to BallotPoint engineers or to any other authorized users of the system.

Of course, software can be changed. Given that this information existed on the system, it was possible for BallotPoint engineers to change the software to make this data accessible to one or more categories of users. For example, BallotPoint could write software to generate a report that would list the IP address information stored in the "oem_access_from" field next to the other voter identifying information stored on the MRNS, including voter name. Because of this possibility that a BallotPoint engineer could change the software to make this data accessible, my

I note separately that the ability of the BallotPoint system to send voters confirmation emails or to provide them with confirmation that their votes have been successfully cast in no way demonstrates that the system as designed enabled voters' identities to be associated with the content of their votes. The system provides voter confirmations as follows.

Once a voter checks into the voting system (via the MRNS) with his or her unique voting credential, the MRNS indicates to the ES the voter profile of the voter who just checked in (ensuring that the voter is presented with the appropriate ballot; in the 2016 APFA National Officer Election, voter profiles corresponded to each member's domicile). But although the voter profile is communicated to the ES, by design, no individual voter identifying information is shared other than a randomly generated one-time password that is identified with that voting session. After the voter successfully casts a vote and it is recorded to the ES, the ES informs the MRNS that the voting session associated with that one-time password has been successfully completed, but it does not send the content of the vote to the MRNS. In the member table, the MRNS marks the member identity associated with that one-time password as having voted, and then permanently deletes the one-time password. The MRNS then informs the voter that he or she has voted successfully, a function it can perform without ever possessing the information necessary to associate the content of a vote with that voter's identity.

Thus, the MRNS sends confirmation emails based only on the *fact* that a vote was successfully cast, and completely independent of the *content* of that vote. The ability of the system to send confirmation emails is not evidence that the system was designed to enable voters' identities to be matched with the content of their votes.

B. There is no reasonable possibility that the tally of ballots communicated by BallotPoint to APFA at the end of the election incorrectly reflected the winners of the election selected by the voters.

Based on my review of the overall system architecture, and the controls BallotPoint instituted at each step of the voting and tallying process, in connection with the 2016 APFA National Officer Election, it is my opinion that there is no reasonable possibility that the BallotPoint system failed to perform as intended to ensure that voters' votes were cast-as-intended and counted-as-cast. In particular, controls at each step of the process exist to ensure that vote integrity is maintained when the voter's vote is (1) cast and transmitted from the user's machine to BallotPoint; (2) recorded on the ES; (3) maintained on the ES during the remainder of the election period; and (4) correctly tallied at the end of the election. Although no information system can be considered 100% secure, the protections in place in the BallotPoint system used in the 2016 APFA National Officer Election include many controls recommended by NIST for systems of this type and purpose, and together ensure that there is no reasonable possibility that the reported results of the election failed to reflect voters' intentions.

I have included a flowchart, attached as Exhibit A to this report, that illustrates the voter-system interactions in the BallotPoint voting process. I have also included a flowchart, attached as Exhibit B to this report, that illustrates the server-to-server interactions, including the encryption and hashing of data performed by each server. What follows is a review of the adequacy of the controls BallotPoint introduced at each step of the voting process to ensure vote integrity.

1. Casting of votes.

In the first step of the voting process, a voter casts his or her ballot using a web application (on a computer or smartphone) or over the telephone. For computer-based votes, the primary threat at this stage is the risk that malicious software on client systems could interfere

with the casting of a vote, preventing the vote from being cast-as-intended. The threat of malicious software on a user's machine (as opposed to the servers maintained by the election systems administrator) is often referred to as a client-side threat.¹⁴ A personal computer or smartphone infected with malicious software targeting the election could potentially steal the victim's authentication credentials or could, in theory, change a user's vote without the victim noticing.¹⁵

Ensuring the security of personally owned computers is one of the most difficult aspects of securing any information system in which users are permitted to access the system from their personal machines.¹⁶ To mitigate this threat, BallotPoint has implemented a recommended control, the use of a secondary communication channel.¹⁷ Specifically, in BallotPoint-administered elections, voter credentials are distributed through the postal mail, instead of through an electronic communication channel. Use of the postal mail ensures that an infected computer cannot intercept the voting credential and use it to cast a ballot without the voter ever becoming aware that he or she had been sent a credential. However, the voter must still enter his or her credential before casting a ballot, introducing the credential to the potentially infected system and the possibility of manipulation by malicious software.

However, despite the conceptual vulnerability represented by client-side infection of the user's machine, in my opinion, the risk that such infection could have affected the outcome of the 2016 APFA National Officer Election is very low. Each successful attack on a voter's computer can impact only one or an extremely small number of voters.¹⁸ Moreover, a piece of

¹⁴ NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*, § 5.3.4, at 29.

¹⁵ NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*, § 5.3.4, at 29.

¹⁶ NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*, § 5.5, at 37.

¹⁷ NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*, § 5.4.9, at 35.

¹⁸ NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*, § 5.3 at 30.

malicious software capable of manipulating the BallotPoint voting process would need to be sophisticated and would require in-depth knowledge of BallotPoint's processes. Security assessors consider the notoriety of the purpose to which a system is being put when assessing the risk presented by a particular vulnerability, including client-side vulnerabilities; in general, the more well-known the purpose to which an information technology system is put, the greater the likelihood (and therefore the risk) that an attacker will invest the time and resources required to affect a sufficient number of client-side systems.¹⁹ Given the relatively low notoriety of the APFA 2016 National Officer Election (as compared to say, a national or statewide political election),²⁰ and in the absence of any evidence (in the form of suspicious voting patterns or irregular voter activity) of client-side malicious interference with votes, in my opinion, there is not a significant possibility that a sufficient number of voters' machines could have been infected with malicious software capable of altering the content of a vote (such that the vote was not cast-as-intended) to have affected the outcome of the National President general election, the election with the smallest margin of victory (582 votes).²¹

2. Transmission and recording of a vote on the BallotPoint server.

Once a voter selects his or her voting choice, BallotPoint has instituted strong controls to ensure, with a high degree of likelihood, that the vote will be successfully transmitted to BallotPoint without interception or manipulation. The primary control BallotPoint uses to ensure

¹⁹ For example, in Ben Adida et. al, *Electing a University President using Open-Audit Voting: Analysis of real world use of Helios*, June 25, 2009, at 2, because of client-side risks, the authors declined to endorse the use of a remote-electronic voting system in "large, high-stakes, governmental elections where the threat of a targeted virus would be far more realistic."

²⁰ For comparison's sake, NIST's assessment of the use of remote electronic voting systems for overseas military voters suggested that it would be difficult for attackers to "successfully target the relatively small percentage of individuals in the world that are eligible to vote as overseas or military voters." NIST IR 7770, *Security Considerations for Remote Electronic UOCAVA Voting*, § 5.5, at 37. The individuals voting in the 2016 APFA National Officer Election are likewise a relatively small percentage of the computer-using public.

²¹ The 582-vote margin of victory describes the margin between the second- and third-place finishers, because, in this first-round election, the top two finishers advanced to the final round of voting.

unreasonable to believe that the result of the election did not reflect the votes cast by the voting users of the system.



Curt Stapleton

DATED: June 30, 2017

Voter-Server Interactions

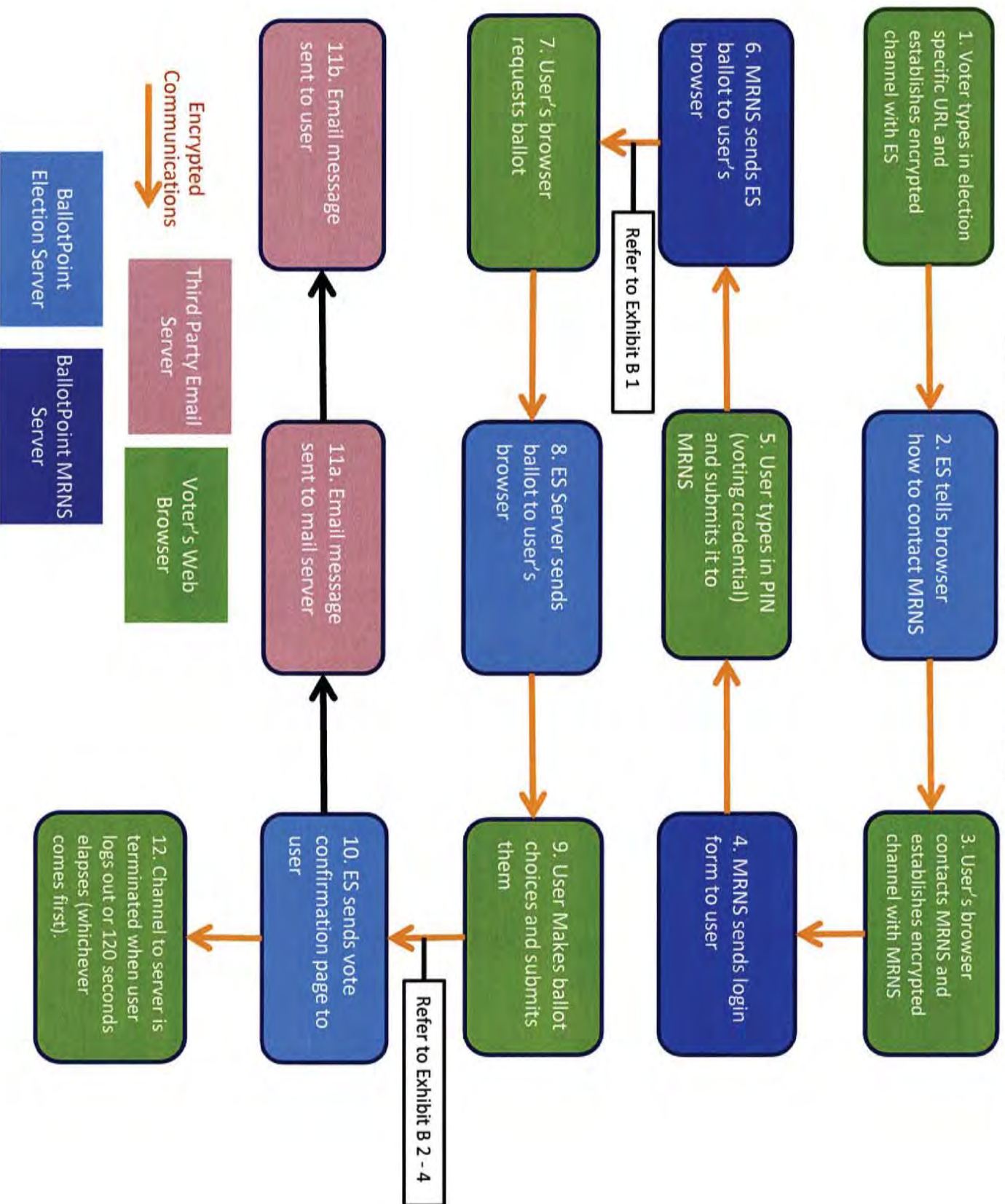
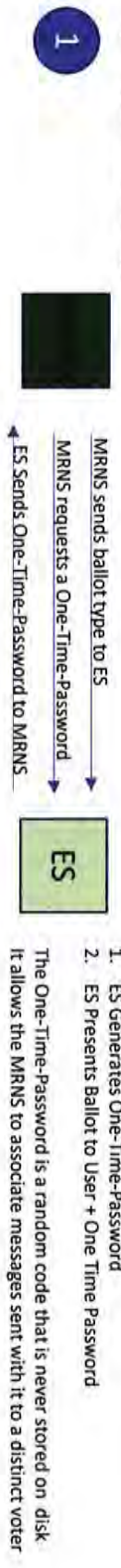


EXHIBIT B

Server-Server Interactions

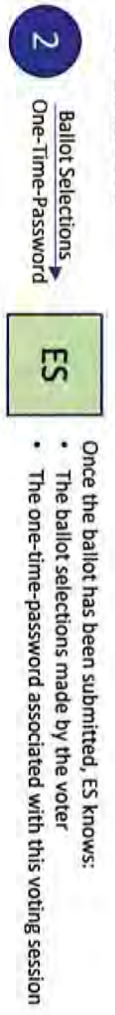
Establish Voting Session

System Determines Voter Type



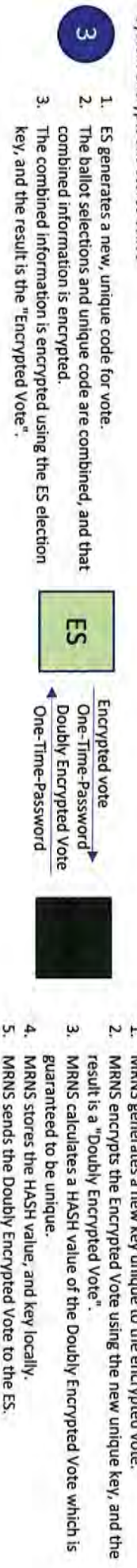
Submit Vote

Voter submits ballot



Record Vote

System encrypts and stores ballot



Confirm Vote Record

System confirms recording of vote



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

R. ALEXANDER ACOSTA, Secretary of
Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL
FLIGHT ATTENDANTS,

Defendant.

Civil Action No. 4:16-cv-1057-A

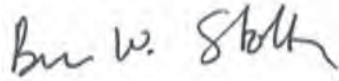
STIPULATION REGARDING AUTHENTICITY OF DOCUMENTS

Plaintiff, the Secretary of Labor, and Defendant, the Association of Professional Flight Attendants, hereby stipulate as follows:

Documents produced to a party to this action by another party or a third party in response to compulsory process (e.g., subpoena, Civil Investigative Demand), or as part of a party's Fed. R. Civ. P. 26(a)(1) disclosures or in response to a document request served upon a party pursuant to Fed. R. Civ. P. 34, or in response to a request made by the Department of Labor in its investigation of the underlying complaint filed by Samuel Morales (agency case number 420-6007132(03)), shall be deemed authentic for the purposes of this lawsuit only, absent good cause. Good cause would include issues relating to the completeness of the document (e.g., missing or incomplete pages) or any conditions in the actual document or the manner in which it was produced that brings into question whether the document was actually generated by the relevant party or third-party or is what it purports to be.

SO STIPULATED.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

THOMAS E. PEREZ [now
R. ALEXANDER ACOSTA],
Secretary of Labor,

Plaintiff,

v.

ASSOCIATION OF PROFESSIONAL
FLIGHT ATTENDANTS,

Defendant.

Civil Action No. 4:16-CV-1057-A

DECLARATION OF STEPHEN J. WILLERTZ

1. My name is Stephen J. Willertz. I am over the age of 18 and am otherwise competent to give this declaration.

2. I am the Director of the Office of Field Operations of the Office of Labor-Management Standards (OLMS) within the U.S. Department of Labor. OLMS administers and enforces various provisions of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), including the LMRDA provisions relating to union officer elections. As Director of the OLMS Office of Field Operations, I oversee and direct these matters, and I have personal knowledge of the information set out in this declaration.

3. On March 7, 2016, OLMS's Dallas office received a written complaint from Samuel Morales in which he claimed that the election of union officers conducted by the Association of Professional Flight Attendants (APFA) on or about January 9, 2016 did not comply with the LMRDA. A true and correct copy of this complaint is attached to this declaration as Exhibit 1.

4. OLMS opened an investigation of the complaint and determined that voting in the APFA's election had occurred over the internet or by phone, and that the APFA had used a company known as BallotPoint Election Services to collect and count the votes.

5. As part of the investigation, OLMS requested and received various information and records of the election from BallotPoint. OLMS obtained information about what observation activities were permitted in connection with the election and also about how the BallotPoint system functioned, including information concerning the functions of the computer machines that make up the system, the types of data recorded and stored on each, and the system's capability to send emails to members who had voted. Some of the specific records that OLMS obtained from BallotPoint were: (1) information from a "votes table" on BallotPoint's "election server" (ES), which contained, inter alia, a record of all of the votes cast in the election and also, for each vote, the IP address from which the vote was cast (if an internet vote), the voter's domicile (also sometimes referred to as the "base of operations," i.e., the airport where the flight attendant is based), a date and timestamp for the vote, and a unique ID number that I understand BallotPoint also calls the "one time password"; and (2) information from an "officer election member" (OEM) table on BallotPoint's "member registration and notification server" (MRNS) which contained, inter alia, the union members' names, addresses, email addresses, access codes, domicile, a timestamp showing the date and eight-hour window during which the member accessed the voting system, and the IP address from which the member accessed the voting system.¹ BallotPoint provided OLMS with the information from the ES votes table in April 2016 and the information from the MRNS OEM table in September 2016.

¹ BallotPoint initially told OLMS that it did not have "direct access" to the OEM table, but later produced the table after OLMS issued a subpoena. BallotPoint did not make any similar claim about the ES votes table.

6. The existence of a functionality with the BallotPoint system which allowed an email to be sent to a union member after the member had voted, either reporting that the vote had been successfully cast or had not been successfully cast, caused OLMS to believe that the BallotPoint system contained some kind of internal mechanism which was capable of linking all voters to their votes. In addition, OLMS determined, by cross-referencing the data that was provided to OLMS after the election had concluded by BallotPoint from the ES votes table and the MRNS OEM table, that it was possible to link 4,081 voters to their votes through analysis of this data. Set forth below is a step-by-step explanation of how OLMS found it possible that voters could be linked to their votes by cross-referencing the ES and MRNS data (an explanation of this analysis was also previously provided to the APFA in this litigation in response to one of the APFA's interrogatories, and the following is adapted from that interrogatory response):

- 1.1 During its investigation, OLMS received data contained in the EID15-VotesTable (Votes Table), which was maintained on the Election Server. This Votes Table data was received in the form of an Excel spreadsheet. OLMS also received data from the EID15-OEM-data-20160909-104048 table ("Officer Election Member" table), which was maintained on the Member Registration and Notification Server (MRNS), and which was provided by BallotPoint on September 12, 2016. This MRNS data was received in the form of a text file, which was converted to an Excel spreadsheet for readability. Each set of data contained information regarding votes cast over the Internet and by telephone.
- 1.2 The Votes Table consisted of a line of data for each vote cast. Each row contained a number of fields showing attributes of the voter, including the IP address or area code from which the vote was cast, the exact time the vote was cast, the "vote string" showing the voting choices, and the voter's domicile.
- 1.3 The MRNS data consisted of a line of data for each member who logged in to vote. Each row contained a number of fields showing attributes of the member, including the IP address from which the member voted, the date and eight-hour window during which the member voted, the member's name, and the member's domicile.
- 1.4 OLMS was able to match the names of voters to the particular vote that they cast by comparing the data from the Votes Table to the MRNS data.

- 1.5 OLMS used a different method to match the APFA member to his or her vote depending on if the vote was cast by Internet (including web-browsing capability of cell phones) or by telephone (call-in). In analyzing votes cast by Internet and telephone (call-in), OLMS began by reviewing the data line-by-line and cross-referencing individual lines of the MRNS data with those from the Votes Table. OLMS initially connected voters to votes via this “line-by-line data analysis method.” Given the large amount of data, OLMS subsequently used automated processes in Excel and Access to more quickly make voter-to-vote connections, a process referred to as the “automated data analysis method.”

Voter-to-Vote Matches Made for Votes Cast by Internet

Line-by-line data analysis method: Votes cast by Internet

- 1.6 Stephen Willertz and Tracy Shanker began by cross-referencing individual lines of the MRNS data with individual lines of data from the Votes Table, analyzing three fields across both the MRNS data and the Votes Table: (1) IP address; (2) date/time information; and (3) voter’s domicile, following the steps below.
- 1.7 They identified a unique IP address in the MRNS data.
- 1.8 They searched for that same unique IP address in the Votes Table.
- 1.9 When the search revealed only one result, they determined that they had likely matched voter with vote. To ensure that they had established a match, they verified that two additional fields (*i.e.*, domicile and date/time information) also matched.
- 1.10 Once the unique IP address, domicile, and date/time information were matched, then the voter’s name from the MRNS data could be linked to the voter’s vote string, establishing that the voter’s choices for each race could be linked.
- 1.11 When IP addresses from the MRNS table search revealed more than one matching IP address in the Votes Table, they analyzed the date/time (“oem_access_when”) field.
- 1.12 The “oem_access_when” field in the MRNS table contains the voting date and the time of voting, recorded in eight-hour windows. Specifically, when the time of voting was between 12:00 a.m. midnight and 7:59 a.m., the time was listed as “0000.” When the time of voting was between 8:00 a.m. and 3:59 p.m., the time was listed as “0800.” When the time of voting was between 4:00 p.m. and 11:59 p.m., the time was listed as “1600.” As an example, if a member voted on January 6, 2016, at 9:34 p.m., the “oem_access_when” field in the MRNS table would read “20160106-1600.”
- 1.13 As stated above, the Votes Table lists the exact time of voting in the “timestamp” field; time is listed in military time format (hour/minutes/second). Utilizing the example above, if a member voted on January 6, 2016, at 9:34 p.m., the “timestamp” field would read “2016-01-06 21:34:22.000.”

- 1.14 When Willertz and Shanker compared the date/time information in the MRNS table and Votes Table, and obtained more than one unique IP address to establish the match, then they analyzed the domicile (“oem_attr1”) field to eliminate non-matches. To illustrate, the Votes Table sometimes contained more than one row with a date/time [hour/minute/second] that fell within the MRNS table’s “date and eight-hour window” field associated with the IP address in question. In these cases, analyzing the domicile field usually enabled Willertz and Shanker to eliminate non-matches to find the one matching set of data.
- 1.15 In some instances, the data analysis steps outlined above did not reveal a one-to-one match because two different members voted from the same IP address, during the same eight-hour window, and were based in the same domicile. (For example, this appeared to occur when two flight attendants resided at the same physical address.) Willertz and Shanker were still able to connect voter with vote in this situation when the two voters’ respective vote strings were identical.

Automated data analysis method: Votes cast by Internet

- 1.16 William Mitchell used Excel and Access to analyze the MRNS data and data from the Votes Table. This method included the following steps.
- 1.17 He used Excel to sort the Votes Table data and the MRNS data to identify all votes cast via Internet.
- 1.18 Utilizing one working spreadsheet, he copied data for all Internet voters into separate worksheets, and then sorted/filtered the data to isolate unique IP addresses.
- 1.19 Using Excel’s conditional formatting function, he identified and highlighted all of the duplicate IP addresses. He filtered the data to select all highlighted cells (*i.e.*, cells indicating duplicate IP addresses), and then applied a filter to select all of the *non-highlighted* cells (*i.e.*, cells indicating *unique* IP addresses). He then copied the unique IP addresses from the Votes Table and the MRNS data into separate worksheets within the same working spreadsheet, and did the same with the duplicate IP addresses.
- 1.20 He imported the unique IP addresses data (from the Votes Table and MRNS data) into Access, and created an Access query that matched all of the unique IP addresses from the Votes Table with those from the MRNS data. This query established a connection between voter and vote for approximately 3,421 members.
- 1.21 The 3,421 figure includes ten votes for which the IP addresses from the Votes Table data and MRNS data did not completely match for unknown reasons. However, because both the domiciles and the timestamps/eight-hour voting windows match up in each instance, OLMS determined that these ten rows of data were highly likely to reflect voter-to-vote connections.
- 1.22 To establish a connection between voter and vote for the duplicate IP addresses, he copied and pasted the duplicate IP addresses from Votes Table and MRNS data

side-by-side in a separate worksheet within his working spreadsheet. He needed to revert to the line-by-line data analysis method to attempt to make voter-to-vote matches for duplicate IP addresses. These data fit into these four general categories:

- a. Votes from duplicate IP addresses where the votes were cast in different eight-hour windows (*match between voter and vote could be made when the votes were cast during different eight-hour windows*).
- b. Votes from duplicate IP addresses where votes were cast in the same eight-hour time window, but the domiciles were different (*match between voter and vote could be made when the domiciles were different*).
- c. Votes from duplicate IP addresses where the votes were cast in the same eight-hour window, and the domiciles were the same, but the vote string was identical (*indicating that a match between voter and vote was made*).
- d. Votes from duplicate IP addresses where the votes were cast in the same eight-hour time window, and where the domiciles were the same, but the vote strings were different (*no match between voter and vote could be made*).

A total of 433 voter-to-vote matches were made by using this “line-by-line” method to analyze duplicate IP addresses.

- 1.23 The “automated” and “line-by-line” data analysis methods resulted in approximately 3,854 matches of voter and vote. These 3,854 matches comprise 41.2% of the total number of ballots cast (9,355) in APFA’s January 9, 2016 election.

Voter-to-Vote Matches Made for Votes Cast by Telephone

- 1.24 With respect to the votes cast by telephone (call-in), OLMS was again able to match the names of voters to their vote using two methods; first, by reviewing the data line-by-line and cross-referencing the MRNS data and the Votes Table data; and second, by using automated processes in Excel and Access to analyze the large volume of data more quickly.

Line-by-line data analysis method: Votes cast by telephone

- 1.25 Willertz initially compared the MRNS data showing members who had voted by telephone to the Votes Table data showing the votes of the members who had voted by telephone.
- 1.26 He examined the MRNS data for all telephone voters within a particular eight-hour voting window.
- 1.27 Within one particular eight-hour voting window, he identified rows of data in which there was only one *voter* from one particular domicile who voted within that eight-hour period.
- 1.28 He searched the Votes Table for all telephone votes within that same eight-hour window, and identified any rows of data in which only *one* telephone vote was

received from a voter in the domicile that was just identified in the MRNS table. When he identified only one telephone voter from a particular domicile (in one eight-hour window) and only one vote string from a telephone voter from that same domicile (in the same eight-hour window), he was able to successfully connect the voter with voter with his or her vote.

Automated data analysis method: Votes cast by telephone

- 1.29 Mitchell filtered the Votes Table and the MRNS data table to identify only the votes cast by telephone. He copied and pasted this data (side-by-side) on a separate worksheet within his working spreadsheet.
- 1.30 He sorted the data from the Votes Table by “timestamp” (i.e., time of voting, down to the second) and then by “attr1” (i.e., domicile).
- 1.31 He sorted the MRNS data by “oem access when” (i.e., time of voting, in eight-hour window format), and then by “oem attr1” (i.e., domicile).
- 1.32 Using Excel’s subtotal command, he identified how many telephone votes were cast on each date and during each eight-hour window.
- 1.33 He then used Excel’s conditional formatting feature to highlight all the *duplicate values* based on “attr1” (i.e., domicile) in each subtotal grouping – for both the Votes Table data and for the MRNS data. The unique “attr1” (i.e., domicile) rows in the Votes Table and the MRNS data were now easily identified – since they were all the rows that were *not* highlighted.
- 1.34 He used Excel to filter the *non-highlighted* “attr1” (i.e., domicile) rows, and subsequently copied and pasted that data from the Votes Table and the MRNS data side-by-side in a separate worksheet within his working spreadsheet.
- 1.35 The result of Mitchell’s analysis is an additional 227 voter-to-vote matches.
- 1.36 To summarize, the data analysis of the votes cast by internet (including the web-browsing capability of cell phones) undertaken by OLMS resulted in 3,854 matches of voter and vote. Adding these 227 voter-to-vote matches for votes cast by telephone (call-in) resulted in matching a total of 4,081 voters to the voters’ choice of candidates. These 4,081 matches comprise 43.6% of the total number of ballots cast (9,355) in APFA’s January 9, 2016 election.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 23rd day of August, 2017, at Washington, D.C.



Stephen J. Willertz
Director, Office of Field Operations
Office of Labor-Management Standards
U.S. Department of Labor

February 28, 2016



Ms. Michelle Hussar
District Director
OLMS -Department of Labor Office
A. Maceo Smith Federal Building
525 Griffin Street
Suite/Room 300
Dallas, TX 75202

Dear Ms. Michele Hussar,

I am filing an election complaint and contest with your office regarding a union Officers election I ran in Dallas, Texas on or about January 9, 2016, which was conducted by the Association of Professional Flight Attendants (APFA) and BallotPoint, Inc. I ran for the office of National Vice President.

This recent election on January 09, 2016 at APFA Unity Headquarters, and I call for a new election to be run under the observation and direction of the Department of Labor (DOL), and in accordance with provisions outlined in section 401(e) of the LMDRA, See 29 C.F.R. Subsection 452.97.

My election complaint centers around the ability for anyone candidate to truly verify the ballots and that the only party that can verify and certify said election is APFA and not a 3rd party accounting firm. Reason being, there is nothing physical to see.

My complaint which I have filed with your office for years centers around the same problematic issues APA and the DOL are dealing with in a lawsuit.

I believe APFA has the ability to stuff the ballots in favor of the institutional candidates by using phantom members or using the returned ballots that can go unchecked with redelivered/undelivered mail.

APFA won't even publish or make available of the eligible voters nor will they offer a voters list of voters or participated in this current election.

Since BallotPoint won't certify the election and they are a party involved in the tabulation of the said votes, it is in my opinion APFA NBC Officers are in no position to certify said election because they must be a neutral party and they voted in said election and some have served in previous officers positions.

On the tabulation of my election it was done very quickly and it was not done base-by-base and it was done using a laptop over a TV monitor. It was done by position, i.e. , President, Vice President, Secretary and Treasurer.

In other words, there is nothing to see or touch or feel and for all we know, the tallies could be easily compromised or intercepted from another room and the tallies could be

Exhibit 1 (Willertz Decl.)

changed. The fact that the tallies are conducted in a different state and arrive over the internet, another safeguard is compromised and broken.

The DOL's regulations at 29 CFR 452.107(c) states that in any secret ballot election which is conducted by mail, regardless of whether the ballots are returned by members to the labor organization office, to a mail box, or to an independent agency such as a firm of certified public accountants, candidates must be permitted to have an observer present at the preparation and mailing of the ballots, their receipt by the counting agency and at the opening and counting of the ballots.

Moreover, the DOL's regulations at 29 CFR 452.110(a) states, in part, that the Act contains a general mandate in Section 401(c), that adequately safeguards to insure a fair election be provided. A labor organization's wide range of discretion regarding the conduct of elections is thus circumscribed by a general rule of fairness.

Also with regard to Preservation of Records Section 401(e) of the LMRDA which provides that "[t]he election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election." 29 U.S.C. 481(e). When I asked for verification of the ballots, I was told there is nothing to be seen, and was handed a piece of paper with regard to my election, which only stated the names of the candidates (3) and the final numbers, with absolutely no certification whatsoever.

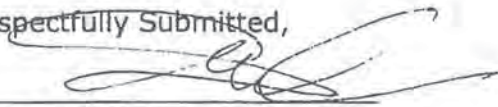
I personally called BallotPoint after the said election and tried to get them to verbally certify my election and they directed me right back to the APFA. In other words, BallotPoint gives their tallies to the NBC Balloting Chairperson and the NBC Chairperson decides how to interpret the tallies. There's no way to cross-reference the results or verify them outside of the NBC's own assertions. Neither APFA nor BallotPoint would discuss how the balloting process actually worked or whether the results were accurate. The ballot count was conducted in another state with no union supervision, and no candidates or witnesses were allowed to view the ballot count. BallotPoint could deliver any result they wanted and APFA could amend those results locally without providing candidates and means of verify their own election.

While I can't prove it, I do believe that the ballot box can easily be stuffed with phantom voters. I say this because several members on Facebook said they went to vote and it said they had already voted, even in a most recent election Travis Phaler, was sent a ballot by BallotPoint and allowed to cast a ratification vote in 2012 even though he had been terminated by the company one year prior and was in dues arrears at the time of his termination. I have this on video.

Because of the above, I believe APFA is violating the LMRDA and more specifically the ballot secrecy provision of section 401(e) of the LMRDA. See 29 C.F.R. Subsection 452.97 .

In closing I am asking that the DOL to overturn my National Vice President election rerun my election and all elections from the same January 9th, 2016 canvassing date because of the voting problems associated with BallotPoint and the electronic voting system.

Respectfully Submitted,



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