

**STATE OF MICHIGAN
6th CIRCUIT COURT IN THE
COUNTY OF OAKLAND**

**PEOPLE OF THE
STATE OF MICHIGAN,**

Case No. 2023-285759-FH

Plaintiff,

Hon. JEFFERY S. MATIS

v.

STEFANIE LAMBERT,

Defendant.

PROSECUTING ATTORNEY

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MOTION TO QUASH INDICTMENT FOR INSUFFICIENCY OF EVIDENCE

NOW COMES the Defendant Stefanie Lambert, by and through her attorney, Daniel J.

Hartman and states:

1. The defendant was indicted with four counts against her arising out of her actions as part of a legal defense team serving multiple clients investigating the 2020 election.
2. The Special Prosecutor sought to clarify the law before Oakland Circuit Court Judge McMillen in 23-199245-CZ (**Attachment 1**).
3. Declaratory relief was sought by the Special Prosecutor on the basis of an alleged “actual controversy” as to the law applicable for the charging decision, and ostensibly for the Special Prosecutor to advise the Grand Jury pursuant to MCL 767.20.

4. The language at issue is:

Sec. 932.

A person who violates 1 or more of the following subdivisions is guilty of a felony:

(b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election.

A person shall not willfully damage or destroy any ballot box or voting machine.

A person shall not obtain undue possession of that ballot box or voting machine.

A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine.

A person shall not aid or abet in any act prohibited by this subdivision.

5. This trial Court has not been previously asked to make a determination of law as to the proper interpretation of **MCL 168.932(b)**.
6. The defendant's previous counsel never asked this Honorable to consider the law as to this interpretation and the defendant specifically does so here.
7. Moreover, a pending Declaratory Judgment Action (**Attachment 2**) filed in the Antrim County Circuit Court from which this action arose requests the Circuit Court there to interpret its order in light of the attempts by the prosecution here to introduce that Circuit Court Order and on the premise, as admitted by the Special Prosecutor here that if the clerks had the authority under the law to provide access to the voting systems then the case against Defendant must be dismissed.

MULTIPLE PUNISHMENTS MERGER ARGUMENT

8. The language of MCL 168.932 when it states, "A person who violates 1 or more of the following **subdivisions** is guilty of a felony" intended to include when referencing subsection (b) all of the language and theories and does NOT create five independent charges; albeit it does create five separate theories.
 - a. The Grand Jury led by the Special Prosecutor returned three separate counts (1-3) for acts related to a violation of **subdivision** (b).

- b. The conspiracy charges in Counts 2 and 3 to violate subdivision (b) are not separate and distinct charges merely alternate theories¹. Duplicate charges therefore violate the prohibition of multiple punishments for the same offense. The charges in count 2 and 3 should be merged into a single count.
9. The Michigan Judicial Institute’s *Appeals & Opinions Benchbook* in Section 1.7B3)1 states:

Rule of Lenity. “The ‘rule of lenity’ provides that courts should mitigate punishment when the punishment in a criminal statute is unclear.” *People v Denio*, 454 Mich 691, 699 (1997). “The rule of lenity applies only if the statute is ambiguous or “in absence of any firm indication of legislative intent.”” *People v Johnson*, 302 Mich App 450, 462 (2013),.

In determining “whether the Legislature intended a single criminal transaction to give rise to multiple convictions,” if “no conclusive evidence of legislative intent can be discerned, the rule of lenity requires the conclusion that separate punishments were not intended.” *People v Perry*, 317 Mich App 589, 602, 604 (2016) (citations and quotation marks omitted). However, if there is a “clear indication of legislative intent and absence of ambiguity, the rule of lenity does not apply.” *Id.* at 605-606.

THERE IS INSUFFICIENT EVIDENCE AS ELEMENTS OF OFFENSE IN COUNT 1

10. The interpretation of the clause *A person shall not obtain undue possession of that ballot box or voting machine* requires a specific determination of two words and a clause in this statute:
- a. The interpretation of the **Undue Possession of THAT voting machine** is a crystal-clear reference to the language in clause (a), clause (b) or both. The use of the word THAT can not be overlooked.
 - b. The interpretation of the **undue Possession of that VOTING MACHINE** creates an issue of fact and law.
 - c. The interpretation of the **UNDUE Possession of that voting machine** creates an issue of fact and law.

¹ For example, in an OWI prosecution pursuant to MCL 257.625 the prosecution has the ability to proceed under a theory of intoxication or alternative theory of unlawful blood alcohol level—but not both

11. The court should note that these are *elements* of the offense charged in Count 1 and this clarification is necessary for the jury instruction as well as this motion to quash.
12. The presence of the word THAT requires the court to look to the preceeding clauses.
There is no way to determine the clause can be fully independent when it is referring to the voting machine described in clause 1 of MCL 168.932b.
13. The essential characteristics of THAT machine is the one defined as being used “during the election”. This time restraint is therefore reasonable to read into the meaning of THAT machine.
14. The term voting machine also refers to a device formerly defined in the election code which has been deleted and replaced with electronic voting system. This law is a remnant to protect a term that no longer applies. Therefore, as a matter of law this cannot proscribe conduct when the machines are not even used anymore.
15. In a recent case examining MCL 168.932c, *People v Holkeboer*, ___NW2d___; 2024 Mich. App. LEXIS 2984, at *18-22 (Ct App, Apr. 18, 2024) the court noted in dicta the following poignant remark about the fact the statute is outdated and is referencing to a mechanical machine that is not even used anymore.

A fact is worth reiterating—the Legislature has not amended this statute substantively since its enactment in 1954. The idea that the Legislature contemplated the scenario here—the digital copying of election information—under **MCL 168.932(c)** is belied by the technological advances in voting technology and computers since the last time this statute was substantively updated. Even at the time of its most recent ministerial amendment in 1995, see 1995 PA 261, the Legislature could have added language to explicitly prohibit copying of election information if it so intended, given that it was (and remains) a time of increasing use of computers and digital technology. The Legislature has consistently demonstrated its ability to amend statutes to reflect the improper use of advancing technological mediums
16. The Michigan Judicial Institute’s *Appeals & Opinions Benchbook* in Section 1.7A states:
“In the construction of the statutes of this state, the rules stated in sections [MCL 8.3a to MCL 8.3w] shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature.” MCL 8.3. “All words and

phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.” MCL 8.3a. MCL 8.5 provides for severability of a portion of an act found to be invalid by a court.

* * *

“When construing a statute, [a court’s] primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute.” *People v Hill*, 486 Mich 658, 667-668 (2010) (quotation marks and citation omitted). Courts must “construe a statute in light of the circumstances existing at the date of its enactment, not in light of subsequent developments. . . . The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.” *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 246-247, 258 (2005) (quotation marks and citations omitted) (holding that where the statute at issue did not define the term “loss,” the court had to “ascertain the original meaning the word ‘loss’ had when the statute was enacted in 1912”

* * *

“In discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute, . . . [and] consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written.” *Shinholster v Annapolis Hosp*, 471 Mich 540, 549 (2004) (quotation marks and citations omitted). “A necessary corollary . . . is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *SBC Health Midwest, Inc v City of Kentwood*, 500 Mich 65, 72 (2017) (quotation marks and citation omitted).

“A provision of law is ambiguous only if it irreconcilably conflict[s] with another provision or when it is *equally* susceptible to more than a single meaning.” *In re Application of Indiana Mich Power Co for a Certificate of Necessity*, 498 Mich 881, 881 (2015) (alteration in original; quotation marks and citation omitted). See Section 1.7(B)(2) for more information on ambiguity.

Courts must “avoid an interpretation that would render any part of the statute surplusage or nugatory.” *State Farm Fire and Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002). A court “may not rewrite the plain statutory language or

substitute its own policy decisions for those decisions already made by the Legislature.” *Slis v Michigan*, 332 Mich App 312, 336 (2020).

17. There is NOTHING ambiguous in the statute that requires interpretation although there are certain words that must be *defined* and the construction of the statute requires an interpretation as noted as to whether the clauses are *crimes* or *alternate theories* of a single violation of subdivision (b).
18. The definition of the word UNDUE is not defined in the statute. However, in its context as part of subdivision (b) the court must properly look to clause one which state, in part, “*A person not duly authorized by law shall not*”. The word undue seems to clearly reference the phrase ‘not duly authorized by law’.
19. The Michigan Judicial Institute’s *Appeals & Opinions Benchbook* in Section 1.7B3)1 states:

Doctrine of *Noscitur a Sociis*. “Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis*: ‘it is known from its associates.’ This doctrine stands for the principle that a word or phrase is given meaning by its context or setting.” *People v Burkman*, ___ Mich ___, ___ (2024) (cleaned up). “Under *noscitur a sociis*, when several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar.” *Id.* at ___ (cleaned up). See *In re LaFrance*, 306 Mich App 713, 725 (2014) (holding that a subparagraph of a statute “must be interpreted in the context of its sister subparagraphs”).

Last Antecedent Rule. “[T]he last antecedent rule[is] a rule of statutory construction that provides that ‘a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation.’” *Hardaway v Wayne Co*, 494 Mich 423, 427 (2013), quoting *Stanton v Battle Creek*, 466 Mich 611, 616 (2002). “[T]he last antecedent rule should not be applied blindly”; for example, it should not be applied if it would render a portion of the statute redundant. *Hardaway*, 494 Mich at 428-429. “Moreover, the last antecedent rule does not mandate a construction based on the shortest antecedent that is grammatically feasible; when applying the last antecedent rule, a court should first consider what are the logical metes and bounds of the ‘last’ antecedent.” *Id.* at 425, 427-429, 429 n 10 (noting that “[t]he last antecedent is the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence,” and holding that “the Court of Appeals . . . improperly applied the last antecedent rule” in construing the unambiguous text of the defendant’s resolution where application of the rule

“[took] what [was] grammatically an essential clause . . . and effectively render[ed] it a nonessential clause”) (citations omitted).

20. Not duly “Authorized by law” is a concept that would explain “UNDUE” in the clause, and that is the definition the defendant asserts is the only proper definition in light of the foregoing discussion.

21. Possession can be *duly authorized by law* under the following circumstances:

- a. Ownership
- b. Custodian
- c. License
- d. Bailment
- e. Trustee
- f. Court Order

22. If the court is going to bypass the context and then look to the word and its common everyday language then there are widespread options:

<https://legaldictionary.net/bailment/#ftoc-heading-6>

Black's law dictionary

undue

More than necessary; not proper; illegal. It denotes something wrong, according to the standard of morals which the law enforces in relations of men, and in fact illegal, and qualifies the purpose with which influence is exercised or result which it accomplishes. *Morris v. Morris*, 192 Miss. 518, 6 So.2d 311, 312

@ undue influence

Persuasion, pressure, or influence short of actual force, but stronger than mere advice, that so overpowers the dominated party's free will or judgment that he or she cannot act intelligently and voluntarily, but acts, instead, subject to the will or purposes of the dominating party. Any improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely. Influence which deprives person influence of free agency or destroys freedom of his will and renders it more the will of another than his own. Misuse of position of confidence or taking advantage of a person's weakness, infirmity, or distress to change improperly that person's actions or decisions. Term refers to conduct by which a person, through his power over mind of testator, makes the latter's d

esires conform to his own, thereby overmastering the volition of the testator. *Parrisella v. Fotopulos*, 111 Ariz. 4, 522 P.2d 1081, 1083.

- undue — un·due /,ən dü, dyü/ adj 1: not due: not yet payable an undue bill 2: exceeding or violating propriety or fitness would impose undue hardship on the debtors such a requirement would place an undue burden on employers Merriam Webster's ... *Law dictionary*
- Undue — Un*due , a. 1. Not due; not yet owing; as, an undue debt, note, or bond. [1913 Webster] 2. Not right; not lawful or legal; improper; as, an undue proceeding. Bacon. [1913 Webster] 3. Not agreeable to a rule or standard, or to duty;... ... *The Collaborative International Dictionary of English*
- undue — UK US /ʌn'dju:/ adjective [before noun] ► more than is acceptable or necessary: »Another rise in interest rates so soon would risk spreading undue alarm among businesses and consumers. undue pressure/strain/hardship »A council member said the... ... *Financial and business terms*
- undue — late 14c., not owing or payable, from UN (Cf. un) (1) not + pp. of DUE (Cf. due). Formed on model of O.Fr. indeu, L. indebitus. Meaning not appropriate, unseasonable is recorded from late 14c. Sense of unjustifiable is attested from c.1400... ... *Etymology dictionary*
- undue — [adj] excessive, unnecessary disproportionate, exceeding, exorbitant, extravagant, extreme, forbidden, illegal, ill timed, immoderate, improper, inappropriate, inapt, indecorous, inept, inordinate, intemperate, needless, overmuch, sinister, too... ... *New thesaurus*
- undue — ► ADJECTIVE ▪ excessive or disproportionate. DERIVATIVES unduly adverb ... *English terms dictionary*
- undue — [un dōō', undyōō'] adj. 1. not yet due or payable, as a debt 2. not appropriate or suitable; improper 3. excessive; immoderate ... *English World dictionary*
- undue — un|due [,ʌn'dju: US 'du:] adj [only before noun] formal more than is reasonable, suitable, or necessary ▪ De Gaulle felt that America had undue influence in Europe. undue pressure/stress/strain etc ▪ Exercise gently and avoid putting yourself... ... *Dictionary of contemporary English*
- undue — [[t]ʌndju:, AM du:[t]] ADJ: ADJ n If you describe something bad as undue, you mean that it is greater or more extreme than you think is reasonable or appropriate. This would help the families to survive the drought without undue suffering..... ... *English dictionary*

- undue — /un dooh , dyooh /, adj. 1. unwarranted; excessive: undue haste. 2. inappropriate; unjustifiable; improper: undue influence. 3. not owed or currently payable. [1350 1400; ME undewe. See UN 1, DUE] * * * ... *Universalium*
- undue — UK [ʌn'dju:] / US [ʌn'du] adjective [only before noun] formal not necessary or reasonable These minor improvements have caused undue expense and delay. • Collocations: Nouns frequently used with undue ▪ burden, delay, hardship, influence,... ... *English dictionary*

23. If the court is going to look to the LEGISLATIVE INTENT, then consider the following:

In *People v Holkeboer*, ___ NW2d ___; 2024 Mich. App. LEXIS 2984, at *18-22 (Ct App, Apr. 18, 2024) the Court of Appeals has interpreted the legislative intent of MCL 168.932.

The intent is to stop and criminalize “interference with the exercise of the right to vote” and “breach of election integrity of the process through interference” after the closing the polls and before the final results of the election have been ascertained. *Id.* at *17. None of this can happen after the election has been certified – therefore, the statute only criminalizes possession that is undue, i.e., unauthorized... “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained.”

B. MCL168.932 CONCERNS THE INTEGRITY OF ELECTION RESULTS

While secondary in import to the plain language, “[l]egislative history is valuable when it evidences an intent to repudiate a judicial construction or considers alternatives in statutory language.” *Seymour*, 258 Mich App at 254. In contrast, statutory history “properly form[s] part of the context [*19] of the statute.” *People v Pinkney*, 501 Mich 259, 276 n 41; 912 NW2d 535 (2018) (quotation marks and citation omitted; alteration in original).

* * *

In the Court's analysis of MCL 168.937, it looked to the statutory history of Michigan Election Law. *Id.* at 276. Specifically, its analysis of the statutory history of MCL 168.937 explained that, for over 80 years, only one statute criminalized election-related forgery limited to falsification of a “register of electors.” *Id.* at 276-277, citing 1859 PA 177, § 20. The prohibited conduct initially included to “willfully cut, burn, mutilate or destroy,” and “unlawfully take and carry away the same, or unlawfully conceal or refuse or neglect to surrender” *Pinkney*, 501 Mich at 277 n 42, quoting 1859 PA 177, § 20. Of note, at the time, the statute indeed prohibited such conduct toward “any register of electors, or copy thereof” *Pinkney*, 501 Mich at 277 n 42, quoting 1859 PA 177, §

20. The Court explained that "the statute was designed to protect a document that was [*20] in the custody of election officials." *Pinkney*, 501 Mich at 277.

In 1925, the Legislature first enacted the following statute:

Every inspector of election, clerk or other officer or person having the custody of any record, election list of voters, affidavit, return or statement of voters, certificates, poll book, or of any paper, document or vote of any description, in this act directed to be made, filed or preserved, who is guilty of *stealing, wilfully destroying, mutilating, defacing, falsifying or fraudulently removing or secreting* the whole or any part thereof, or who shall *fraudulently make any entry, erasure, or alteration therein*, or who permits any other person so to do, shall, on conviction, be deemed guilty of a felony. [1925 PA 351, part V, ch I, § 14 (emphasis added).]

Our Supreme Court has explained that this statute "was designed to preserve the purity of elections . . . " *People v O'Hara*, 278 Mich 281, 297; 270 NW 298 (1936).²

24. NONE of the CHARGED ACTS occurred within the time frame of clause A which is "*during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained*". Any extension of the time frame

25. The defendant submits that the Special Prosecutions interpretation based on the position argued when seeking advice on charging authority was that the possession had to be specifically authorized by a statute, rule or court order.

- a. This amazingly restrictive view is legally absurd.
- b. *McGhee v Helsel*, 262 Mich App 221, 226; 686 NW2d 6 (2004)

Our Supreme Court set forth an "absurd result" rule in *Salas v Clements*, 399 Mich. 103, 109; 247 N.W.2d 889 (1976): "We must keep in mind the fundamental rule of statutory construction that departure from the literal construction of a statute is justified when such construction would produce an absurd and unjust result and would be clearly inconsistent with the purposes and policies of the act in question." Our Supreme Court has since criticized and substantially limited, if not eviscerated, the "absurd result" rule, agreeing "with Justice Scalia's description of such attempts to divine unexpressed and nontextual legislative intent as 'nothing but an invitation to judicial lawmaking.'" *People v McIntire*, 461 Mich. 147, 156 n 2; 599 N.W.2d 102 (1999), quoting Scalia, *A Matter of Interpretation: Federal Courts and the Law* (New Jersey: Princeton University Press, 1997), p 21. Thus, whether the [***8] plain meaning of a statute may be avoided because its literal application results in an absurdity remains an open question in Michigan.

² Note that the Holkeboer Court was interpreting MCL 168.932© a sister **subdivision** but that does not alter the analysis of the intent behind the entire statute of MCL 168.932. In fact it enhances the defendant's point.

What is clear after *McIntire, supra*, is that the literal application of a statute cannot be set aside merely because a reviewing court deems the result inequitable, unwise, or unintended. "Absurd" has been defined as "utterly or obviously senseless, illogical, or untrue; contrary to all reason or common sense; laughably foolish or false." *Random House Webster's College Dictionary* (1997), p 6. A result is not absurd merely because reasonable people viewing a statute with the benefit of hindsight would conclude that the Legislature acted improvidently. Courts may not rewrite the plain language of the statute and substitute their own policy decisions for those already made by the Legislature. *DiBenedetto v West Shore Hosp*, 461 Mich. 394, 405; 605 N.W.2d 300 (2000).

26. The prosecution has conceded that the possession was given freely by the clerks who were investigated for their transfer of the possession of the tabulators which are components of the voting systems to the legal team and experts for analysis.
 - a. The statement was made in a press release dated August 3, 2023, immediately following the indictment attached as **Attachment 3**.
 - b. The Special Prosecutor stated on page 2 paragraph 6, "It was determined that the county and municipal clerks that turned over the tabulators to the unauthorized third parties were deceived by some of the charged defendants. The clerks had no idea of the scope, nature or duration of how their tabulators were going to be manipulated or that they would be out of their possession for an extended period of time."
 - c. The Special Prosecution's admission is admissible under MRE 801d
27. The defendant relies upon the law of bailment for *duly authorized possession*.
 - a. *Yono v Co of Ingham*, ___ NW2d ___; 2023 Mich. App. LEXIS 9587, at *14-15 (Ct App, Dec. 28, 2023)

Bailments are a form of express or implied contract. *Nat'l Ben Franklin Ins Co v Bakhaus Contractors, Inc*, 124 Mich App 510, 512 n 2; 335 NW2d 70 (1983), citing 8 Am Jur 2d, Bailments, § 2, p 738, and *In re George L Nadell & Co, Inc*, 294 Mich 150, 154; 292 NW 684 (1940). "'Bailment,' in its ordinary legal signification, imports the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished." *Goldman v Phantom Freight, Inc*, 162 Mich App 472, 479-480; 413 NW2d 433 (1987). "[I]t is a relationship [*15] wherein a person gives to another the temporary use and possession of property other than money, the latter agreeing to return the property to the former at a later time." *Id.* at 480. Michigan law classifies bailments as either gratuitous (for the sole benefit

of either the bailor or bailee) or mutual (for the benefit of both parties). *Godfrey v City of Flint*, 284 Mich 291, 295; 279 NW 516 (1938). If a bailment relationship exists, standards of care are automatically imputed on both the bailor and bailee. *Id.* at 297.

- b. *Goldman v Phantom Freight, Inc.*, 162 Mich App 472, 479-80; 413 NW2d 433 (1987)

"Bailment," in its ordinary legal signification, imports the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust [*480] shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished. *In re George L Nadell & Co, Inc.*, 294 Mich 150, 154; 292 NW 684 (1940); *National Ben Franklin Ins Co v Bakhaus Contractors, Inc.*, 124 Mich App 510, 512, n 2; 335 NW2d 70 (1983). Phrased another way, it is a relationship wherein a person [***10] gives to another the temporary use and possession of property other than money, the latter agreeing to return the property to the former at a later time. *Godfrey v City of Flint*, 284 Mich 291, 295-296; 279 NW 516 (1938).

In this case, while the facts might, as defendant asserts, point not to the creation of a bailment but merely to a license to use defendant's equipment, the question was one of fact for the jury to determine. We agree with defendant that neither *Jones v Keetch*, 388 Mich 164; 200 NW2d 227 (1972), nor *Hill v Harbor Steel & Supply Corp.*, 374 Mich 194; 132 NW2d 54 (1965), [**437] cited by plaintiff, are squarely on point in support of plaintiff's position. Still, we believe that the judge erroneously usurped the jury's fact-finding function by determining that plaintiff's proofs failed, as a matter of law, to establish a bailment. A factfinder could find that a bailment was created by these facts.

- c. *In re George L Nadell & Co.*, 294 Mich 150, 154-55; 292 NW 684 (1940)

"In its broadest sense it (bailment) has been said to include any delivery of personal property in trust for a lawful purpose. * * * The term (bailment) may be said to import the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or [***5] implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished, or kept until the bailor reclaims it."

In our opinion the effect of this transaction was a bailment for the sole benefit of the bailee. Under such circumstances it was the bailee's duty to return the stock when the purpose of the bailment was completed. See 6 Am. Jur. p. 302; *Dale v. See*, 51 N.J. [*155] Law, 378 (18 Atl. 306, 5 L.R.A. 583, 14 Am. St. Rep. 688).

28. The distinction for who benefits from the bailment is not necessary to discern and not relevant to the legal conclusion that a bailment was created which is lawful possession.
29. The Special Prosecutor's suggestion that "The clerks had no idea of the scope, nature or duration of how their tabulators were going to be manipulated or that they would be out of their possession for an extended period of time." Is also not relevant as the scope and duration is determined by when the *purpose of the bailment* is accomplished.
30. There is therefore an issue of fact remaining only as to the factual and legal claim of deception when the prosecution stated, "It was determined that the county and municipal clerks that turned over the tabulators to the unauthorized third parties were deceived by some of the charged defendants".
31. The legal question is whether deception is relevant to the transfer of possession. This requires a re-writing of the statute to add that possession gained by trick, deceit or fraud renders the possession undue when given. Let us first state that even the charge of larceny (which differs in the intent to permanently deprive versus here to merely examine the devices) has separate charges for a larceny by trick or false pretenses. As this distinction is NOT in the statute it would be improper to ADD the language and violate due process as to lack of notice.
32. BUT EVEN IF, then the indictment is still deficient. There is no place where the Special Prosecutor pointed to ANY representation made by the defendant that is false or deceitful to the clerk.
33. This requires us then to examine the intent of the prosecutor to proceed relying on the fact that some co-conspirator, indicted or unindicted, has made a deceitful statement. This requires a separate analysis.
 - a. The admission of a statement by a co-conspirator requires independent proof under MRE 801(d)(2)(E).
 - b. To admit a co-conspirator's statement under MRE 801(d)(2)(E), three requirements must be met: (1) the proponent must establish by a preponderance of the evidence that a conspiracy existed through independent evidence, (2) the statement must have been made during the course of the conspiracy, and (3) the statement must have furthered the conspiracy People v. Derrick, 2008 Mich. App. LEXIS 561, People v. Moscara, 140 Mich. App. 316, People v. Ayoub, 150 Mich. App. 150.

- c. Independent proof of the conspiracy can be established through circumstantial evidence and inferences, and it is not necessary to offer direct proof of the conspiracy People v. Derrick, 2008 Mich. App. LEXIS 561, People v. Moscara, 140 Mich. App. 316, People v. Ayoub, 150 Mich. App. 150.
- d. The evidentiary standard the court uses to find the independent proof of the conspiracy is the preponderance of the evidence standard. This means that the evidence must show that it is more likely than not that a conspiracy existed People v. Moscara, 140 Mich. App. 316, People v. Bell, 2003 Mich. App. LEXIS 2458.
- e. Applying this to the case begin by recognizing that the clerks who transferred the tabulators were targeted as co-conspirators and remain unindicted.
- f. Next consider that the agreement to have the devices is tested is only a violation of law under this theory IF the possession was obtained by deceit.
- g. There must be evidence by a preponderance that the agreement to tested these devices INCLUDED the illegal act: an agreement to deceive the clerks to obtain possession.
- h. There is insufficient evidence to show that this defendant KNEW of the deceitful act, or agreed to participate in any deceitful act to obtain the bailment.

THE STATUTE MCL 168.932b AS APPLIED IS UNCONSTITUTIONALY VOID FOR VAGUENESS

34. The Michigan Judicial Institute’s *Appeals & Opinions Benchbook* in Section 1.7C states:

“Statutes are presumed to be constitutional, and the party challenging a statute has the burden of showing the contrary.” People v Burkman, ___ Mich ___, ___ (2024). “A facial challenge alleges that a statute is unconstitutional on its face, meaning that, in general, the challenger must establish that no set of circumstances exists under which the statute would be valid.” Id. at ___ (noting that “in the First Amendment context, a facial challenge may be sufficient if it establishes that the statute prohibits constitutionally protected speech or conduct and is thus overbroad”) (cleaned up). “An as-applied challenge, on the other hand, alleges a present infringement or denial of a specific right or of a particular injury in process of actual execution of government action.” Id. at ___ (quotation marks and citation omitted).

“When a dispute arises regarding whether a properly enacted statute violates the Constitution, that dispute must be resolved by the courts, not by a single individual within the executive branch.” League of Women Voters of Mich v Secretary of State, 331 Mich App 1, 12 n 5 (2020) (noting the Legislature and the Governor do have a role “to play in resolving such a dispute if they choose to do so by repealing or amending the statute at issue”). “[J]ust as a legislative body cannot legitimately enact a statute that is repugnant to the Constitution, nor can an executive-branch official effectively declare a properly enacted law to be void by simply conceding the point in litigation.” Id. at 11.

“Generally, a criminal defendant may not defend on the basis that the charging statute is unconstitutionally vague or overbroad where the defendant’s conduct is fairly within the constitutional scope of the statute.” *People v Rogers*, 249 Mich App 77, 95 (2001). “In determining whether a statute is unconstitutionally vague or overbroad, a reviewing court should consider the entire text of the statute and any judicial constructions of the statute.” *Id.* at 94.

A statute may be challenged for vagueness on the following three grounds:

(1) that it is overbroad and impinges on First Amendment freedoms;

(2) that it does not provide fair notice of the proscribed conduct; or

(3) that it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether the law has been violated. *People v Rogers*, 249 Mich App 77, 94-95 (2001).

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *People v Burkman*, ___ Mich ___, ___ (2024) (quotation marks and citation omitted). “The vagueness doctrine incorporates notions of fair notice or warning and requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.” *Id.* at ___ (quotation marks and citation omitted). “Accordingly, a statute may be considered unconstitutionally vague if it fails to provide fair notice of the conduct proscribed or encourages arbitrary and discriminatory enforcement.” *Id.* at ___ (cleaned up).

“To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. A statute cannot use terms that require persons of ordinary intelligence to speculate regarding its meaning and differ about its application. For a statute to be sufficiently definite, its meaning must be fairly ascertainable by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words.” *People v Sands*, 261 Mich App 158, 161 (2004) (citations omitted). See also *Burkman*, ___ Mich at ___ (“A statute provides fair notice when it gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and such knowledge may be acquired by referring to judicial interpretations, common law, dictionaries, treatises, or the common meaning of words.”) (cleaned up). “A statute is not vague if the meaning of the words in controversy can be fairly ascertained by referring to their generally accepted meaning.” *People v Harris*, 495 Mich 120, 138 (2014).

“When a defendant’s vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in [the] case.” *People v Newton*, 257 Mich App 61, 66 (2003).

35. In the present case, no court has ever interpreted this statute; AND four bar admitted lawyers (DePerno, Howard, Ryker and Lambert); one Legislator; and five election clerks all BELEIVED their conduct to be lawful.
36. The Special Prosecutor sought a declaratory judgment before finalizing a ‘charging decision’ after having access to PAAM and the Attorney General who started the case and ran the investigation before recusing herself for a conflict.
37. The application of this prohibition is clear. The statute cannot be enforced.
38. This was raised by prior counsel obliquely in the claim of Ex Post Facto and the creation of a statute. These have already been raised. This is more direct and relates solely to a ruling on vagueness.
39. The defendants relied upon the limitation of the timeframe in clause A and the intent to protect the purity of the election. Ironically, the actions of the team representing multiple people was to verify and investigate the 2020 election.
40. It is a critical fact that there was a live action in Antrim County Michigan where the Court had granted access to the imaged data from the election system for analysis. This analysis required devices of the same configuration to ‘test’ the system in operation. As the Custodians of the Antrim Voting Systems did not participate or consent to possession AND the Secretary of State informed the court that they had no “control” over individual tabulators owned by the election clerks, some members of the team lawfully obtained bailments for the use of inspecting and operating the voting systems for a test and a blind control using ES & S and four experts.
41. I would be remiss if the findings did not show as attached as (**Attachment 4**) that the Secretary of State, together with the AG who was an opponent in the litigation in Antrim after intervening was determined by the experts to along with Dominion LIED about human error causing the Antrim County result and found that the problem was more widespread.
42. The defendants are essentially whistleblowers who investigated the Secretary of State and Attorney General for covering up a crime—the very crime that MCL 168.932 seeks to punish and that is anything that corrupts the purity of the election.
43. The issue was approached but not ruled on the merits in a filing of February 15, 2024
Defendant, Stephanie Lambert’s Motion to Quash Indictment and/or Suppress all

Evidence and all Orders Compelling Submission of Fingerprints which the court deemed abandoned in the 3.11.24 opinion this Court issued.

44. The discussion raised the issue of *ex post facto* and cited the law but did not apply the analysis of how it applies—the defendant asserts that the interpretative statement AFTER the conduct that the Special Prosecutor relied upon was a novel theory of the law. Using the opinion of Judge McMillen was tantamount to *ex post facto* application in that the legal clarification came after the conduct.
45. As this motion endeavors to clarify the issue, the constitutional vagueness is the first analysis in that there was no notice of THAT interpretation which transformed the conduct that appeared to conform to the law to alleged criminal behavior. This interpretation should not have retroactive effect as there was no notice to this defendant.
46. The sentiment expressed that this late notice is defective and while this may inform future defendants of the interpretation, it violates due process as to her as she lacked notice and the statute is vague as it applies to her and therefore constitutionally infirm. The retroactive implication does trigger the *ex post facto* analysis. Here is the germane part:

2. A fundamental principle of constitutional law is that a defendant cannot be accused of a crime, where such crime is “created” specifically, and purposefully, for that defendant, and then sought to be applied to that defendant. See, e.g., Mich Const 1963 Article I, § 10; U.S. Const., art I, § 10.

3. A law is considered *ex post facto* if it “(1) seeks to punish an act that was innocent when the act was committed; (2) makes an act a more serious criminal offense; (3) increases the punishment for a [committed] crime; or (4) allows the prosecution to convict on less evidence.” *People v Earl*, 495 Mich 33, 37; 845 NW2d 721 (2014). See also, *People v. Betts*, 507 Mich. 527, 542, 968 N.W.2d 497, 504 (2021).

4. The prohibitions on *ex post facto* laws “assure that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning” as well as prevent the government from imposing arbitrary and vindictive legislation. *Weaver v Graham*, 450 U.S. 24, 28-29; 101 S Ct 960; 67 L Ed 2d 17 (1981).

47. The question is the fundamental fairness of the interpretation that transforms legal conduct into criminal behavior that was so hard to understand that after the AG determined to find a crime to fit this was selected and though the statute needed no interpretation was used to transform conduct that a Sheriff, five clerks, four layers and legislator thought was illegal into an indictment.

SELECTIVE AND VINDICTIVE PROSECUTION

48. The AG in the present case has been ‘selective’ in his decision to investigate and prepare the charges with violation of the Guarantees of Equal Protection and Due Process of Law. This transfer of the file to the Special Prosecutor does not change the improper political motivation of the charges.
49. The defendant has been charged in violation of the First Amendment in retaliation for speech that challenged the legality of the actions of AG, MiSOS and Dominion in public filing in the Antrim case which challenged their official narrative and discredited the report white-washing what really happened in Antrim County.
50. As Judge Elsenheimer was entering an order of dismissal after the case became moot by resolution of the recount restoring the election outcome in favor of the Plaintiff William Bailey, the judge stated that he was convinced the legislature needed to review what occurred. See (**Attachment 5**).
51. Stephanie Lambert and the others defendants and accused participants are whistleblowers who faced prosecution and threats of prosecution designed to silence them in violation of the First amendment when she accused the POWERFUL Michigan Department of State of violating the law.
52. Here is an example of the types of articles that were targeted for chilling. I have used the defendant Matthew Deperno rather than offering direct public statements of the defendant. However this is the motivation for the selective and vindictive prosecution was to stop and silence and chill speech.

53. Antrim County Plaintiffs Introduce New Evidence in 2020 Election Case -- Experts Were Able to Compromise Data and Flip Votes | The Gateway Pundit | by Jim Hoft
54. Antrim County Attorney DePerno Releases BOMBSHELL Report - Claims County Voting Machines Were Remotely Logged into - Decertifies Entire Antrim Election | The Gateway Pundit | by Jim Hoft
55. <https://www.thegatewaypundit.com/2021/07/devastating-proof-security-breach-election-registration-servers-occurred-early-november-maricopa-county-katie-hobbs-knew/>
56. BREAKING: Michigan Voter Fraud Atty. Matt DePerno's Office Broken Into - Then VFW Hall Cancels DePerno Presser After Threats! | The Gateway Pundit | by Patty McMurray
57. HUGE NEWS: Attorney Matthew DePerno Releases Michigan Elections Forensics Report - 66,194 Unregistered Ballots Tallied in JUST 9 COUNTIES | The Gateway Pundit | by Jim Hoft
58. BREAKING: Michigan Attorney DePerno Files New Findings - Alleges 1,061 "Phantom" Ballots Found in Antrim County 2020 Election | The Gateway Pundit | by Jim Hoft
59. These declarations included declarations publicly that they had caught the MiSOS covering up for Dominion violating the law as demonstrated by the report attached as (**Attachment 4**) as well as the revelation that the CEO of Dominion had lied to the Michigan Senate Committee Hearing when he claimed the devices were not capable of connecting to the internet.
60. The state's attorney is the Attorney General who has a duty to protect the state and its officials and employees from civil and criminal liability and acts as the advisor to the Secretary of State and is a known close political ally who is not independent.
61. Attached as (**Attachment 6**) is the statement by the AG LORI BOURBONEIS who made clear that post-election release of voting systems to lawyers was not only authorized, but expected to occur – just not during the election, of course.
62. The criminal INDICTMENT in direct response to comments made and disclosures about the integrity of the 2020 election. The environment was a political one in which many people were questioning the veracity of elections.

63. The best defense of the State of Michigan must have seemed to them to target and silence the critics to the statements and an indictment would discredit, remove and punish the defendants
64. These claims of discrediting these election integrity advocates had the effect—a chilling of speech. The other clerks saw the deterrent example made and the public issue was nearly squelched.
65. Selective Prosecution was addressed as a defense in *United States v Armstrong*, 517 US 456; 116 S Ct 1480; 134 L Ed 2d 687 (1996). Here are some headnotes that summarize the holdings.
66. A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. Cases delineating the necessary elements to prove a claim of selective prosecution have taken great pains to explain that the standard is a demanding one. These cases afford a "background presumption," that the showing necessary to obtain discovery should itself be a significant barrier to the litigation of insubstantial claims.
67. A selective-prosecution claim asks a court to exercise judicial power over a "special province" of the Executive. The Attorney General and United States Attorneys retain "broad discretion" to enforce the nation's criminal laws. They have this latitude because they are designated by statute as the President's delegates to help him discharge his constitutional responsibility to take care that the laws are faithfully executed. U.S. Const., art. II, § 3; 28 U.S.C.S. §§ 516, 547. As a result, the presumption of regularity supports their prosecutorial decisions and, in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.
68. A prosecutor's discretion is subject to constitutional constraints. One of these constraints, imposed by the equal protection component of the Due Process Clause of the Fifth Amendment, is that the decision whether to prosecute may not be based on an unjustifiable standard such as race, religion, or other arbitrary classification. A defendant may demonstrate that the administration of a criminal law is directed so exclusively against a particular class of persons with a mind so unequal and oppressive that the system of prosecution amounts to "a practical denial" of equal protection of the law.

69. The required threshold, a credible showing of different treatment of similarly situated persons, adequately balances the Government's interest in vigorous prosecution and the defendant's interest in avoiding selective prosecution.
70. The discriminatory effect is related to the Equal Protection Rights of Voters (not minorities) present in the present case.
71. In *Bush v Gore*, 531 US 98; 121 S CT 525; 148 L Ed 2D 388 (2000) the Court defined the EQUAL PROTECTION RIGHTS of the electorate to include the right to cast a vote, the right to have the vote counted as cast and the right not to have your vote diluted.
72. This is summarized with equal dignity which is recognized as a fundamental right.
73. Having once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person's vote over that of another. It must be remembered that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.
74. "No reasonable person would call it "an error in the vote tabulation," FLA. STAT. § 102.166(5), or a "rejection of legal votes," FLA. STAT. § 102.168(3)(c), 4 when electronic or electromechanical equipment performs precisely in the manner designed, and fails to count those ballots that are not marked in the manner that these voting instructions explicitly and prominently specify. The scheme that the Florida Supreme Court's opinion attributes to the legislature is one in which machines are required to be "capable of correctly counting votes," § 101.5606(4), but which nonetheless regularly produces elections in which legal votes are predictably not tabulated, so that in close elections manual recounts are regularly required. This is of course absurd." Id at 120.
75. It is a case of finding a target for prosecution and then identifying the crime instead of identifying a crime and identifying the suspect. How can this be with unclean hands by the officials and their allies in MiSOS who have a vested interest in silencing Attorney Stephanie Lambert and the others and making sure no one else ever questions an election?
76. The equal protection claim is not based on a protected 'racial class' but the interference with the equal protection rights of a voter to have a fair and transparent election that can be viewed by the public with confidence.

77. In *Wayte v. United States*, 470 U.S. 598 (1985) the appellate court's order was affirmed because petitioner failed to prove that respondent prosecuted him because of his protest activities. The President of the United States directed male citizens to register for the Selective Service System through a general proclamation. Petitioner citizen protested and ignored the system. An indictment was eventually returned against him for failing to register in violation of the Military Selective Service Act, 50 U.S.C.S. § 453 et seq. Petitioner moved for a dismissal, contending that he was "selectively prosecuted" for resisting the system. The district court granted the motion. Respondent government appealed, asserting that petitioner did not prove a prima facie case of discrimination. The appellate court agreed, holding that petitioner never proved that respondent focused an investigation on him because of his activities. On a final review, the court affirmed this ruling on the grounds that allowing the avoidance of service through protest alone would have constituted an illegal form of immunity.
78. In order to establish a prima facie case of selective prosecution a defendant has to prove that: (i) others similarly situated generally had not been prosecuted for conduct similar to his or herself and (ii) a government's alleged discriminatory selection was based on impermissible grounds such as race, religion, or exercise of U.S. Const. amend. I, rights.
79. The present case, the defendant has established the prong that the discriminatory selection was made because of her exercise of her free speech and in violation of her attempting to protect her and her constituents fundamental right to vote which resulted in the MISOS and the AG coordinating to remove her voice. The use of the proxy of the Special Prosecutor does not change the fact that the very political investigation was run by the AG.
80. In *Detreville v. Gurevich*, 2022 US Dist LEXIS 225300; 2022 WL 17668171 (D.Colo. 12/14/2022) stated, " Generally, "the First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." *Nieves v. Bartlett*, 139 S. Ct. 1715, 1722, 204 L. Ed. 2d 1 (2019) (internal quotation marks omitted). To establish a First Amendment retaliation claim, plaintiff must demonstrate (1) that he was engaged in a constitutionally protected activity; (2) that the defendant's action caused him to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity; and (3) that the defendant's actions

were substantially [*15] motivated as a response to plaintiff's exercise of his First Amendment speech rights. *Becker v. Kroll*, 494 F.3d 904, 925 (10th Cir. 2007).”

81. The defendant and others targeted were engaged in a constitutionally protected activity—where she was criticizing publicly the MiSOS for violation of law which subjected her to a retaliation motivated to silence her as evidenced by the coordinated attacks and the transfer of the investigation in their zeal to convict her.
82. Law enforcement should not be used to wage war on a person who challenges their governments actions as lawful.
83. In *Jackson v Clark*, 564 F Supp 483 (2008) the court denied a motion to dismiss a civil count for due process violation when he was able to show that he was harmed by false charges. In the present case, the defendants publicly accused by MiSOS before the present charges;
84. In *Jackson*, supra, an additional count for wrongful discharge failed because the plaintiff did not report the violations of law of the defendant until after he was targeted by a criminal investigation in contrast to the present case where the report of the election crime by filing the Antrim Report preceded the targeting of Antrim legal team.
85. The use of pretext to bring charges and to ignore the very charges that she was blowing the whistle on is a violation of due process, equal protection, and the First Amendment.

THERE IS INSUFFICIENT EVIDENCE AS ELEMENTS OF OFFENSE IN COUNT 2 & 3

86. The defendant has stated that these charges are a single conspiracy with multiple overt acts if there is sufficient evidence. The can be multiple objects of the conspiracy charged but not multiple conspiracies based on a single agreement.
87. There are two objects presented in the charges as to each count.
88. In Count 2 in the discussion of independent proof we have already laid out the question.
 - a. There is insufficient evidence to show a preponderance to admit evidence that there was an agreement with Stephanie Lambert to commit the deception which is the key conduct that renders the *possession* undue to stand trial on Count 1.

- b. Likewise insufficient evidence, in the indictment to show any evidence of an *agreement* that Stephanie Lambert made to deceive to obtain possession.
- c. The sole representation that is alleged is against the indicted defendant Daire Rendon in which a clerk reported an out of court statement that she claims to have relied upon.
- d. The statement claimed to be deceptive was that there was a Michigan House Investigation being conducted. The defense is prepared to meet the veracity of that statement in court as Daire Rendon was a sitting member³; however, there is NO AWARENESS by the defendant. of the statement (much less agreement) being made to procure cooperation.
- e. This is a question of agency law

Authority to Act: The primary issue in agency law is whether the member of the organization has the authority to make representations on behalf of the organization. Authority can be established in several ways:

Actual Authority: This can be either express or implied. Express authority occurs when the organization explicitly grants a member the power to make certain representations or decisions. Implied authority arises from the member's position or role within the organization (e.g., a manager or officer is generally implied to have certain decision-making powers).

Apparent Authority: This exists when a third party reasonably believes, based on the organization's conduct, that the member has authority to act on behalf of the organization. Apparent authority can bind an organization to the representations of a member even if the member lacks actual authority.

- f. One or more of the clerks, while under their own threat of prosecution, made these self-serving statements to avoid the 'wrath' of the AG while under threat of prosecution. Please recall that the clerks were easily identified after the serial numbers of the devices were *openly* listed in the report filed in Antrim County exposing the AD, Secretary of State and Dominion Voting Systems for both

³ In addition, due to the separation of powers it is up to the House to determine the authority of the member(s) and disavow or rule. It is not the providence of the court or jury. There is under the 5th Amendment and the threat of prosecution no obligation for Daire Rendon to come forward and name names to support her assertion of which members of Congress she was working with in the investigation.

election crimes but also for lying and covering them up. This disclosure shows the lack of any criminal intent by the legal team.

- g. To be a conspiracy the object *agreed* to must be unlawful. The purpose of this alleged conspiracy was not to deceive, rather the only AGREEMENT was to investigate the operation of the voting system to determine if the device functioned as represented and determine how the results actually occurred in Antrim County and to find out how widespread the errors were—the agreement was to check the purity of the election. That is what the direct and circumstantial evidence shows.

89. In Count 3, the alleged conspiracy is to violate MCL 752.795

Sec. 5.

A person shall not *intentionally* and **without authorization or by exceeding valid authorization** do any of the following:

- (a) Access or cause access to be made to a computer program, computer, computer system, or computer network to acquire, alter, damage, delete, or destroy property or otherwise use the service of a computer program, computer, computer system, or computer network.

90. To be a conspiracy the object *agreed* to must be unlawful. The purpose of this alleged conspiracy was not to provide unauthorized access rather the AGREEMENT was to investigate the operation of the voting system to determine if the device functioned as represented and determine how the results actually occurred in Antrim County and to find out how widespread the errors were—the agreement was to check the purity of the election. That is what the direct and circumstantial evidence shows.

91. As already established in the admission by the Special Prosecution attached as **(Attachment 2)**.

- a. The Special Prosecutor stated on page 2 paragraph 6, “It was determined that the county and municipal clerks that turned over the tabulators to the *unauthorized* third parties were deceived by some of the charged defendants. The clerks had no idea of the scope, nature or duration of how their tabulators were going to be manipulated or that they would be out of their possession for an extended period of time.”

92. The term unauthorized third parties is a sneaky claim and this is determined on the scope of the authority of the Secretary of State who will attempt to offer inadmissible claims that the clerk lacked the authority to authorize the inspection of the devices

- a. There is a contract for the township and municipality to OWN the machines.
- b. R168.772 (4) states:

(4) Where the legislative body of a city, township, or village provides for the purchase and use of an electronic voting system, the clerk of the city, township, or village shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

- c. This Administrative Rule was promulgated by the Secretary of State.
- d. The Secretary of State can not make individual decrees but must regulate through agency action in conformity with the Administrative Code and all the requirements limiting executive arbitrary and capricious action to pass rules when authorized by law.
- e. Again, this LEGAL question determines whether there was authority of the clerks to grant access to the tabulators.
- f. The facts are uncontested that the clerks provide their consent to the third parties in a bailment to access the computer.

93. There was one agreement. It involved the permission of the clerks OUTSIDE of the timeline to inspect and prepare the devices for use in the next election. This involved independent testing of the devices to see if the election was pure. There was no agreement to engage in illegal conduct. The persons who entered into the agreement believed they had lawful authority and the law permits the clerks to provide a bailment for the purpose of inspecting testing and making the devices ready for the next election and examining the purity of the last election. This is the right of the custodians of the township and municipal owners of the devices.

94. The receiving persons had a right to expect that with both express and apparent authority that the bailment had been created. The bailment was for a purpose that was done and then the devices returned.

95. It was only after filing the report exposing the AG, SOS and Dominion in Antrim that the Executive Branch Struck Back against the whistleblowers.

THERE IS INSUFFICIENT EVIDENCE AS ELEMENTS OF OFFENSE IN COUNT 4

96. In Count 4 the crime alleged is that *A person shall not willfully damage or destroy any ballot box or voting machine.*

- a. MCL 168.932b in clause 5 does permit and aid or abet theory of compact liability.
- b. There is no evidence of an *agreement* to damage or destroy the devices.
- c. Any damage done, if any, to the voting machine was NOT caused by the direct acts of the Defendant
- d. There is a requirement for complicit liability of specific intent which transforms from the actor to the ‘aider and abettor’ an intent to cause the result.
- e. The bailment requires that the person in possession use due care.
- f. The damage, if any, would have to be intended and then supported by some acts of the defendant. If we concede that she helped the investigation how is there any evidence that she intended to damage or destroy the devices.
 - i. Evidence would start with awareness that the investigation would cause damage or destruction.
 - ii. The damage that was presented is mostly theoretical
 - iii. Other damage reported is unintended collateral damages caused by the experts
 - iv. There is no conversations, authorizations or instructions by the defendant telling the experts in handling the machines to cause damage.
- g. Therefore, there is no evidence that the experiment or examination design which was handled by the experts was discussed and revealed to include that there would be damage caused willfully—with the defendant.

Dated: September 30, 2024

/s/ Daniel J. Hartman
Daniel J. Hartman P52632

Attachments :

1. DJ Complaint and Circuit Court Opinions and Orders
2. DJ Complaint and Brief Filed in Antrim County

3. August 3, 2023 Press Release
4. Lenberg Report
5. Elsenheimer Opinion
6. Lori Bourbonnais Email

ATTACHMENT 1

Complaint for Declaratory Judgment
and Circuit Court Opinions and
Orders

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE
STATE OF MICHIGAN,

File No.

Plaintiff,

Hon.

vs.

STEFANIE LAMBERT JUNTILA,

Defendant.

PEOPLE OF THE STATE OF MICHIGAN
SPECIAL PROSECUTOR
By: D.J. HILSON (P57726)
Hall of Justice, Fifth Floor
990 Terrace Street
Muskegon, MI 49442
(231) 724-6435
HilsonDa@co.muskegon.mi.us

COMPLAINT FOR DECLARATORY JUDGMENT

There is no other pending or resolved civil action arising out of the
transaction or occurrence alleged in the complaint.

NOW COME the People of the State of Michigan, by and through their attorneys, D.J. Hilson, Special Prosecuting Attorney, and states the following for his complaint for declaratory judgment:

A. Parties, Jurisdiction, and Venue

1. Plaintiff DJ Hilson is Special Prosecutor acting in the capacity as Special Prosecutor on behalf of the Attorney General of the State of Michigan. This suit is brought by the DJ Hilson in his official capacity.

2. On information and belief, Stefanie Lambert Junttila is a resident of Michigan.
3. Through this lawsuit, the Special Prosecutor Hilson seeks a declaratory judgment pursuant to MCR 2.605. This Court has jurisdiction to provide such relief.
4. The circumstances giving rise to this Complaint have arisen between 2021 and 2022 in Oakland County, making this Court an appropriate venue for this Complaint.

BACKGROUND

5. The People incorporates by reference the other paragraphs of this complaint.
6. In communications as it relates to a pending action that has been sealed pursuant to Court Order by the Oakland County Circuit Court, it has been asserted by Ms. Lambert Junttila that the People have a misunderstanding of Michigan Election Law. As part of this sealed proceedings, Plaintiff is required, by law, to provide legal interpretation and instruction and advice as it relates to election laws, constitutional matters, legal duties and obligations and legal authority, if any, of clerks to provide election systems or voting machines without a court order or otherwise authorized by law. Ms. Lambert Junttila through counsel has alleged misapplication of the law as it relates to these sealed proceedings, which creates an actual controversy.
7. It is solely the intent of the People to obtain a legal determination as to the applicable legal standards concerning the crime of undue possession of a voting machine and to clarify the legal prohibitions contained in MCL 168.932(b). More specifically the People request an order of declaratory judgment on the two following issues:
 - a. Whether the phrase, “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained” modifies and restricts the

language in the sentences preceding it, including, "A person shall not obtain undue possession of that ballot box or voting machine."?

b. Whether "undue possession" means possession that is not authorized by the Secretary of State or Court Order?

Count I - DECLARATORY JUDGMENT

8. The People incorporates by reference the other paragraphs of this complaint.

9. MCR 2.605(A) states:

(1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

(2) For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.

10. Upon information and belief, an actual controversy exists between the Special Prosecutor acting as Attorney General and Stefanie Lambert Junttila as to the interpretation of the MCL 168.932(b).

11. Pursuant to MCL 600.8311; Const 1963, art 6, § 13, this Court has subject matter jurisdiction over felony offenses, which would encompass any crimes prosecuted under MCL 168.932(b).

12. MCL 168.932(b) of the "Michigan Election Law," sets forth a list of felonies related to elections, which provides:

(b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or

voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. *A person shall not obtain undue possession of that ballot box or voting machine.* A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision. (emphasis added).

13. “If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written. [] In other words, when statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed.” *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004) (citations omitted). The language of MCL 168.932(b) is clear and unambiguous, and the plain meaning of MCL 168.932(b) provides for multiple, distinct felony violations as follows:

- a. A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election.
- b. A person shall not willfully damage or destroy any ballot box or voting machine.
- c. A person shall not obtain undue possession of that ballot box or voting machine.
- d. A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine.
- e. A person shall not aid or abet in any act prohibited by this subdivision.

14. This plain meaning is further supported by the legislative history of the statute. The initial version of MCL 168.932(b) was written as a single sentence, where the time limitation of “during the progress of any election or primary election or after the closing of the polls and before the ballots are counted and the result ascertained” did apply to the undue possession provision. The statute was later amended in 1957 to be distinct phrases separated by semi-colons, thus

removing the applicability of the time limitation to the other phrases. In 1995, the Legislature further delineated the phrases as separate offenses by making each phrase into a separate and distinct sentence, each with its own subject, verb, and prohibited conduct. *In re MCI Telecommunications Complaint*, 460 Mich 396, 415; 596 NW2d 164 (1999) (“Where the Legislature has considered certain language and rejected it in favor of other language, the resulting statutory language should not be held to explicitly authorize what the Legislature explicitly rejected.”)

15. Thus, the People assert that the time limitation, “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained” does *not* apply to the prohibited conduct of “A person shall not obtain undue possession of that ballot box or voting machine.”

16. Turning to the next point of contention, the People further assert that “undue possession” must be that which is not allowable by law, and the only lawful authority that can be given for the possession of voting machines is by the Secretary of State or Court Order. Specifically, as outlined in detail below, the People allege that a local election official under the direct supervision of the Secretary of state does not have the authority to release voting machines independently.

17. Pursuant to MCL 168.21, “The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” And, “the Legislature [has] granted the Secretary a broad measure of discretion in conducting and supervising elections.” *Davis v Secretary of State*, 333 Mich App 588, 598; 963 NW2d 653 (2020).

18. The Secretary of State has the obligation to make rules and instructions for the conduct of elections, MCL 168.31.

19. “Under MCL 168.32, the Legislature authorized a Bureau of Elections within the office of the Secretary of State and authorized the Secretary of State to appoint a Director of Elections to whom is delegated the powers to perform the duties of the Secretary of State respecting the supervision and administration of election laws.” *Davis*, 333 Mich App at 598.

20. Further, it is the duty of local election officials to follow the instructions of the Secretary of State. See *Davis*, 333 Mich App at 598, citing *Secretary of State v Berrien Co Bd of Election Comm'rs*, 373 Mich 526, 530-531; 129 NW2d 864 (1964) (“Under MCL 168.31, local election officials must follow the Secretary of State’s instructions regarding the conduct of elections.”).

21. The duty of local election officials to follow the directives of the Secretary of State exists even where the directives relate to rules for the use of voting equipment that is owned by the local government. In *Berrien Co Bd of Election Comm'rs, supra*, 373 Mich at 528, the local election officials asserted “that because the voting machines are the property of the people of the township it was beyond the power of the plaintiff [Secretary of State] to order or direct the manner of their use and competent for the township board to direct, as they did by resolution adopted, use of the voting machines” in a manner contrary to the Secretary of State’s instruction. The Supreme Court rejected that contention when it held that it was the duty of the local election officials to follow the instructions received by the Secretary of State despite the local election official’s resolution. *Id.* at 530-531.

22. Further, in 2021-2022, the Michigan Constitution provided, “Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights: . . .

(h) The right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections.” Const 1963, art 2, §4(1)(h).¹

23. Michigan Election Law allows for the Secretary of State to engage in audits and to supervise local election officials in conducting audits. MCL 168.31a(2), effective December 28, 2018, states:

(1) In order to ensure compliance with the provisions of this act, after each election the secretary of state may audit election precincts.

(2) The secretary of state shall prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963. The secretary of state and county clerks *shall* conduct election audits, including statewide election audits, as set forth in the prescribed procedures. The secretary of state shall train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the secretary of state in their counties. An election audit must include an audit of the results of at least 1 race in each precinct selected for an audit. A statewide election audit must include an audit of the results of at least 1 statewide race or statewide ballot question in a precinct selected for an audit. An audit conducted under this section is not a recount and does not change any certified election results. The secretary of state *shall* supervise each county clerk in the performance of election audits conducted under this section. (Emphasis added)

¹ Michigan voters in the November 2022 election decided to expand and clarify this audit provision to state, “The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections. The secretary of state shall conduct election audits, and shall supervise and direct county election officials in the conduct of such audits. No officer or member of the governing body of a national, state, or local political party, and no political party precinct delegate, shall have any role in the direction, supervision, or conduct of an election audit. Public election officials shall maintain the security and custody of all ballots and election materials during an election audit. Election audits shall be conducted in public based on methods finalized and made public prior to the election to be audited. All funding of election audits shall be publicly disclosed.” However, this provision did not become effective until December 24, 2022, which post-dates the controversy in issue before the Court.

It is noteworthy that the Secretary of State's involvement in a supervisory capacity of local audits is not discretionary, but mandatory as indicated by the use of the word "shall".

24. Neither the Constitution nor the statute allow for an individual voter to conduct an independent audit. *Bailey v Antrim County*, ___ Mich App ___; ___ NW2d ___ (2022) 2022 WL 1193720, at *5, lv den, ___ Mich ___; 982 NW2d 175 (2022).

25. Thus, authorization to release the physical voting equipment under any purported "audit" must be supervised by the Secretary of State and cannot be initiated by a private citizen.

26. Further, MCL 168.799a requires that following the final determination by the board of canvassers following an election, the original seal may be removed from an election program, but "shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state." Again, indicating that secured storage is incumbent upon the local election official, and the device must be preserved until the Secretary of State or its rules allow for the removal from the secured location.

27. Additionally, Michigan Election Law provides the Secretary of State with the discretion to release voting machines and equipment under certain circumstances. MCL 168.847 states:

The secretary of state may authorize the release of all ballots, ballot boxes, voting machines, and equipment after 30 days following certification of an election by the board of state canvassers in a precinct other than a precinct in which 1 or more of the following occur:

- (a) A petition for recount has been filed with the board of state canvassers.
- (b) A petition has been filed pursuant to section 879.¹
- (c) A court of competent jurisdiction has issued an order restraining interference with ballots, ballot boxes, voting machines, and equipment.

28. Mich. Admin. Code R 168.772 provides:

(3) Where the board of county commissioners provides for the purchase and use of an electronic voting system in a county, the county clerk shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

(4) Where the legislative body of a city, township, or village provides for the purchase and use of an electronic voting system, the clerk of the city, township, or village shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

The Clerk shall have custody and shall be responsible for three specific actions: maintenance, repair, or preparation for elections. *Id.* Nowhere in this code does the rule allow for the Clerk to independently be responsible for an audit. Nor does it allow for a clerk to unilaterally relinquish the custody of a voting machine, when read in conjunction MCL 168.847 which only provides the Secretary of State with discretion to release voting machines. Particularly, under the plain language of this rule when coupled with the Constitution and the Michigan Election Law, a clerk does not have authorization under this provision to relinquish custody for purposes of an audit.

29. In sum, looking at the Michigan Constitution, Michigan Election Law, and Michigan Administrative Code, it is clear that for purposes of “undue possession” means possession not authorized by the Secretary of State or valid court order, such as a search warrant.

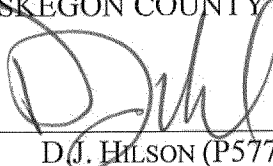
30. Thus, the language, “A person shall not obtain undue possession of that ballot box or voting machine[.]” means that an individual cannot possess a ballot box or voting machine without authorization from the Secretary of State or a valid court order.

31. The special prosecutor requests that the Court enter a declaratory judgment as to these two points of law.

RELIEF REQUESTED

WHEREFORE, The People of the State of Michigan by and through special prosecutor DJ Hilson request declaratory judgment finding that the undue possession of voting machines prohibition is not limited to events that occur “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained,” and the People request declaratory judgment that “undue possession” is possession that is not authorized by the Secretary of State or by court order.

Respectfully submitted,
SPECIAL PROSECUTOR &
MUSKEGON COUNTY PROSECUTOR



Dated: March 10, 2023

By: D.J. HILSON (P57726)
Prosecuting Attorney

BUSINESS ADDRESS & TELEPHONE:
Hall of Justice, Fifth Floor
990 Terrace Street
Muskegon, MI 49442

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

STEFANIE LAMBERT JUNTILA,

Defendant.

Case No. 23-199245-CZ
Hon. Phyllis C. McMillen

OPINION AND ORDER

At a session of Court

Held On

July 12, 2023

This matter is before the Court on Plaintiff's Complaint for Declaratory Judgment. The Court heard oral argument on July 7, 2023.

I. FACTS AND PROCEEDINGS¹

Plaintiff, the People of the State of Michigan, acting through the Special Prosecutor on behalf of the Attorney General of the State of Michigan, filed this action seeking a declaratory judgment to obtain a legal determination as to the applicable legal standards concerning the crime of undue possession of a voting machine and to clarify the legal prohibitions contained in MCL 168.932(b).

Defendant, Stefanie Lambert Junttila, filed an Answer to the Complaint in which she denies that the Court has jurisdiction to hear this action, denies that there is an actual

¹ A more detailed explanation of the factual background is contained in this Court's Opinion and Order denying Defendant's motion for summary disposition, entered June 6, 2023.

controversy, and alleges that the Special Prosecutor has violated multiple laws and rules in bringing this action.²

II. DECLARATORY JUDGMENTS GENERALLY

MCR 2.605 governs declaratory judgments. MCR 2.605(A)(1) provides, “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights. *Shavers v Attorney General*, 402 Mich 554, 588–589; 267 NW2d 72 (1978); *Durant v State of Michigan, Dep’t of Ed (On Remand)*, 238 Mich App 185, 204–205; 605 NW2d 66 (1999). “[W]hat is essential to an ‘actual controversy’ under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised.” *Shavers*, 402 Mich at 589; *Fieger v Comm’r of Ins*, 174 Mich App 467, 470–471; 437 NW2d 271 (1988).

The Court of Appeals has stated that the purpose of a declaratory judgment is

to enable the parties to obtain adjudication of rights *before an actual injury occurs*, to settle a matter *before it ripens into a violation of the law* or a breach of contract, or to avoid multiplicity of actions by *affording a remedy for declaring in expedient action the rights and obligations of all litigants*. [*UAW v Central Mich Univ Trustees*, 295 Mich App 486, 496; 815 NW2d 132 (2012) (citation omitted; emphasis in original)]

² Defendant previously filed a motion for summary disposition in lieu of an answer to the complaint, arguing that this Court lacks subject matter jurisdiction to enter a declaratory judgment; Plaintiff lacks the legal capacity to sue; the Attorney General has already tried and failed to bring these charges before a court; and the Special Prosecutor cannot change the language of the statute to suit his client’s interests. The motion also asked the Court to sanction the prosecutor for violating court rules and the Michigan Rules of Professional Conduct. The Court addressed these arguments in its June 6, 2023 opinion and order.

III. ANALYSIS

The “Michigan Election Law”, MCL 168.1 *et seq.*, includes a list of felonies related to elections at MCL 168.932, which provides in relevant part:

(b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. *A person shall not obtain undue possession of that ballot box or voting machine.* A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision. [emphasis added]

“If the statute’s language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written. In other words, when statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed.” *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004) (citations omitted).

A. Plaintiff’s Arguments

According to Plaintiff, the language of MCL 168.932(b) is clear and unambiguous, and its plain meaning provides for multiple, distinct felony violations as follows:

- A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election.
- A person shall not willfully damage or destroy any ballot box or voting machine.

- A person shall not obtain undue possession of that ballot box or voting machine.
- A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine.
- A person shall not aid or abet in any act prohibited by this subdivision.

Plaintiff argues that this plain meaning is further supported by the legislative history of the statute. The initial version of MCL 168.932(b) was written as a single sentence, where the time limitation of “during the progress of any election or primary election or after the closing of the polls and before the ballots are counted and the result ascertained” applied to the undue possession provision. The statute was later amended in 1957 to be distinct phrases separated by semi-colons, thus removing the applicability of the time limitation to the other phrases. Then, in 1995, the Legislature further delineated the phrases as separate offenses by making each phrase into a separate and distinct sentence, each with its own subject, verb, and prohibited conduct. See *In re MCI Telecommunications Complaint*, 460 Mich 396, 415; 596 NW2d 164 (1999) (“Where the Legislature has considered certain language and rejected it in favor of other language, the resulting statutory language should not be held to explicitly authorize what the Legislature explicitly rejected.”). Thus, Plaintiff asserts that the time limitation, “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained” does *not* apply to the prohibited conduct of “A person shall not obtain undue possession of that ballot box or voting machine”.

Plaintiff further asserts that “undue possession” must be that which is not allowable by law, and the only lawful authority that can be given for the possession of voting machines is by the Secretary of State or court order. Specifically, Plaintiff alleges

that a local election official under the direct supervision of the Secretary of State does not have the authority to release voting machines independently.

Pursuant to MCL 168.21, “[t]he secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” And, “the Legislature [has] granted the Secretary a broad measure of discretion in conducting and supervising elections.” *Davis v Secretary of State*, 333 Mich App 588, 598; 963 NW2d 653 (2020). The Secretary of State has the obligation to make rules and instructions for the conduct of elections. MCL 168.31. “Under MCL 168.32, the Legislature authorized a Bureau of Elections within the office of the Secretary of State and authorized the Secretary of State to appoint a Director of Elections to whom is delegated the powers to perform the duties of the Secretary of State respecting the supervision and administration of election laws.” *Davis*, 333 Mich App at 598. Further, it is the duty of local election officials to follow the instructions of the Secretary of State. See *id.*, citing *Secretary of State v Berrien Co Bd of Election Comm’rs*, 373 Mich 526, 530-531; 129 NW2d 864 (1964) (“*Berrien County*”) (“Under MCL 168.31, local election officials must follow the Secretary of State’s instructions regarding the conduct of elections.”).

The duty of local election officials to follow the directives of the Secretary of State exists even where the directives relate to rules for the use of voting equipment that is owned by the local government. In *Berrien County*, *supra*, the local election officials asserted that “because the voting machines are the property of the people of the township it was beyond the power of the [Secretary of State] to order or direct the manner of their use and competent for the township board to direct, as they did by resolution adopted, use

of the voting machines” in a manner contrary to the Secretary of State’s instruction. The Supreme Court rejected that contention, holding that it was the duty of the local election officials to follow the instructions received by the Secretary of State despite the local election officials’ resolution. *Id.* at 530-531.

Further, in 2021-2022, the Michigan Constitution provided, “Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights:...(h) The right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections.” Art. § 4, Sec (1)(h).³

Michigan Election Law allows for the Secretary of State to engage in audits and to supervise local election officials in conducting audits. MCL 168.31a(2), effective December 28, 2018, provides:

(1) In order to ensure compliance with the provisions of this act, after each election the secretary of state may audit election precincts.

(2) The secretary of state shall prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963. The secretary of state and county clerks *shall* conduct election audits, including statewide election audits, as set forth in the prescribed procedures. The secretary of state shall train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the secretary of state in their counties. An election audit must include an audit of the results of at least 1 race in each precinct selected for an audit. A statewide election audit must include an audit of the results of at least 1 statewide race or statewide ballot question in a precinct selected for an audit. An audit conducted under this section is not a recount and does not change any certified election results. The secretary of state *shall* supervise each county clerk in the performance of election audits conducted under this section....[emphasis added]

It is noteworthy that the Secretary of State’s involvement in a supervisory capacity of local audits is not discretionary, but mandatory, as indicated by the use of the word

³ Michigan voters in the November 2022 election decided to expand and clarify this audit provision, but the changes did not become effective until December 24, 2022, after the events at issue in this case.

“shall”. Neither the Constitution nor the statute allows for an individual voter to conduct an independent audit. *Bailey v Antrim Co*, 341 Mich App 411, 423; 990 NW2d 372 (2022), lv den, 982 NW2d 175 (2022). Thus, authorization to release the physical voting equipment under any purported “audit” must be supervised by the Secretary of State and cannot be initiated by a private citizen.

Further, MCL 168.799a(4) requires that following the final determination by the board of canvassers following an election, the original seal may be removed from an election program, but “shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state.” Again, indicating that secured storage is incumbent upon the local election official, and the device must be preserved until the Secretary of State or its rules allow for the removal from the secured location.

Additionally, Michigan Election Law provides the Secretary of State with the discretion to release voting machines and equipment under certain circumstances. MCL 168.847 provides:

The secretary of state may authorize the release of all ballots, ballot boxes, voting machines, and equipment after 30 days following certification of an election by the board of state canvassers in a precinct other than a precinct in which 1 or more of the following occur:

- (a) A petition for recount has been filed with the board of state canvassers.
- (b) A petition has been filed pursuant to [MCL 168.879].
- (c) A court of competent jurisdiction has issued an order restraining interference with ballots, ballot boxes, voting machines, and equipment.

Mich Admin Code R 168.772 provides, in relevant part:

- (3) Where the board of county commissioners provides for the purchase and use of an electronic voting system in a county, the county clerk shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.
- (4) Where the legislative body of a city, township, or village provides for the purchase and use of an electronic voting system, the clerk of the city,

township, or village shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

Thus, a clerk shall have custody and shall be responsible for three specific actions: maintenance, repair, or preparation for elections. Nowhere in this code does the rule allow for a clerk to be independently responsible for an audit. Nor does it allow for a clerk to unilaterally relinquish the custody of a voting machine, when read in conjunction with MCL 168.847 which only provides the Secretary of State with discretion to release voting machines. Particularly, under the plain language of this rule when coupled with the Constitution and the Michigan Election Law, a clerk does not have authorization under this provision to relinquish custody for purposes of an audit.

In sum, looking at the Michigan Constitution, Michigan Election Law, and Michigan Administrative Code, it is clear that “undue possession” means possession not authorized by the Secretary of State or valid court order, such as a search warrant. Thus, the language “A person shall not obtain undue possession of that ballot box or voting machine” means that an individual cannot possess a ballot box or voting machine without authorization from the Secretary of State or a valid court order.

Plaintiff asks the Court to enter a declaratory judgment finding that

- (1) the prohibition against the undue possession of voting machines is not limited to events that occur “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained”; and
- (2) “undue possession” is possession that is not authorized by the Secretary of State or by court order.

B. Defendant's Arguments

In her Answer to the Complaint, Defendant asserts that Plaintiff is seeking relief outside the Michigan Court Rules, and particularly the civil and criminal rules of procedure, and in doing so is violating several sections of the Michigan Rules of Professional Conduct and the United States and Michigan Constitutions. Defendant further states that this Court does not have jurisdiction to provide the relief wrongfully requested by Plaintiff. Defendant asserts that Plaintiff is wrongfully using this action, and this Court, in an attempt to undermine the adversarial legal system of the State of Michigan and the United States.

Defendant denies that there is an “actual controversy” existing between the prosecutor and the Defendant, or the Plaintiff and Defendant, within the meaning of the jurisprudence of the State of Michigan or the United States, or MCR 2.605. Defendant notes that the prosecutor admits in the Complaint that he is acting on his own behalf, or on behalf of the Attorney General of the State of Michigan, and not on behalf of the People of the State of Michigan. Defendant admits that the Secretary of State for the State of Michigan has the obligation to make rules and instructions for the conduct of elections. In response to the remaining allegations in the Complaint regarding the interpretation of the relevant statutes, Defendant's answer states:

Defendant denies an actual controversy between the Plaintiff and Defendant, or the prosecutor and defendant (see paragraph 10 of plaintiff's complaint wherein which the prosecutor admits he is acting on his own behalf, or on behalf of the Attorney General of the State of Michigan, and not on behalf of the people of the State of Michigan.)

Defendant further states in response that whether the plain language of the statute is clear and unambiguous or ambiguous, then the prosecutor/attorney general's claims in representing themselves in this action rather than the People of the State of Michigan (see paragraph 10, *infra*), should be set forth in an action on their own behalf against Defendant and then file an action to request a declaratory judgment, rather than abuse the power of office and the citizens of this state.

Defendant denies that the Court should enter a declaratory judgment as to the "two points of law" referred to in the Complaint, and asserts that Plaintiff failed to articulate the "two points of law". Moreover, Defendant asserts that if the language of the statutes and regulations is indeed plain and unambiguous as alleged in the Complaint, then the prosecutor admits that no controversy exists. And further, the prosecutor admits that bringing this action is an attempt to obtain a judgment on the definition of the law when no case or controversy exists presently between the prosecutor and Defendant.

Moreover, the prosecutor admits he wants an explanation of the law to have this Court perform the function of his position in a sealed grand jury proceeding of which he previously stated Defendant was not the subject. What is more, the prosecutor admits that he wants this Court, which he knows is the Court presiding over the grand jury, and which he anticipates will preside over any criminal proceeding in the future relative to the

outcome of the grand jury proceeding, to make determinations of the law to relieve the grand jury of its duty, as well as to have a preordained outcome in any potential criminal action in the future. The timing of the prosecutor's actions supports Defendant's position. Indeed, if the prosecutor is truly seeking a declaratory statement of the law, he would not have initiated the grand jury proceeding, assured Defendant she was not the subject of same, and then immediately brought a declaratory action feigning a "controversy". Rather, the prosecutor would have informed Defendant of the prosecuting attorney's intent to bring a grand jury, and then filed the declaratory action.

Defendant asks the Court to deny Plaintiff's request for relief and dismiss the action. Defendant further alleges that Plaintiff has violated MCL 767.19f(1), which provides:

Except as otherwise provided by law, a person shall not publish or make known to any other person any testimony or exhibits obtained or used, or any proceeding conducted, in connection with any grand jury inquiry. A person who violates this subsection is guilty of a misdemeanor punishable by imprisonment in the county jail for not more than 1 year or by a fine of not more than \$1,000.00, or both.

Defendant asks the Court to find and hold Plaintiff in contempt and refer Plaintiff to the Attorney Grievance Commission of the State Bar of Michigan. Defendant argues that Plaintiff has publicly disclosed the "secret" grand jury proceedings in a *Detroit Free Press* article on June 29, 2023, in which he not only violated this statute but also implicated this Court's participation in an attempt to trap Defendant in civil proceedings by making her litigate this case, waive her rights and privileges and potentially those of her clients. Defendant also alleges that Plaintiff should be held in contempt for abusing the process and powers of this Court by attempting to violate Defendant's constitutional and civil rights, by seeking through these "civil declaratory judgment" proceedings to

maliciously prosecute Defendant and to further violate her rights, which conduct is actionable under both Michigan law and the United States Code, e.g., MCL 691.1407 and 42 USC § 1983.

C. Findings

The Court finds that Plaintiff is entitled to a declaration as to the interpretation of the statute. The Court agrees with Plaintiff that the statutory interpretation set forth in the Complaint is supported by the plain language of the statutes. Defendant does not dispute that the statutory language is clear and unambiguous, and has not offered any contrary interpretation of the statutes.

Regarding Defendant's arguments that this Court lacks jurisdiction to hear this matter, and that there is no actual controversy, the Court has already addressed these arguments in its June 6, 2023 Opinion and Order and will not re-address them here.

Regarding Defendant's assertion that the prosecutor has violated MCL 767.19f(1), there is no evidence that the prosecutor has disclosed any testimony, exhibits, or proceeding in violation of the statute. Defendant's assertion that the Special Prosecutor has violated the Michigan Court Rules, federal and state laws and Constitutions, and the Michigan Rules of Professional Conduct are without merit. Defendant's allegations that this action is a "trap" or that it is causing her to waive her rights and privileges and potentially those of her clients are without merit.

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WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that

(1) the prohibition in MCL 168.932(b) against the undue possession of voting machines is not limited to events that occur “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained”; and

(2) for purposes of MCL 168.932(b), “undue possession” is possession that is not authorized by the Secretary of State or by court order.

This Order resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Phyllis McMillen
Phyllis McMillen, Circuit Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

STEFANIE LAMBERT JUNTILA,

Defendant.

Case No. 23-199245-CZ
Hon. Phyllis C. McMillen

OPINION AND ORDER

At a session of Court
Held On

June 6, 2023

This matter is before the Court on Defendant's motion for summary disposition (in lieu of an answer) pursuant to MCR 2.116(C)(4), (C)(5), (C)(7), and (C)(8). The Court heard oral argument on May 31, 2023. For the reasons set forth below, the motion is denied.

I. FACTS AND PROCEEDINGS

According to the Petition of the Attorney General for appointment of a special prosecutor, on February 10, 2022, Michigan Secretary of State Jocelyn Benson requested the Michigan Department of the Attorney General and Michigan State Police investigate third party access to vote tabulators, components and technology that had been used in the 2020 election. The Attorney General alleges in her petition that various individuals, including Defendant, Stephanie Lambert Junttila, orchestrated a plan to gain access to voting tabulators that had been used in various counties around the state.

The tabulators were collected and taken to hotels and/or AIRBNB's in Oakland County where they were broken into, and "tests" performed on the equipment. The investigation was completed, and the case presented to the Criminal Trials and Appeals Division of the Attorney General, seeking approval for criminal charges against various individuals including the Defendant Junttila.

When the investigation began there was not a conflict of interest. However, during the course of the investigation, facts were developed that caused investigators to believe that Matthew DePerno was one of the prime instigators of the conspiracy. DePerno became the Republican nominee for Attorney General, to run against Dana Nessel, the incumbent Attorney General. This created a conflict for the office of the Attorney General, prompting the petition for appointment of a Special Prosecutor.

The petition requests that a Special Prosecuting Attorney be appointed in this matter, to review the charging request and handle any prosecution that may result against Defendant and the other subjects of the investigation.

On September 8, 2022, pursuant to 2002 PA 706; MCL 49.160, D.J. Hilson, Prosecuting Attorney for Muskegon County, was appointed by the Prosecuting Attorneys Coordinating Council as a Special Prosecuting Attorney to perform all the duties of a prosecuting attorney with respect to the prosecution of Stefanie Lambert Junttila, and other individuals.

In October of 2022, Special Prosecutor Hilson petitioned for the convening of a grand jury pursuant to MCL 767.1, *et seq.* The role of the grand jury is to determine whether or not indictments should issue as set forth in MCL 767.23a.

On March 6, 2023, a grand jury was convened. Immediately after the convening of the grand jury, Ms. Junttila, through counsel, contacted the Special Prosecutor. In a letter dated March 7, 2023, Defendant, through counsel stated, “[It] was my understanding from the meeting yesterday that you have not fully read all applicable laws/statute/rules/Michigan Constitution, or you are ignoring the applicable law and making misrepresentation [sic].” The letter went on to state, “As you know, governmental immunity was modified in 2008 at the charging stage to qualified immunity. My client intends to seek any and all remedies available should this process continue.”

In a second letter, on March 8, 2023, Defendant through counsel again communicated to Special Prosecutor Hilson, “On Monday, March 6, 2023, it was clear that you did not understand the pertinent election laws...I would suggest that your office review all applicable statutes, election laws as well as the Michigan Constitution. I implore you to read and review those applicable statutes again to fully understand the constitutional and statutory rights of clerks and election officials in this state. I strongly suggest that your office hire independent counsel to advise you of those statutory and constitutional rights. Govern yourself accordingly.”

Defendant contends that Michigan law allows any person to have possession of voting tabulating machines if the possession was obtained by consent of the county clerk. The People contend that a fair and reasonable reading of the election law indicates that possession of voting tabulating machine can only be done pursuant to statute or Court order and for only limited purposes. The controversy between the parties was made clear and became ripe on March 6, 2023, when Ms. Lambert was subpoenaed to testify as it

related to allegations that she possessed and/or controlled the subject tabulators, prompting the aforementioned letters from her attorney.

A charging decision is ready to be made by the charging entity. Before a decision regarding criminal charges is made, the Special Prosecutor determined it is in the public interest and the best interests of justice for the Court to determine whether a court order or other legal process is required to possess a voting tabulator. The Special Prosecutor reasons a court ruling interpreting the election law through a declaratory judgment action will instruct the charging entity on whether the law prohibits possession of a voting tabulator machine and if so, under what conditions. Once the law is determined by the Court in this Declaratory action, the charging entity will be able to apply the facts to that law to determine whether probable cause exists that a crime was committed and determine whether an indictment should issue. An interpretation of the law that occurs only after a charging decision is made will be too late in informing the charging entity in making its decision whether to issue charges or not. Pursuant to MCL 767.20, the prosecuting attorney is to advise the grand jury on legal matters.

Presumably, the Special Prosecutor believed filing this action would be welcomed by Defendant as affording her an opportunity to be heard and obtain a ruling on the law, before a charging decision is made. That, however, is not the case. Rather Defendant has challenged the authority of this Court to make the decision requested in the complaint for declaratory relief and asks that the complaint be dismissed.

Defendant moves for summary disposition on several grounds, specifically, that the Court lacks subject matter jurisdiction to enter a declaratory judgment; Plaintiff lacks the legal capacity to sue; the Attorney General has already tried and failed to bring these

charges before a court; and the Special Prosecutor cannot change the language of the statute to suit his client's interests.¹ Defendant also argues that the Special Prosecutor is violating the Michigan Rules of Professional Conduct, specifically MRPC 3.3(d) (Candor Toward the Tribunal), because he is knowingly seeking relief outside of and in violation of the Michigan Court Rules. Defendant seeks dismissal of the lawsuit; a finding that Oakland County is not the proper venue²; a finding that the Special Prosecutor and Attorney General's Office have violated MRPC 3.3 and MCR 1.109(E); and an award of sanctions.

Plaintiff opposes the motion and moves for judgment in its favor pursuant to MCR 2.116(I)(2). Plaintiff asks the Court to order a speedy hearing and advance this matter on the calendar pursuant to MCR 2.605(D).

II. SUMMARY DISPOSITION STANDARDS

A. MCR 2.116(C)(4)

A summary disposition motion pursuant to MCR 2.116(C)(4) tests the trial court's subject-matter jurisdiction. *Braun v Ann Arbor Charter Twp*, 262 Mich App 154, 157; 683 NW2d 755 (2004). "[J]urisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending...." *Bowie v Arder*, 441 Mich 23, 39; 490 NW2d 568 (1992), quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253-254; 283 NW 45 (1938). "When viewing a motion under MCR 2.116(C)(4), [the] Court must determine whether the pleadings demonstrate that the defendant was

¹ On page 6 of her brief, Defendant refers to MCR 2.116(C)(6) ("[a]nother action has been initiated between the same parties involving the same claim") and MCR 2.116(C)(8) ("failure to state a claim on which relief can be granted"). However, Defendant's brief does not contain any argument based on (C)(6), and her arguments do not mention (C)(8).

² Defendant filed a separate motion for change of venue, which the Court denied.

entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact.” *Cork v Applebee’s of Mich, Inc*, 239 Mich App 311, 315; 608 NW2d 62 (2000).

B. MCR 2.116(C)(5)

Summary disposition is appropriate under MCR 2.116(C)(5) where “[t]he party asserting the claim lacks the legal capacity to sue.” In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), the court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *Kuhn v Secretary of State*, 228 Mich App 319, 332; 579 NW2d 101 (1998); *Dep’t of Social Services v Baayoun*, 204 Mich App 170, 173; 514 NW2d 522 (1994).

The Court of Appeals has stated that “standing to sue and capacity to sue are two distinct concepts” that should not be improperly conflated. *Flint Cold Storage v Dep’t of Treasury*, 285 Mich App 483, 502; 776 NW2d 387 (2009). “The purpose of the standing doctrine is to assess whether a litigant’s interest in the issue is sufficient to ensure sincere and vigorous advocacy.” *Lansing Schools Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010) (internal quotation marks and citation omitted). “Thus, the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable.” *Id.* (quotation marks and citation omitted). In other words, a defense asserting a lack of standing refers to whether a party has the requisite interest in the lawsuit to be allowed to maintain it. A motion based on a lack of standing defense “would be within MCR 2.116(C)(8) or MCR 2.116(C)(10), depending on the pleadings or other circumstances of the particular case.” *Leite v Dow Chemical Co*, 439 Mich 920, 920; 478 NW2d 892 (1992). The

“lack of legal capacity to sue,” on the other hand, refers to a party’s inherent inability to initiate *any* lawsuit. This Court has stated, for example, that a lack of capacity to sue “refers to some legal disability, such as infancy or mental incompetency....” *Moorhouse v Ambassador Ins Co, Inc*, 147 Mich App 412, 419; 383 NW2d 219 (1985).

C. MCR 2.116(C)(7)

Pursuant to MCR 2.116(C)(7), summary disposition is appropriate if a claim is barred by a prior judgment, i.e., res judicata. *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich.App 678, 687; 762 NW2d 529 (2008); *Beyer v Verizon North Inc*, 270 Mich App 424, 435; 715 NW2d 328 (2006). A motion pursuant to MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence so long as the evidence would be admissible. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The allegations set forth in the complaint must be accepted as true unless contradicted by other evidence. *Id.* “[T]he trial court must accept the nonmoving party's well-pleaded allegations as true and construe the allegations in the nonmovant's favor to determine whether any factual development could provide a basis for recovery.” *Hoffman v Boonsiri*, 290 Mich App 34, 39; 801 NW2d 385 (2010).

III. ANALYSIS

A. Request for summary disposition pursuant to MCR 2.116(C)(4)

MCR 2.605 governs declaratory judgments. MCR 2.605(A)(1) provides, “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

Where there is no actual controversy, “the court lacks jurisdiction to issue a declaratory judgment.” *Citizens for Common Sense in Gov’t v Attorney Gen*, 243 Mich App 43, 56; 620 NW2d 546 (2000), citing *McGill v Auto Ass’n of Mich*, 207 Mich App 402, 407; 526 NW2d 12 (1994). Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights. *Shavers v Attorney General*, 402 Mich 554, 588–589; 267 NW2d 72 (1978); *Durant v State of Michigan, Dep’t of Ed (On Remand)*, 238 Mich App 185, 204–205; 605 NW2d 66 (1999). “[W]hat is essential to an ‘actual controversy’ under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised.” *Shavers*, 402 Mich at 589; *Fieger v Comm’r of Ins*, 174 Mich App 467, 470–471; 437 NW2d 271 (1988).

The Court of Appeals has stated that the purpose of a declaratory judgment is.

to enable the parties to obtain adjudication of rights *before an actual injury occurs*, to settle a matter *before it ripens into a violation of the law* or a breach of contract, or to avoid multiplicity of actions by *affording a remedy for declaring in expedient action the rights and obligations of all litigants*. [*UAW v Central Mich Univ Trustees*, 295 Mich App 486, 496; 815 NW2d 132 (2012) (citation omitted; emphasis in original)]

Defendant argues that the action fails for several reasons. First, the Special Prosecutor failed to name any “parties that exist”. The Complaint alleges a controversy between himself and Defendant based upon a criminal action, but does not allege that Defendant is a defendant in the criminal action. Further, the prosecutor himself is not a party in a criminal case, but merely represents the People, and therefore he cannot be a party to this declaratory action. Second, there is no “actual controversy” between the Special Prosecutor and Defendant. The fact that Defendant disagrees with the Special Prosecutor on the interpretation of a law does not create a controversy within the meaning

of MCR 2.605; if that were true, then every attorney and every citizen would have a claim under MCR 2.605 simply because any attorney or citizen disagrees with another. Finally, the declaratory judgment will not protect the parties' actual rights. There is no allegation as to what rights or damages the Special Prosecutor will suffer without a declaratory judgment, and in fact, there is no allegation of actual or even hypothetical harm.

In response, Plaintiff argues that this action is proper, because the actual controversy between the parties was made clear when Defendant was subpoenaed to testify regarding allegations that she possessed and/or controlled voting tabulators, and the parties require clarification of the law to determine whether a clerk has the legal authority to permit any person to take possession of voting tabulators. Plaintiff argues it is in the public interest and the interests of justice for this Court to determine the meaning of the law before a decision regarding criminal charges is made. Defendant has indicated to Plaintiff that she intends to file suit against the Special Prosecutor and/or members of his staff and advised him to seek his own counsel. Plaintiff seeks a declaratory judgment to sharpen the issues for the parties; to help inform the charging entity regarding the law and to resolve Defendant's claim that the charging entity was relying on a misinterpretation of the law; and to avoid further litigation on the interpretation of the law as it relates to the charging decision.

Plaintiff argues that declaratory relief is proper here, as it was in *Lake Angelus v Mich Aeronautics Comm*, 260 Mich App 371, 375; 676 NW2d 642 (2004). In that case, a resident of the City of Lake Angelus (Robert Gustafson) threatened to request that the Aeronautics Commission override a city ordinance barring the landing, docking, or

takeoff of seaplanes if the City did not revoke the ordinance. The City sought a declaratory judgment as to the issue of whether the Commission has the power to override an ordinance adopted by a city regarding seaplane prohibitions. The defendant argued there was no “actual controversy” because Gustafson had not yet requested the Commission to override the ordinance, nor had the multistage administrative process that might lead to overriding the ordinance taken place. The trial court found there was an actual controversy for purposes of MCR 2.605, and the Court of Appeals affirmed, stating,

We agree with the city that there is substantial support for its contention that the adoption of the administrative rule following *Gustafson*^[3], coupled with Robert Gustafson’s perseverance, portends expensive, lengthy, and burdensome multistage administrative and legal proceedings, and that there is an actual controversy, and that it is in the public interest to declare the rights of the parties on the question whether the commission has the authority to override the ordinance. [*Id.* at 376]

Plaintiff argues that here, as in *Lake Angelus*, Defendant has claimed that the Special Prosecutor is relying on an inaccurate understanding of the law in making decisions related to investigations into felonies in Oakland County. Defendant, through counsel, has written letters indicating that the Special Prosecutor is unaware of or ignoring the law and making misrepresentations; the letters threaten litigation and urge him to hire counsel. Thus, the controversy is not hypothetical, but imminent. Plaintiff seeks guidance from the Court as it relates to the Special Prosecutor’s future conduct in evaluating the statute for charging purposes. Further, Defendant’s claim will likely lead

³ Gustafson had previously filed a lawsuit in federal court challenging the validity of the City’s ordinance barring the landing, docking, or takeoff of seaplanes in the City. In response, the Seaplane Pilots Association wrote to the Commission asking it to clarify that all bodies of water are open to seaplanes, regardless of local ordinances. In lieu of granting the request, the Commission adopted an administrative rule setting forth a detailed multistage administrative process by which a local ordinance could be overridden.

to lengthy and burdensome legal proceedings similar to the situation in *Lake Angelus*, which could be avoided through “a declaration of the rights of the future conduct of the Special Prosecutor in this matter as it relates to the interpretation of MCL 168.932(b).” Plaintiff also states that the Court’s declaratory ruling “will assist the charging entity to apply the law to the facts revealed through the police investigation in determining whether charges should even be filed; a decision that must be made prior to any criminal charges being filed.”

The Court finds that Defendant is not entitled to summary disposition pursuant to MCR 2.116(C)(4), because the Court does not lack jurisdiction to enter a declaratory judgment. Plaintiff is asking for a legal interpretation of a statute to direct his future action, specifically, the law that applies to the charging decision. He also seeks a legal interpretation of the statute to direct his future action before he subjects himself to the actions threatened by Defendant. This is exactly the type of action contemplated by MCR 2.605.

MCR 2.605 contains specific provisions governing actions for a declaratory judgment. MCR 2.605(A)(1) empowers a court to “declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” MCR 2.605(C) provides that “[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in an appropriate case.”

Declaratory relief, by its very nature, is meant to advise parties of their rights and liabilities under a statute or document, prior to action being taken, without having to act at their peril. For this reason, the declaratory judgement rule now embodied in MCR

2.605 was adopted and is now liberally construed by the courts of the State of Michigan. As stated by the Michigan Supreme Court in *Adair v State*, 486 Mich 468, 490; 785 NW2d 119 (2010):

An action for a declaratory judgment is typically equitable in nature and subject to different rules than other causes of action. The declaratory judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” We have also consistently held that “a court is not precluded from reaching issues before actual injuries or losses have occurred.” [footnotes omitted]

The purpose of a declaratory judgment action is to enable the parties to obtain adjudication of rights before an actual injury occurs, to settle a matter before it ripens into a violation of the law or a breach of contract, or to avoid multiplicity of actions by affording a remedy for declaring in expedient action the rights and obligations of all litigants. *Skiera v Nat’l Indemnity Co*, 165 Mich App 184, 189; 418 NW2d 424 (1987).

This case is not merely hypothetical. Per the petition of the Attorney General, Defendant is the investigation of the Defendant’s involvement in the possession of the subject tabulators has been completed, and it is time for a charging decision to be made. A determination of the law will direct the Special Prosecutor and through his advice pursuant to MCL 767.20 and 767.20 the charging entity and could preclude a determination that an indictment should issue, thereby avoiding unnecessary litigation.

There is clearly a disagreement between the parties respecting their status or rights and duties with reference to the subject action, as reflected in the letters sent by Defendant through her attorney to that effect. Defendant believes that she has the proper interpretation of the law, while the Special Prosecutor believes he does, and desires to advise the grand jury in that regard. To resolve the issue of the law would therefore allow

the parties a chance to be heard on the issue, before the action ripens by way of a charging decision on whether or not to indict. Both parties have an interest in this matter, and their interests are adverse to one another.

Defendant's arguments that the Special Prosecutor is individually a party to this action is not supported by the facts or law that establish the authority and duty of the Attorney General and in turn the Special Prosecutor. The Special Prosecutor is acting on behalf of the People of the State of Michigan, and should a decision be made to charge the Defendant, it will be made in their name. It is in the best interest of the People and in the interest of justice that the court determine the meaning of the law before a decision on criminal charges is made. *Shavers*, 402 Mich at 588-590.

B. Request for summary disposition pursuant to 2.116(C)(5)

Summary disposition pursuant to MCR 2.116(C)(5) is proper when "[t]he party asserting the claim lacks the legal capacity to sue." *Moorhouse*, 147 Mich App at 419 n 1. "Lack of 'capacity to sue' refers to some legal disability," such as infancy, mental incompetency, or improper party in interest, which defect will deprive the party of the right to come into court and seek relief in a given case." *Id.*

Defendant asserts that the Special Prosecutor cannot be the real party in interest. In support of her assertion, she states "Indeed, there is an inherent, and inescapable legal disability in his seeking the requested declaratory relief from the Court. He is not the real party in interest in the sense required by the court rules". Defendant provides no further illumination of her argument, nor supporting authority, nor is the Court aware of any

support for this assertion. The Special Prosecutor is not acting in his personal capacity but rather on behalf of the People of the State of Michigan as he is authorized to do.

Michigan Law grants broad authority to the Attorney General to represent the people of the State of Michigan, grounded both in statute and at common law. In *Mundy v McDonald*, 216 Mich 444, 450-451; 185 NW 877 (1921) the Supreme Court stated, “A broad discretion is vested in this officer in determining what matters may, or may not, be of interest to the people generally. We must recognize the fact that the office of Attorney General is ancient in its origin and history, and it is generally held by the states of the Union that the Attorney General has a wide range of powers at common law.”

MCL 14.28 provides:

The attorney general shall prosecute and defend all actions in the supreme court, in which the state shall be interested, or a party; he may, in his discretion, designate one of the assistant attorneys general to be known as the solicitor general, who, under his direction, shall have charge of such causes in the supreme court and shall perform such other duties as may be assigned to him; and the attorney general shall also, when requested by the governor, or either branch of the legislature, and may, when in his own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

Further, MCL 14.101 provides:

The attorney general of the state is hereby authorized and empowered to intervene in any action heretofore or hereafter commenced in any court of the state whenever such intervention is necessary in order to protect any right or interest of the state, or of the people of the state. Such right of intervention shall exist at any stage of the proceeding, and the attorney general shall have the same right to prosecute an appeal, or to apply for a re-hearing or to take any other action or step whatsoever that is had or possessed by any of the parties to such litigation.

The statutory and common law authority of the Attorney General should be liberally construed. *Mich State Chiropractic Ass'n v Kelley*, 79 Mich App 789, 791; 262 NW2d 676 (1977).

These statutes allow for both the intervention and the initiation of lawsuits in which the interest of the state call for action. *In re Lewis' Estate*, 287 Mich 179, 184; 283 NW 21 (1938). Additionally, MCL 49.153 authorizes prosecuting attorneys to appear for the state to initiate suits “whether civil or criminal, in which the state or county may be a party of interested.” Under this broad authority, the Special Prosecutor has the capacity to sue in his official capacity as Special Prosecutor on behalf of the Attorney General on behalf of the People of the State of Michigan. Summary disposition under MCR 2.116(C)(5) is not warranted.

C. Request for summary disposition pursuant to MCR 2.116(C)(7)

Defendant also asserts that dismissal is warranted under MCR 2.116(C)(7) on the basis that the Attorney General Dana Nessel “tried and failed to bring these charges before a court” in the Third Circuit Court, Wayne County. Defendant alleges that this would be a basis for dismissal of this case under MCR 2.116(C)(7).

MCR 2.116(C)(7) allows for summary disposition where “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.”

The doctrine of res judicata (also known as claim preclusion) precludes litigation of a claim that is predicated on an underlying transaction that was litigated in a prior case. *Stoudemire v Stoudemire*, 248 Mich App 325, 334; 639 NW2d 274 (2001). Michigan broadly applies res judicata to all claims that could arise from the same transaction or set of events “[to] which the parties, exercising reasonable diligence, might have brought forward at the time.” *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). The following elements must be shown to establish res judicata: (1) the prior decision was decided on the merits; (2) the prior decision was a final judgment; (3) the earlier and subsequent actions involved the same parties or their privies; and (4) the issues presented in the subsequent case were, or could have been raised and decided, in the prior case. *Stoudemire*, 248 Mich App at 334.

The doctrine of collateral estoppel “precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in that prior proceeding.” *Rental Props Owners Ass’n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 528-529; 866 NW2d 817 (2014). “Generally, application of collateral estoppel requires (1) that a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) that the same parties had a full and fair opportunity to litigate the issue, and (3) mutuality of estoppel.” *Id.* at 529.

Defendant has not submitted any proof that indictments have been sought, or that a complaint/information was filed in the Third Circuit Court, Wayne County, as it relates to the investigation into violation of Michigan Law occurring in Oakland County. Nor

has Defendant submitted any final judgment that would bar the current action. Neither res judicata nor collateral estoppel preclude the decision being sought in the Special Prosecutor's complaint. There are no grounds for summary disposition pursuant to MCR 2.116(C)(7).

D. Request for Dismissal "Because the Special Prosecutor Cannot Change the Language of the Statute to Suit His Client's Interests"

The Court is uncertain of the argument being made by the Defendant under the above heading but feels compelled to respond to various assertions. Nothing in the Special Prosecutor's request for declaratory judgment impacts Defendant's due process rights. If anything, they expand them. Normally, a charging decision is made by the prosecutor without any input from the prospective defendant. Here, in light of the controversy that has arisen between the parties, the Prosecutor has asked that both sides of the disagreement be heard, and a ruling made on the applicable law. The direction sought by the Special Prosecutor is in the charging process, an activity normally in the sole purview of the prosecutor. If an indictment is issued and charges brought against Defendant, she will proceed to preliminary examination and trial, where all of her Constitutional rights will be fully protected.

MCL 14.28 provides that the Attorney General may, when in his [or her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested. The Attorney General has statutory and common-law authority to act on behalf of people of State in any cause or matter and such authority is liberally construed and should be interfered with only where his actions are clearly inimical to people's interest. *Mich State Chiropractic*, 79 Mich App at 791. Here,

it is clearly in the interest of the People of the State of Michigan that a charging entity considering indictments of a citizen be provided with a proper interpretation of the laws which the persons under investigation are alleged to have violated.

E. Michigan Rules of Professional Conduct and MCR 1.109

Defendant argues that the Special Prosecutor's conduct is in violation of the Michigan Rules of Professional Conduct, specifically MRPC 3.3 (Candor Toward the Tribunal), which provides in part:

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts that are known to the lawyer and that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Defendant argues that the Special Prosecutor is wrongfully seeking to obtain a declaratory judgment in a civil action in order to obtain a conviction in a criminal action and is knowingly seeking relief outside of and in violation of the Michigan Court Rules. Defendant acknowledges this action is not ex parte, but asserts it is ancillary to a secretive grand jury proceeding that is an ex parte proceeding. Defendant asks the Court to find that the Special Prosecutor and the Attorney General's Office have violated MRPC 3.3 and MCR 1.109(E), and to assess sanctions.

In response, Plaintiff argues that the Special Prosecutor has the authority to bring this action, and there is no basis to find that the Special Prosecutor has misled this Court or withheld information. Further, there is no basis to assess sanctions pursuant to MCR 1.109; there is no improper purpose, and the actual controversy was created by Defendant when she threatened to file a lawsuit against the People.

The Court finds that Defendant is not entitled to any of the relief she seeks regarding the Michigan Rules of Professional Conduct or MCR 1.109. There is nothing

on this record to indicate that the Special Prosecutor or the Attorney General has violated any of the rules, and in any event, MRPC 1.0(b) states, “[t]he rules do not...give rise to a cause of action for enforcement of a rule or for damages caused by failure to comply with an obligation or prohibition imposed by a rule”. Further, the Court does not find that the Special Prosecutor or the Attorney General has violated MCR 1.109(E) in any manner.

WHEREFORE, IT IS HEREBY ORDERED that Defendant’s motion for summary disposition is **denied**.

IT IS FURTHER ORDERED that the court, pursuant to MCR 2.605(D) and MCR 2.116(I) and (J) sets the hearing on the issues for which the Plaintiff seeks declaratory relief for July 7, 2023, at 10:00 a.m.

IT IS FURTHER ORDERED that Defendant may, within 14 days from the date of this order, file any brief on the merits of the case that she wishes the court to review.

IT IS FURTHER ORDERED that Plaintiff may file a reply brief within 7 days of the filing of Defendant’s brief.

IT IS FURTHER ORDERED that Defendant file an answer to the complaint within 14 days of the date of this order.

IT IS SO ORDERED.



Phyllis McMillen, Circuit Judge

ATTACHMENT 2

*Complaint and Brief for Declaratory
Judgment*

| | | |
|--|----------------|--------------------|
| STATE OF MICHIGAN JUDICIAL DISTRICT 13TH JUDICIAL CIRCUIT ANTRIM COUNTY | SUMMONS | CASE NUMBER |
|--|----------------|--------------------|

Court address

205 E CAYUGA ST, BELLAIRE, MI 49615

Court telephone number

Plaintiff's name, address, and telephone number

STEFANIE LAMBERT, IN PRO PER,

Plaintiff's attorney bar number, address, and telephone number

STEFANIE LAMBERT

400 RENAISSANCE CENTER, 26TH FLOOR

DETROIT, MI 48234

PHONE: (313) 410-6872

v

Defendant's name, address, and telephone number

D.J. HILSON

Muskegon Prosecutor

Attorney for the People

990 Terrace Street, Fl. 5

Muskegon, MI 49442

(231) 724-6435

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☒ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☒ this court, ☐ _____ Court, where

it was given case number 2020-0009238-CZ and assigned to Judge ELSENHEIMER

The action ☐ remains ☒ is no longer pending.

Summons section completed by court clerk.

SUMMONS**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

| | | |
|------------|------------------|-------------|
| Issue date | Expiration date* | Court clerk |
|------------|------------------|-------------|

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the deal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

☐ I served ☐ personally ☐ by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

☐ I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

| | |
|-----------------------------|--------------------------|
| Name | Date and time of service |
| Place or address of service | |
| Attachments (if any) | |

☐ I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

☐ I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

| | | | |
|-----------------------------|----------------|-----------|------------------------|
| Service fee \$ | Miles traveled | Fee \$ | |
| Incorrect address fee \$ | Miles traveled | Fee \$ | TOTAL FEE \$ |

Signature _____

Name (type or print) _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) _____ on _____
Date and time

Signature _____ on behalf of _____

Name (type or print) _____

STATE OF MICHIGAN
IN THE 13TH CIRCUIT COURT OF ANTRIM COUNTY

STEFANIE LAMBERT,

Petitioner / Plaintiff,

v.

Case No. 24- -CZ
Hon. Kevin A. Elsenheimer

D.J. HILSON,

Respondent / Defendant.

COMPLAINT FOR DECLARATORY RELIEF UNDER MCR 2.605

There are no other pending civil actions
arising out of the transaction or occurrence.

There is a pending criminal case in Oakland Circuit Court,
Case No. 2023-285759-FH

There is a previous matter concerning this transaction or occurrence
In Antrim County 2020-0009238-CZ previously assigned to Judge Elsenheimer

NOW COMES, Stefanie Lambert, *in pro per*, and states:

1. Petitioner is an attorney licensed in the state of Michigan and assisted in the case of *William Bailey v. Antrim County*, Case No. 2020-9238-CZ, in which the Discovery Order subject to this action was entered. (**Attachment 1**, Discovery Order dated December 4, 2020) (Discovery Order).

- a. Ms. Lambert worked as one of Bill Bailey's attorneys, but did not enter an appearance as an attorney of record.
- b. Ms. Lambert consulted on advice and strategy with the client and legal team but remained in the background due attacks from SOS Benson and AG Nessel that were ongoing at the time.

- c. Ms. Lambert, a former Wayne County Prosecutor, with significant trial experience ranging from the life offense docket to the special victim unit, worked as Sidney Powell's local counsel for the appeal of *King v Whitmer*, 556 F. Supp. 3d 680 (E.D. Mich. 2021).
- d. SOS Benson and AG Nessel filed the first bar grievance Ms. Lambert had ever received along with a request for sanctions against Ms. Lambert.
- e. Ms. Lambert ultimately won against SOS Benson and AG Nessel on appeal of the sanction, and her bar grievance was dismissed. (**Attachment 2**).
- f. As a matter of strategy, Ms. Lambert thought it was in William Bailey's best interest if she worked in the background supporting Matthew Deperno rather than have the judge and possible jury hearing the case be distracted with press related to these professional reputational attacks.
- g. In *King v Whitmer, supra*, Judge Parker had dismissed the case prior to discovery and held that Powell had filed a "frivolous" lawsuit.
- h. Ms. Lambert represents another client who had obtained ballots and all election documentation from a FOIA request from the Detroit November 3, 2020 election.
- i. Three years later the documents were reviewed by Ms. Lambert's client and Erich Speckin, an expert in forensic and paper documents.
- j. Speckin ultimately found an estimated 35,000+ fraudulent ballots.
- k. These ballots and the issues related to them which would have timely been discovered had the *King v Whitmer, supra* matter been allowed to proceed to discovery and not been dismissed days after it was filed. (**Attachment 3**, Speckin Report, July 27, 2023).

2. Defendant is a Special Prosecutor acting in this capacity on behalf of the Attorney General of the State of Michigan who has indicted the defendant in Oakland County. (**Attachment 3**) which is pending trial in File No: 23-285729-FH with a date certain of October 23, 2024.

- a. This indictment is a pending criminal case in which Petitioner is charged for conduct related to her representation of the client William Bailey and while acting in reliance upon an order from this court dated December 4, 2020, which order was issued by the Court. (**Attachment 1**, Discovery Order dated December 4, 2020) (Discovery Order).
- b. The scope of that order as it relates to the Petitioner's conduct and other of her rights under law must be declared.
- c. On Friday, September 27, Respondent, Special Prosecutor and Assistant Special Prosecutor admitted during a status conference that the issue addressed by this Court, to wit, whether a clerk has authority to authorize possession (because they do), is a fatal issue to the prosecution's case, should this court rule that the clerks do have such authority.
- d. Respondent's even seek to enter this Court's order as an exhibit in the trial, because they believe, incorrectly, that undersigned and other attorneys exceeded the court's order and that the Secretary of State, despite declaring in this case during discovery that it WAS in fact the clerks and townships that had the authority to release the tabulators, would not having would have given permission.
- e. Yet, Respondents agree based on their representations in the criminal prosecution that this issue of "clerk permission" is critical to undersigned's case and a ruling that local

clerks have the ability to grant permission is “fatal” to their case and such “would obviously require dismissal.”

- f. In the case in which this Court’s order was entered, which order is sought to be introduced for the proposition that the SOS had authority AND not the local clerks, the SOS refused to produce the 19 tabulators in discovery, *because she then claimed that **only the city and townships had ability to give such permission.***
- g. As an important aside, Michigan Rules of Professional Conduct (MRPC) 8.3 require the court to report a violation of law including misconduct pursuant to MRPC 8.4 to the state bar, and this Court has had the reports in its possession for several years and no reports to the bar have been made.
- h. Moreover, the court knew and read the reports involving ES&S and the control group and concluded that they were compelling and that the Legislature should review them and be involved.
- i. Now Respondent seeks to charge and punish, once again, their literal opponents in the civil case in this Court for exposing this evidence.
- j. This Respondent and the AG did even though it was criminal for them to investigate opposing counsel and they wanted this case in Oakland County, not this County (where venue was sought) and needed to find a crime to even if it was as this Court and the SOS had essentially declared it was a LEGAL act.
- k. In particular, in recordings that were at first secreted and then produced by the prosecutor, AAG Hagaman-Clark, who was responsible for issuing the indictment ***and*** appointing the Special Prosecutor, is heard discussing the need to create a conspiracy to charge Ms. Lambert and a desire to have a certain jury pool. AAG

Hagaman-Clark expressed the intent to pick the venue with the objective of influencing jury selection and forum shopping for what she thought would be the location most likely to have a jury that would convict Ms. Lambert. Hagaman-Clark stated: “I really like Mary Beebe, I think she’s a great prosecutor up there, but I don’t want to be picking a jury of [Ms. Beebe’s] peers up there on this kind of crap. Whereas, if we can...charge them all with some kind of conspiracy, charge it down here” She also stated: “You know even if it’s conspiracy to you know commit a *legal* act in an illegal manner.” Hagaman-Clark’s comments are telling. That is, the only way that they could get a “jury” in Oakland County was to make up a conspiracy charge as against all the alleged defendants. Hagaman-Clark knew that a jury in Roscommon County (or elsewhere up north including of course Antrim) would never convict Ms. Lambert because there was no crime committed, even acknowledging herself that it was a “crap” case.

1. Therefore, there is a direct controversy before this Court to declare the legal rights and obligations of the parties.
3. An action for declaratory relief is authorized by Michigan Court Rules and law and lies as a remedy that may be sought as against government officials and individuals in litigation concerning disputes over the proper role or roles, rights, and obligations of the respective parties, and allocations of legal duties and powers of the one seeking a declaration of such respective rights and obligations. See, e.g., *Demorest v Di Pentima*, 118 Mich App 299, 303; 324 NW2d 634 (1982); *Gyarmati v Bielfield*, 245 Mich App 602, 605; 629 NW2d 93 (2001); see also MCR 2.605(A).
4. MCR 2.605(A)(1) further provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an

interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.”

5. A complaint for declaratory relief requests that a court declare the rights and duties, and/or status, of the parties vis-à-vis one another.

6. While it is true that a declaratory judgment is usually obtained before there has been an interference with the rights of a party, such interference is not necessarily a bar to such an action.

“The distinctive characteristic of a declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words, such a judgment does not involve executory or coercive relief. The essential distinction between an action for declaratory judgment and the usual action is that no actual wrong need have been committed or loss have occurred in order to sustain the declaratory judgment action, but there must be no uncertainty *that the loss will occur or that the asserted right has been or will be invaded*. The purpose of the declaratory judgment is to permit adjudication of the rights or status of the parties without the necessity of a previous crime or breach.” *Demorest*, supra (cleaned up) (emphasis added).

7. Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights and responsibilities.

- a. What is essential to an “actual controversy” under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised. *Citizens for Common Sense in Gov’t v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000) (cleaned up).
- b. The Michigan Supreme Court has stated that “[t]he declaratory judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978).
- c. The Supreme Court has also consistently recognized that the declaratory judgment avenue is available to guide and inform litigants before a legal insult occurs. “One

great purpose is to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, that they may guide their actions accordingly and often may be able to keep them within lawful bounds.” *Merkel v Long*, 368 Mich 1, 13; 117 NW2d 130 (1962) (cleaned up).“Courts continually declare rights which have not become fixed under an existing state of facts, but are prospective only; they may not, however, be so remote and speculative as to be hypothetical and abstract.”” *Id.*, quoting Borchard, *Declaratory Judgments* (2d ed), pp 422-424.

8. An actual controversy exists between the parties as to their rights and obligations under the Michigan Election Code and the Court’s December 4, 2020 Discovery Order. **(Attachment 1).**

- a. The controversy resulting in the aforementioned order arose in Antrim County and therefore venue is properly found here.
- b. The controversy involves an order of this Court and relates to the Petitioner, who was a lawyer working with the team representing William Bailey.

9. Therefore, this Court has subject matter jurisdiction over this request for a declaratory judgment.

10. Petitioner asserts that the discovery order was granted with a scope that authorized the possession and analysis of voting systems and even though specific systems were not listed that ‘actual’ systems would be required to complete the discovery.

11. The Court considered the statements of the AG office that disavowed any control over the systems was outside the authority of the Secretary of State or County Clerk to compel production of actual devices.

12. Petitioner further asserts that such permission from a court is not required by law where a clerk provides consent as there is both ‘actual’ authority and ‘apparent’ authority.

13. Petitioner further alleges that the conduct of an election commences with the Logic & Accuracy Test of the voting systems and ends with certification, after the time for filing a recount expires.

14. Petitioner further alleges that a township clerk or municipal clerk is the custodian of the voting systems owned by the local entity and as such has the authority to grant ‘due possession’ outside the time during the *conduct of the election* defined in MCL 168.932 as being from the logic and accuracy test to the certification of the election, after the time for a recount expires..

15. Petitioner further alleges that the Secretary of State lacks the authority by statute to control the possession of the voting system or access outside of the *conduct of an election* as being from the logic and accuracy test to the certification of the election, after the time for a recount expires..

16. The petitioner further alleges that the Secretary of State lacks the authority to take administrative action in the absence of a statute granting authority.

17. Administrative action that is binding requires it be done within the ‘rulemaking’ authority in a procedure following the Administrative Procedures Act.

18. In 2020-2021, there was no statute authorizing the Secretary of State to restrict access to the voting machines and their administrative authority is limited to the conduct of elections.

19. Furthermore, there is no promulgated rules to restrict access to voting systems outside of the time of the conducting of elections.

20. Furthermore, there were no (non-binding) instructions or guidance that limited access or possession of voting systems outside the time of conducting elections.

21. Petitioner further alleges that the clerk of a township or municipality has a duty under federal law to protect all election records pursuant to 52 USC §§ 20701, 20702, and 20703, *inter alia*.

22. Petitioner further alleges that at the time of the entering by this Court of its order that the clerk under MCL 168.772 had the custody of a voting system and the duty to inspect, maintain, repair and prepare the voting systems.

23. Under MCL 41.65, township clerks, who are constitutional officers, have custody of all records and books, including all tabulators and voting machines. County and township clerks are constitutional officers in Michigan, and as such, they have unilateral and exclusive constitutional, common-law and statutory duties to include keeping and maintaining “all records”. See, 1963 Mich Const Art. VII, § 4; § 18; MCL 41.65. The latter statute states, in pertinent part, the following: “The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law....” MCL 41.65. No duties provided by law under the Constitution to constitutional officers can be transferred or delegated to another by statute, executive order, or otherwise. *Dubois v. Riley Twp. Bd.*, 126 Mich. 587; 85 NW 1067 (1901).

24. Petitioner further alleges that the Secretary of State has not taken any formal administrative action to promulgate a formal rule and is relying on decrees, guidance, and/or manuals to justify her ostensible authority.

25. Petitioner further alleges that the Secretary of State has not had her rights declared previously by any Michigan Court as to the limits of her authority to declare the access granted and resulting possession “undue.”

26. Petitioner further alleges that without this “power” granted by statute there is no issue of fact in the charges in the underlying criminal case and that the overreach of power needs to be restrained by the judicial branch under the separation of powers.

27. Petitioner further alleges that a judge of this Court issued a discovery order and the *scope* of that order permitted analysis of the internal hardware and software on the devices in question, which included the right to test the systems, retrieve records from the systems, and to attempt to determine if the systems functioned properly, as well as whether there had been potential or actual remote connection and/or remote access to the systems.

28. Petitioner alleges that the Court’s order did not exclude expert comparison with other voting systems to formulate opinions, and in fact, nowhere did the court limit use or prevent other tabulators from being analyzed to compare with the election management system results. But for this black box comparison and testing, there would never have been the discovery of vote shifting, which is why the SOS and AG sought to prevent further analysis of tabulators, going so far as to begin threatening clerks and lawyers with crimes. Contrary to what she told this Court that she had no authority over city and township clerks when she was asked in discovery.

29. Petitioner further alleges that the silence in the Antrim case on the admissibility of the reports which clearly referenced the device numbers as well as reported use of actual devices is significant to the understanding of the AG’s position of possession at that time BEFORE deciding to investigate the legal team and experts for a crime—the lack of objection to the report’s admissibility or the methods of testing is an important fact.

30. Petitioner further alleges that this Court must determine, as a matter of law, whether the court’s discovery order and clerks, in general, had the right to grant possession to the voting systems.

31. That this court should declare MCL 168.932(b) is void for vagueness under the facts and circumstances where Respondent was unsure of its interpretation at the time of charging Petitioner, and therefore, it is unreasonable to assume that the interpretation by the Petitioner was in error.

32. If the Special Prosecutor had to file the Oakland declaratory judgment action seeking an interpretation of what the law authorized, then how could the Petitioner have been on notice what actions violated any statute or court order for conduct that predated the declaratory relief?

WHEREFORE, pursuant to the aforementioned motion and accompanying brief in support, Petitioner requests this Honorable Court to declare the rights and obligations of the parties under the laws of the State of Michigan, including but not limited to:

- a. THAT THE COURT'S DISCOVERY ORDER IS PROPERLY INTERPRETED AS GRANTING AUTHORITY TO POSSESS OFFICIAL VOTING SYSTEMS FOR TESTING ;
- b. THAT THE SECRETARY OF STATE HAS NO LEGAL AUTHORITY GRANTED BY STATUTE TO RESTRICT ACCESS TO THE VOTING SYSTEMS OWNED BY THE TOWNSHIPS AND MUNICIPALITIES OUTSIDE THE TIME FOR CONDUCTING ELECTIONS AS DEFINED FROM THE LOGIC AND ACCURACY TEST THROUGH CERTIFICATION AND PAST THE TIME OF RECOUNT.
- c. THAT NO FORMAL OR INFORMAL AGENCY ACTION OF THE MICHIGAN SECRETARY OF STATE EXISTED AS TO THE POSSESSION OF THE VOTING SYSTEMS AT THE TIME OF THE EXPERT ANALYSIS THAT RESULTED IN INDICTMENT.
- d. THAT THE SCOPE OF THE COURT'S DISCOVERY ORDER GRANTED DISCOVERY AUTHORITY THAT NECESSARILY INCLUDED THE RIGHT TO EXAMINE AND REPORT ON THE INTERNAL INVESTIGATION OF THE DEVICE; TO EXAMINE ALL HARDWARE AND SOFTWARE AS CONFIGURED AND TO RETRIEVE SYSTEM OPERATIONAL LOGS; TO DETERMINE WHETHER THE SYSTEM OPERATED AS INTENDED; AND TO INSPECT FOR ANY EVIDENCE OF REMOTE ENTRY DURING THE

ELECTION AS DEFINED FROM THE LOGIC AND ACCURACY TEST TO THE CERTIFICATION OF RESULTS;

- e. THAT TOWNSHIP CLERKS AS THE CUSTODIAN OF TOWNSHIP VOTING SYSTEMS WITH LEGAL DUTIES AND POWERS GRANTED BY CONSTITUTION AND LAW UNDER 1963 MICH CONST ART. VII, § 4; § 18; AND MCL 41.65, CAN GRANT PERMISSION TO A LEGAL TEAM TO HAVE POSSESSION OF A VOTING SYSTEM AND TO INSPECT THE SYTEM OUTSIDE OF THE ELECTION AS DEFINED FROM THE LOGIC AND ACCURACY TEST TO THE CERTIFICATION OF RESULTS WITHOUT VIOLATING ANY CRIMINAL LAWS AND WITHOUT THE PERMISSION OF THE SECRETARY OF STATE OR COURT ORDER;
- f. THAT THE SPECIAL PROSECUTOR'S NOVEL INTERPRETAION OF MCL 168.932(b) RUNS CONTRARY TO LAW
- g. THAT THIS COURT'S DISCOVERY ORDER WAS INTENDED WITHIN ITS SCOPE TO HAVE THE VOTING SYSTEMS TESTED WHICH NECESSARILY REQUIRED POSSESSION AND SUCH POSSESSION WAS NOT UNDUE UNDER MCL 168.932(c).
- h. THAT THE TERM UNDUE POSSESSION WAS VOID FOR VAGUENESS AS IT FAILS TO APPRISE DEFENDANTS OF THE CONDUCT PROSCRIBED AS WELL AS CHARGING PROSECUTORS.

Respectfully submitted,

/s/ Stefanie Lambert
Stefanie Lambert Juntilla (P71303)
Law Office of Stefanie L. Lambert PLLC
Attorney for Plaintiff / Appellant
400 Renaissance Center
26th Floor
Detroit, MI 48234
www.stefanielambert.com
attorneylambert@protonmail.com

Dated: September 30, 2024

CERTIFICATE OF SERVICE

Undersigned states that the attached pleadings were served upon counsel of record in accordance with the Michigan Court Rules, and electronically served where allowed by the Court Rules and MIFILE electronic filing system.

Respectfully submitted,

/s/ Stefanie Lambert
Stefanie Lambert Juntilla (P71303)
Law Office of Stefanie L. Lambert PLLC
Attorney for Plaintiff / Appellant
400 Renaissance Center
26th Floor
Detroit, MI 48234
www.stefanielambert.com
attorneylambert@protonmail.com

Dated: September 30, 2024

ATTACHMENT 1

Discovery Order, December 4, 2020,
William Bailey v. Antrim County, et al.,
Case No. 20200009238-CZ

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

WILLIAM BAILEY,

Plaintiff,

v

File No. 2020009238CZ
HON. KEVIN A. ELSSENHEIMER

ANTRIM COUNTY,

Defendant.

Matthew S. DePerno (P52622)
Attorney for Plaintiff

Haider A. Kazim (P66146)
Attorney for Defendant

DECISION AND ORDER REGARDING
PLAINTIFF'S MOTION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER,
SHOW CAUSE ORDER AND PRELIMINARY INJUNCTION

The above captioned Plaintiff is a resident of Central Lake Township, Antrim County, Michigan. Plaintiff voted in person in the most recent election held November 3, 2020. Subsequently, Plaintiff filed a complaint on November 23, 2020, including the following counts: (1) constitutional right to accuracy and integrity of elections; (2) violation of “purity of elections clause;” (3) election fraud [pursuant to] MCL 600.4545(2) and MCL 158.861; (4) common law election fraud; (5) equal protection violation; and (6) statutory election law violations. Along with his complaint, the Plaintiff also filed a Motion for an Ex Parte Restraining Order, Show Cause Order and Preliminary Injunction. The proposed order, submitted by Plaintiff, would permit Plaintiff to take forensic images from the 22 precinct tabulators and investigate those images, thumb drives, software and the County Clerk’s “master tabulator.”¹ Additionally, the order would

¹ Defendant asserts that there is no “master tabulator” and that the Dominion tabulator in its possession is the same type used by the individual precincts.

prohibit destruction of evidence relating to the November 3, 2020 election and prohibit turning on the Dominion tabulators or connecting the tabulators to the internet.

The Court heard oral arguments on the Plaintiff's motion on December 3, 2020, and took the matter under advisement. For purposes of this Decision and Order, the Court adopts the Defendant's statement of facts as to the events leading up to and immediately after the election. Moreover, the Defendant has agreed to preserve and protect all records in its possession used to tabulate votes in Antrim County, to not turn on the Dominion tabulator in its possession and to not connect the Dominion tabulator in its possession to the internet.² Therefore, the only remaining issue to be considered by the Court is whether the Plaintiff is permitted to obtain the requested forensic images.

Injunctive relief is generally considered an extraordinary remedy that issues where justice requires, there is an inadequate remedy at law, and there is a real and imminent danger of irreparable injury.³ A preliminary injunction requires a particularized showing of irreparable harm; an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural.⁴ To determine whether an injury constitutes irreparable harm, as would support a preliminary injunction the injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief.⁵ The irreparable-harm factor is considered an indispensable requirement for a preliminary injunction.⁶ In determining whether to issue a preliminary injunction, the trial court must evaluate whether: (1) the moving party made the required demonstration of irreparable harm, (2) the moving party showed that it is likely to prevail on the merits, (3) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, and (4) there will be harm to the public interest if an injunction is issued.⁷

First, Plaintiff asserts that he will suffer irreparable harm via the loss of his constitutional right to have his vote counted if the temporary restraining order and preliminary injunction are not granted. Specifically, in the recent election, the Village of Central Lake included a proposed

² According to Defendant, it only retains possession of one Dominion tabulator machine. The remaining Dominion tabulator machines are in the custody, control and/or possession of the 22 individual precincts.

³ *Mich AFSCME Council 25 v Woodhaven-Brownstone School Dist*, 293 Mich App 143; 809 NW2d 444 (2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Detroit Fire Fighters Ass'n v City of Detroit*, 482 Mich 18; 753 NW2d 579 (2008).

initiated ordinance to authorize one marihuana retailer establishment within the village on the ballot. There were 524 votes cast regarding this proposal, with 262 for and 262 against. According to the tabulation on November 3, 2020, with the votes tied the proposal failed. However, when the ballots were retabulated on November 6, 2020, the result went from a tied vote to the proposal passing by one vote.⁸ According to the Clerk of Central Lake Township and the ASOG Forensic Report, three ballots were damaged when they were retabulated. Allegedly the damaged ballots were manually re-filled out and re-run through the tabulation machine, yet the final numbers do not reflect that the damaged/cured ballots were included. Plaintiff argues that failure to include the damaged ballots in the retabulation resulted in the marihuana proposal passing and violated his constitutional right to have his vote counted. The temporary, let alone total, loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.⁹ As such, the Court finds that Plaintiff has met the requirement for irreparable harm.

Second, Plaintiff asserts that he is likely to prevail on the merits of his claim because, pursuant to the Michigan Constitution and by statute, his right to vote was violated and he is entitled to have the results of the recent election audited in order to ensure its accuracy and integrity. Defendant counters that Plaintiff is not likely to succeed on the merits of his claims because he lacks standing to bring the constitutional claims and his statutory claims are inapplicable.

A litigant has standing whenever there is a legal cause of action, but even if no legal cause of action is available, a litigant may have standing if he or she has a special injury or right or substantial interest that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.¹⁰ While the Defendant argues that Plaintiff has failed to allege an injury in fact, the Court disagrees. As discussed above, assuming that Plaintiff's ballot was one of those damaged during the retabulation, failure to include his vote on the marihuana proposal potentially resulted in passage of the ordinance. Moreover, failure to include the Plaintiff's ballot would amount to the loss of his right to vote, which is an injury specific to Plaintiff. As the Court has determined that

⁸ See Declaration of Judith L. Kosloski.

⁹ *Garner v Mich State Univ*, 185 Mich App 750; 462 NW2d 832 (1990).

¹⁰ *Lansing School Ed. Ass'n v Lansing Bd of Ed.*, 487 Mich 349, 372; 792 NW2d 686 (2010).

the Plaintiff has standing to bring the constitutional claims, it is unnecessary to analyze whether the Plaintiff will succeed on the merits of his statutory claims.¹¹

Third, Plaintiff asserts he will suffer greater harm than the Defendant if the injunction is not granted as he will lose his constitution freedom to vote, whereas the Defendant has a duty to ensure the election process is conducted without fraud. Defendant argues that granting the Plaintiff's request for preliminary injunction would violate the License Agreement with Dominion and essentially force Antrim County to commit breach of contract. The Plaintiff is entitled to have his vote counted and the Defendant has a duty to maintain an accurate and secure election. The Court believes that Defendant's duty to ensure that no eligible Antrim County voter is disenfranchised outweighs its potential duties or obligations under the Licensing Agreement. Moreover, MCR 2.302(C) allows for protective orders that trade secrets or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way. Thus, any forensic investigation into the Dominion voting equipment can be limited to safeguard the company's intellectual property through a protective order.

Finally, Plaintiff asserts the public interest weighs in favor of granting temporary injunctive relief because confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy. Defendant claims that harm to the public interest, via reverse engineering of Dominion software (presumably for malicious purposes), outweighs any potential harm to the Plaintiff. The Court believes that confirming the accuracy, integrity and security of the electoral process is a greater public interest at this juncture than the potential future misuse of reverse engineered data. Therefore, the public interest weighs in favor of granting the Plaintiff's preliminary injunction.

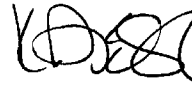
For the reasons stated herein, the Court finds that Plaintiff has met the necessary requirements for issuance of a preliminary injunction and thus, Plaintiff's Motion for an Ex Parte Restraining Order, Show Cause Order and Preliminary Injunction is granted.

¹¹ MCL § 600.4545(1) applies whenever it appears that material fraud or error has been committed at any election at which there has been submitted any constitutional amendment, question, or proposition to the electors of the state or any county, township or municipality thereof. Defendant argues that this statute is inapplicable because any fraud or error would not have affected the outcome of the election.

IT IS ORDERED that Antrim County maintain, preserve and protect all records in its possession used to tabulate votes in Antrim County, to not turn on the Dominion tabulator in its possession and to not connect the Dominion tabulator in its possession to the internet.

IT IS FURTHER ORDERED, pursuant to MCR 2.302(C), that to protect the respective interests of the parties, this Decision and Order shall also serve as a Protective Order restricting use, distribution or manipulation of the forensic images and/or other information gleaned from the forensic investigation without further order of this Court.

IT IS SO ORDERED.



12/04/2020
05:11PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge

ATTACHMENT 2

Grievances Dismissed Against Ms. Lambert

State of Michigan
Attorney Discipline Board

**Grievance Administrator,
Michigan Attorney Grievance Commission,**

Petitioner,

ADB Case No. 23-31-GA

v

Stefanie Junttila, P71303,

Respondent.

NOTICE OF VOLUNTARY DISMISSAL

Now comes Petitioner by and through its counsel Kimberly L. Uhuru and voluntarily dismisses the charges of professional misconduct against Respondent Junttila.

Wherefore, Petitioner respectfully requests that the hearing panel issue an order of dismissal as to Respondent Junttila.

Dated: July 10, 2023

**MICHIGAN ATTORNEY
GRIEVANCE COMMISSION**

/s/ Kimberly L. Uhuru

KIMBERLY L. UHURU, P61966

Deputy Administrator

755 W. Big Beaver Rd., Suite 2100

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ATTACHMENT 3

Speckin Report,
July 26, 2023

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Amended Report of July 26, 2023

July 27, 2023

I was asked to examine and recount ballots, the envelopes, totals tapes, record books and other associated documents for the 2020 election. This included AVCBs 1-134 and Precincts 1- 503 for the City of Detroit in their possession. This process took from the 17th of April 2023 to the 17th of May 2023. Additional photos were taken from 17th of July 2023 to 24th of July 2023.

Upon my arrival at the Detroit Department of Election Office located at 2978 W. Grand Blvd., Detroit, MI 48202, we were greeted, and the ground rules were explained and provided by the management staff. The rules included but are not limited to, no touching of the ballots, envelopes or register tapes. We could only direct the staff there to move, show, count, etc. the items desired. I was not allowed to proceed beyond the lobby area without being accompanied by a supervisor.

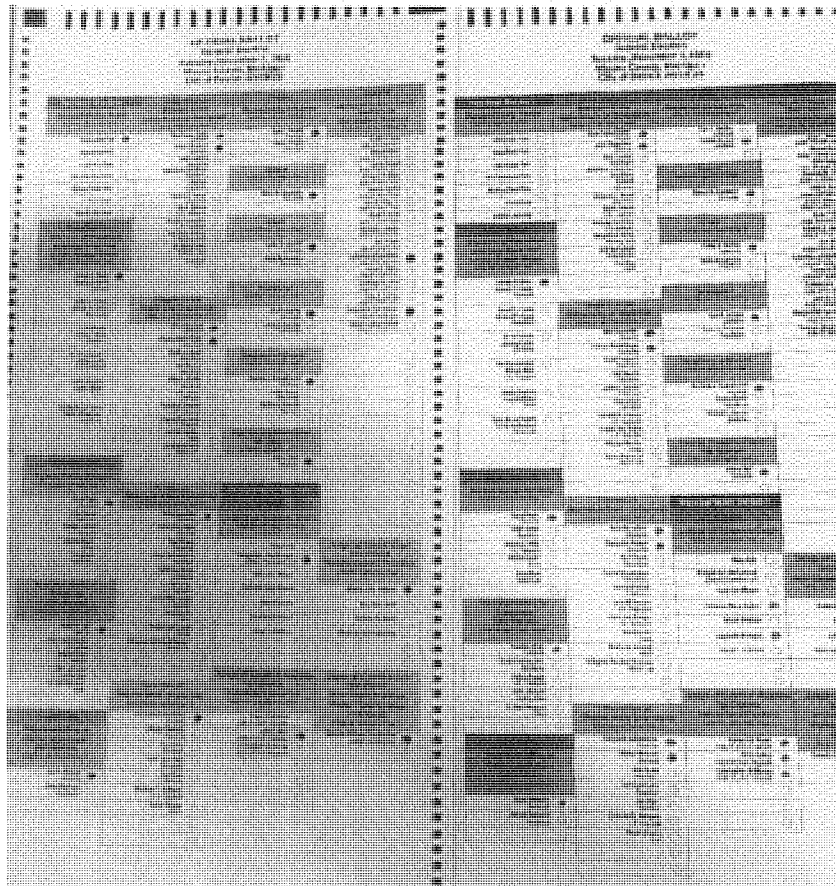
The ballots were located in locked cabinets that had a tag on them that had to be cut off. There were 17 cabinets in total of which 12 were filled with AVCB ballots and the other 5 were filled with Precinct Ballots. The ballots were stored in these cabinets by AVCB 1-8, 8-17, 17-24, 24-30, 31-36, 37-41, 42-51, 52-61, 62-70, 71-81, 82-92, 93-134 and by Precincts 1-88, 89-207, 208-301, 302-384, and 385-503. The ballots were all stacked in the cabinets one on top of the other and had to be sorted by the City staff upon removal from the cabinet.

The manner in which the ballots were counted was by the representative from the Election office moving the ballots from one pile to another while my team was tallying the vote totals. The tallies were recorded by Presidential candidate (Biden, Trump, or other) and by Congressional Senator candidate (Peters, James or other). In this context, the term "other could be anything other than the two main candidates such as another party, write in, undervote (blank), or overvote. This category was designed as a placeholder to keep the number of ballots total as well as the main parties' vote totals. While the ballots were in front of my team, we were able to observe that the printing on the mail in ballots have some inconsistencies, for example some have darker printing than others.

At the same time when this printing anomaly was noted, many of the City of Detroit staff commented to each member of my team that the ballot paper felt different on some of the ballots. We were unable to touch the paper or examine completely to determine this. It occurred while the representative was flipping the ballots, some were sticking to one another, and they made comments that some ballots felt

thicker than others. In my opinion, further examination should occur on these ballots and AV boards to confirm these differences, the number of instances where this may have occurred, patterns that may exist on voting on the different paper stock, and any further determinations that can be made from either paper that exists. This can be crucial evidence in light of the possibility of additional ballots being introduced as discussed in affidavits and evidenced by videos.

Below is a photograph of two ballots showing the representative difference in printing appearance that can be seen between two ballots from AV 26, similar differences were found in other AV boards.



The mail in envelopes, absentee applications, register tapes and record books were located in the same storage room as the ballots in file-like storage drawers. These drawers were not locked or sealed like the ballots at the time of our arrival.

The method used to count the envelopes was to observe the representative from the Election office count the envelopes in stacks of a 100 (sometimes 50 or 25), we then counted the total and I recorded that number. With regards to the register tapes and the record books; the City representative removed the tapes and record book from the envelope, I then documented the totals that were recorded and the materials were placed back in the same envelope.

In several of the AV boards, a comparison was made from the applications for mail in ballots to the envelopes. I was told by the City staff that many applications were sent out (even unsolicited in cases) for

mail in ballots in 2020. However, it was confirmed by the staff that in order to receive a mail in ballot, an application needed to be received, either by return mail or delivered in person.

This was a very time-consuming process to match up each returned ballot with a corresponding application, therefore only 2 AV boards were done like this as time allowed. In the two AV boards compared (AV 79 and AV 122), there were 289 mail-in ballots (249 in AV 79 and 40 in AV 122) found that had NO application in the file to receive the ballots. In some of those instances post it notes were found in the files that included "Ballot doesn't match poll book"; "not on list in QVF"; and "Not on list".

I have now been provided with what I am told is a "permanent AV voter list". I then compared the ballot return envelopes that have no corresponding application for AV ballot request to the "permanent list".

Looking into the math involved, AV 79 had a total of 1249 ballots counted according to the total printouts. 249 showed no application for the ballot, this is nearly 20%. When the "permanent list" is compared to these 249 without applications, 155 of them were still not found on this list or with an application. This is over 12%.

For AV 122 the total ballots shown in the printouts is 511, with 40 having no corresponding application which is approximately 8%. When the "permanent list" is compared to these 40 without applications, 33 of them were still not found on this list or with an application. This is over 6%.

It would follow that if all the boards were compared in this manner, with approximately 170,000 AV ballots, the range at 8%-20% would be 13,600 to 34,000 ballots with no application requesting the ballot.

My office will continue to analyze records and compare additional boards in the same manner as AV 79 and AV 122 above.

After the envelopes were counted, the total number of envelopes were compared to the total number of ballots for each AVCBs. Many of these boards had unexplainable differences. In some, the number of ballots was more than the number of envelopes. In a few instances, there were more envelopes than ballots present to be counted. A small discrepancy can exist by simple human error of an envelope missing or misfiled of course, but the differences in some cases are much bigger. For example, AV 18 contains 43 more envelopes than ballots; AV 38 contains 40 more ballots than envelopes; AV 40 contains 62 more ballots than envelopes. There are dozens of such examples, while other AVs match exactly or nearly exactly.

A comparison was then made to the vote totals on the tapes (in person) or printouts (AVCB) to the ballots present to be counted. Three AV boards had totals of ZERO votes on the printouts, but votes were recorded to the state. These boards are AV 33, AV 57, and AV 58. It is unclear how the totals were reported when the printouts show ZERO. At 11:23pm AV 33 shows the totals of zero, for AV 57 at 11:50pm shows zero, and for AV 58 at 11:50pm shows zero. These three AV envelopes showed no totals on any printouts.

See photos on the following page:

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11/19/2020 11:23:41 AM

Statement of Votes Cast

General Election
Wayne County, Michigan
November 03, 2020

SOVC for: All Contests, Detroit, Detroit AVCB ICC 33, AV Counting Board
City of Detroit AVCB 33 - Adjudication Report Tape

| Precinct | Registered Voters | Card Cast | Verbal Cast | In Person |
|-------------------------------|-------------------|-----------|-------------|-----------|
| Township/City | | | | |
| Detroit | | | | |
| City of Detroit - Precinct 33 | | | | |
| AV Counting Board | 0 | 0 | 0 | N/A |
| Total | 0 | 0 | 0 | N/A |
| Detroit - Total | 0 | 0 | 0 | N/A |
| Township/City - Total | 0 | 0 | 0 | N/A |
| AV Counting Board | 0 | 0 | 0 | N/A |

[Signature]
[Signature]

Page 2 of 10

11/19/2020 11:23:41 AM

Statement of Votes Cast

General Election
Wayne County, Michigan
November 03, 2020

SOVC for: All Contests, Detroit, Detroit AVCB ICC 57, AV Counting Board
City of Detroit AVCB 57 - Adjudication Report Tape

| Precinct | Registered Voters | Card Cast | Verbal Cast | In Person |
|-------------------------------|-------------------|-----------|-------------|-----------|
| Township/City | | | | |
| Detroit | | | | |
| City of Detroit - Precinct 57 | | | | |
| AV Counting Board | 0 | 0 | 0 | N/A |
| Total | 0 | 0 | 0 | N/A |
| Detroit - Total | 0 | 0 | 0 | N/A |
| Township/City - Total | 0 | 0 | 0 | N/A |
| AV Counting Board | 0 | 0 | 0 | N/A |

Page 3 of 10

11/19/2020 11:23:41 AM

Statement of Votes Cast

General Election
Wayne County, Michigan
November 03, 2020

SOVC for: All Contests, Detroit, Detroit AVCB ICC 58, AV Counting Board
City of Detroit AVCB 58 - Adjudication Report Tape

| Precinct | Registered Voters | Card Cast | Verbal Cast | In Person |
|-------------------------------|-------------------|-----------|-------------|-----------|
| Township/City | | | | |
| Detroit | | | | |
| City of Detroit - Precinct 58 | | | | |
| AV Counting Board | 0 | 0 | 0 | N/A |
| Total | 0 | 0 | 0 | N/A |
| Detroit - Total | 0 | 0 | 0 | N/A |
| Township/City - Total | 0 | 0 | 0 | N/A |
| AV Counting Board | 0 | 0 | 0 | N/A |

For AV 13, the ballots counted by hand and the vote totals reported to the state are nearly identical (1565 vs 1566), but the number of ballots scanned and shown on the printouts are 1621. This is over 50 ballots for this AV board that show as scanned but are not present in the ballots presented to us.

As for AV 14, the number of ballots on the totals printout as scanned and the votes reported are very similar (1764 vs 1757) this is also very similar to the number of envelopes counted for that AV board of 1765. However, the number of ballots actually present is 1740. This is approximately 25 more envelopes present than ballots. I am unable to determine where these previous approximately 25 ballots have gone.

In AV 15, the number of ballots present and the total ballots on the printout are similar (1762 vs 1765). The number of envelopes counted for the AV is 1795. This is approximately 30 more envelopes present than ballots. I am unable to determine where these previous approximately 30 ballots have gone.

In AV 19, the total number of ballots counted by my team and the number of ballots on the total printout are similar (2301 vs 2300). There were only 2270 envelopes counted for this AV board. This would leave approximately 30 ballots appearing and counted that have no corresponding envelope received.

In AV 23, the total envelopes counted, and the number of ballots scanned on the totals printout are similar (2858 vs 2855). The totals ballots presented in our count was only 2818. This would be a difference of 40 ballots missing, or possibly the same ballots that were also rescanned to account for scanned total than total ballots present.

In AV 26, the total number of ballots present, and the total number scanned on the printout are similar (3426 vs 3430). The number of envelopes returned for this AV board was 3385. This is approximately 45 more ballots presented and counted than envelopes found to return the ballots.

Similar anomalies in the ballot count, envelope count, or total votes scanned exist in the following additional AV boards: AV 27, AV 28, AV 32, AV 36, AV 38, AV 40, AV 41, AV 42, AV 43, AV 45, AV 62, AV 64, AV 68, AV 69, AV 77, AV 79, AV 82, AV 87, AV 88, AV 89, AV 95, AV 96, AV 101, and AV 122.

Further anomalies existed in the totals for an individual candidate, for instance in AV 49 the total we counted within the ballots present in the presidential race for Biden is 902, however, the total reported as votes cast and counted for AV board is 965 for Biden. It is unclear where these additional 63 votes would have come from as they are not present in the ballots presented. Duplicate scanning and counting of ballots is possible and could account for this discrepancy but the computer and system data including the scans of the ballots from the tabulators would need to be examined to confirm or deny this possibility.

Similar anomalies (of 10 or more votes) in total votes on the printouts of compared to the totals in the ballots exist in the following AV boards: AV 1 (32), AV 3 (22), AV 4 (16), AV 6 (10), AV 10 (-13), AV 12 (-12), AV 13 (53), AV 17 (57), AV 21 (16), AV 22 (13), AV 23 (36), AV 24 (19), AV 25 (15), AV 28 (46), AV 30 (-12), AV 35 (11), AV 36 (-15), AV 37 (-22), AV 40 (-10), AV 41 (53), AV 42 (10), AV 43 (27), AV 44 (-29), AV 45 (-41), AV 47 (23), AV 49 (63), AV 62 (92), AV 67 (19), AV 68 (-19), AV 72 (13), AV 73 (11), AV 75 (16), AV 77 (12), AV 84 (13), AV 86 (19), AV 88 (59), AV 92 (16), AV 93 (14), AV 94 (15), AV 95 (19), AV 99 (63), and AV 130 (46).

Based on these types of anomalies between scanned totals and ballots currently present, it is my opinion that the computer data relating to the scanning and tabulation from this 2020 election should be examined and compared for discrepancies as well as time sequences. This data should include ballot images to check for duplicate scans, comparison of totals, times of scanning, and other related features and possible access from outside sources. My office is ready and able to perform this additional analysis. The data and computer hardware should be preserved until complete analysis can be performed.

A handwritten signature in black ink, appearing to read 'E. Speckin', with a long horizontal stroke extending to the right.

Erich J. Speckin

Forensic Document Analyst

STATE OF MICHIGAN
IN THE 13TH CIRCUIT COURT OF ANTRIM COUNTY

STEFANIE LAMBERT,
Petitioner / Plaintiff,

v. **Case No.**
Hon.

D.J. HILSON,
Respondent / Defendant.

PETITIONER’S BRIEF IN SUPPORT OF DECLARATORY JUDGMENT

INTRODUCTION AND BACKGROUND

This case concerns the interpretation of a discovery order and the chain of events that followed during a case before Judge Elsenheimer, *William Bailey v. Antrim County*, Case No. 2020-9238-CZ. There, the Court acknowledged that Mr. Bailey’s legal team (which included Petitioner) had the right to inspect the electronic voting systems that had been used in the 2020 election. (**Attachment 1**, December 4, 2020 Discovery Order from Bailey v Antrim County) (Discovery Order). The Court specifically stated “ More importantly, the Court recognized that the rights and authority with respect to such inspections is defined by statute and Constitution and granted to the township and county clerks.” See, e.g., MCL 41.65 (township clerks, who are constitutional officers, have custody of all records and books, including all tabulators and voting machines. County and township clerks are constitutional officers in Michigan, and as such, they have unilateral and exclusive constitutional, common-law, and statutory duties to include keeping and maintaining “all records”). See also, 1963 Mich Const Art. VII, § 4; § 18 (No duties or rights provided by the Michigan Constitution to constitutional officers can be transferred or delegated to

any other office or entity by statute, executive order, or otherwise. *Dubois v. Riley Twp. Bd.*, 126 Mich. 587; 85 NW 1067 (1901)).

The Court further stated “loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law,” and that “the Court believe that confirming the accuracy, integrity, and security of the electoral process is a greater public interest at this juncture than the potential future misuse of reverse engineered data. Therefore, the public interest weights in favor of granting the Plaintiff’s preliminary injunction.” The Court further stated in footnote 2 that “The remaining Dominion tabulators are in the control and/or possession of the 22 individual precincts.” The city and townships were not sued and Defendant SOS argued that she has no power to compel the cities and townships to turnover their tabulators and has stated countless times that Michigan election authority is “decentralized.” Untimely the cities and townships were unable to be compelled to turnover their tabulators for expert review.

Ms. Lambert worked as one of Bill Bailey’s attorneys but remained in the background due attacks from SOS Benson and AG Nessel that were ongoing at the time. Ms. Lambert, a former Wayne County Prosecutor, with significant trial experience ranging from the life offense docket to the special victim unit, worked as Sidney Powell’s local counsel for the appeal of *King v Whitmer*, 556 F. Supp. 3d 680 (E.D. Mich. 2021). SOS Benson and AG Nessel filed the first bar grievance Ms. Lambert had ever received along with a request for sanctions against Ms. Lambert. Ms. Lambert ultimately won against SOS Benson and AG Nessel on appeal of the sanction, and her bar grievance was dismissed. (**Attachment 2**). As a matter of strategy, Ms. Lambert thought it was in William Bailey’s best interest if she worked in the background supporting Matthew Deperno rather than have a jury hearing the case be distracted with press related to these attacks. Judge Parker had dismissed the case prior to discovery and held that Powell had filed a “frivolous”

lawsuit. Ms. Lambert represents a client who had obtained ballots and all election documentation from a FOIA request for the Detroit November 3, 2020. Three years later the documents were reviewed by Ms. Lambert's client and forensic and paper expert Erich Speckin. Speckin found up to 35,000 fraudulent ballots which would have timely been discovered had the "frivolous" King v Whitmer matter been allowed to proceed to discovery and not been dismissed days after it was filed. (**Attachment 3**, Speckin Report, July 27, 2023).

Approximately at the same time Ms. Lambert prevailed on appeal to the Sixth Circuit and had her bar grievance dismissed, AG Nessel and her staff concocted ways to charge her opposing counsel Matthew Deperno and the team of lawyers supporting him on the Antrim matter with crimes. In particular, in recordings that were at first secreted and then produced by the prosecutor, AAG Hagaman-Clark, who was responsible for issuing the indictment *and* appointing the Special Prosecutor, is heard discussing the need to create a conspiracy to charge Ms. Lambert and a desire to have a certain jury pool. AAG Hagaman-Clark expressed the intent to pick the venue with the objective of influencing jury selection and forum shopping for what she thought would be the location most likely to have a jury that would convict Ms. Lambert. Hagaman-Clark stated: "I really like Mary Beebe, I think she's a great prosecutor up there, but I don't want to be picking a jury of [Ms. Beebe's] peers up there on this kind of crap. Whereas, if we can...charge them all with some kind of conspiracy, charge it down here" She also stated: "You know even if it's conspiracy to you know commit a *legal* act in an illegal manner." Hagaman-Clark's comments are telling. That is, the only way that they could get a "jury" in Oakland County was to make up a conspiracy charge as against all the alleged defendants. Hagaman-Clark knew that a jury in Roscommon County (or elsewhere up north including of course Antrim) would never convict Ms. Lambert because there was no crime committed, even acknowledging herself that it was a "crap"

case. She understood that she was then reviewing the Antrim County expert reports that were filed before Judge Elsenheimer. It would be illegal for them to try and prosecute their opposing counsel, and the court in its final ruling thought that these expert reports were so compelling that they should be reviewed by the Michigan legislature.

Most concerning is that these plans to “find crimes” were taking place while the Bill Bailey case was *pending* on appeal! AG Nessel could have, and should have, brought the matter to the attention of Judge Elsenheimer if she thought the scope of his Court Order was exceeded, but she knew that she would risk an adverse appellate decision. Instead, she brought into her office, her opposing counsel’s retained licensed fraud and private investigator on the Bill Bailey case, Michael Lynch. AG Nessel’s staff told Michael Lynch that he had done something illegal and pressured him to take an “immunity” deal that resulted in her piercing her opposing counsel’s files. The recordings further demonstrate that Nessel and staff knew exactly what they was doing because she referenced the exact machines and serial numbers filed on the Antrim County case. AG Nessel systematically informed each expert on the Antrim case that they had “committed crimes,” and she tarnished their reputations in press releases stating that she was investigating them for criminal acts. The very same experts that this Honorable Court said their reports warranted legislative review. (**Attachment 4**, Jeff Lenberg CV and Report; **Attachment 5**, Ben Cotton CV and Report; **Attachment 6**, Jim Penrose, CV and Report).

This was enough to prevent legislative review of the damning expert reports that found Dominion “subverted” the election and shifted votes through the Natural Law Party (the same party SOS Benson refuses to let RFK remove his name from the ballot for 2024), and to tarnish the plaintiff’s case on appeal. These experts are no slouches. Jeffrey Lenberg has a long history of working for National Sandia Labs, Jim Penrose was the former technical director of

counterterrorism receiving awards from Brennan and Clapper, and Ben Cotton a cyber security expert frequently relied upon by Congress. Their work was not only legal but powerful to implement appropriate changes in election security.

It's the expert's job, not attorneys to advise what review is necessary in litigation. Moreover, the experts control what needs to be looked at in terms of the analysis to determine whether there are any flaws with the voting systems, and also they are not limited by the authority granted by constitution, statute, and court order in what they do.

The Antrim election had statewide and national races on the ballot. Complete testing was critical to determine who, what, where, when and why. Dominion and SOS Benson were blaming Clerk Guy in the litigation. The expert work determined that SOS Benson's version of events through Halderman was not correct. It was not error on the part of Clerk Guy. It was the intentional subversion through the logical bumper by Dominion. None of this would have been discovered without the permission of the local clerks to examine tabulators which experts analyzed against the Antrim EMS image. Halderman did not do this. He merely accepted Dominion's version of events as true and regurgitated it in his report. It was Halderman who offered to "help" Dominion just after the November election. He received the version of events directly from Dominion just like Clerk Guy did on November 4, 2020 in an email. Halderman had an interest. He was on the board in Michigan that recommends "annual testing at a minimum" of the source code. But we learned in SOS Benson's discovery responses that she never took the source code in trust, therefore it was not tested. It was in the possession of Dominion in trust in California. SOS Benson further stated in her discovery responses that she does not have more than basic knowledge of tabulators and Bailey should "ask the manufacturers," and that she couldn't help produce tabulators in discovery because Michigan is "decentralized" SOS Benson through Nessel and Hilson, have

requested a declaratory action granting all control to SOS Benson that can bypass the legislature and be retroactively applied to Deperno and Lambert. (**Attachment 7**). Moreover, this was not the first time. Hilson's declaratory judgment action was a desperate move because the SOS and AG had previously threatened and meant to charge clerks with crimes, but they failed. If the Special Prosecutor had to file this declaratory judgment action seeking an interpretation of what the law authorized, then how could the Petitioner have violated any statute or court order at the time of the events underlying the AG's attempts to bring criminal charges?

SOS Benson's office even disagreed with that position while the Bailey case was pending. Lori Bourbonais stated that tabulators could not be released to attorneys until certification of the election and the security is released. Bourbonais sent the email to every clerk in Michigan demonstrating that clerks had authority to have their equipment reviewed pursuant to litigation. (**Attachment 8**, Bourbonais Email, December 22, 2020)

In keeping with these statutory rights and obligations, a township clerk can and indeed has authorized examination of their voting systems and machines and provide access to same outside of election seasons. There is no "undue possession" when it was authorized by a court and/or, where, by constitution and statute, the authority to delegate and allow same is given to Michigan's constitutional officers. Indeed, giving to the citizenry the right to know the functionality and integrity of election systems is a fundamental cornerstone of the republic because citizens must ultimately be given power over the means by which they are to choose their representatives outside of the election seasons. If the integrity and legality of these election systems cannot be guaranteed, verified, vetted, scrutinized, and ultimately approved by the citizenry *before* and *after* elections, then there is no guarantee that the fundamental right to choose representation is preserved – the most basic fundamental right is the right to vote, for without this right secured (in every sense)

there is no guarantee of representation and no trust in the system. While the First Amendment guarantees the right of every citizen to cast a vote and to have that vote counted, and this right includes the right not to have one's vote diluted or canceled out by the tabulation of fraudulent votes or ballots, the Supreme Court of the United States has given the right to free and fair elections primacy over all other rights. See, e.g., *Reynolds v Sims*, 377 US 533, 560-563; 84 S Ct 1362; 12 L Ed 2d 506 (1964). Thus, the Court has recognized the "political franchise" of voting as a "fundamental political right, because preservative of all rights." *Yick Wo v Hopkins*, 118 US 356, 371; 6 S Ct 1064; 30 L Ed 220 (1886). "[T]he right...is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise *in a free and unimpaired manner* is preservative of other basic civil and political rights." *Harper v. Va State Bd of Elections*, 383 U.S. 663, 667 (1966) (emphasis added). Thus, "*any* alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Id.* It is a right protected not only by the First Amendment, but one of those non-enumerated fundamental rights reserved to the People by the Ninth Amendment. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. All other rights, even the most basic, are illusory if the right to vote is undermined." *Reynolds*, 377 US at 560. A corollary to the right of citizens to vindicate a violation of their rights to integrity in the voting process as against state and individual actors, the judicial branch has the authority to directly address state failures in the conducting of national elections. Of necessity, they must. While states might have authority to regulate a national election under Article I, § 2 of the Constitution, this is in no way a delegation to them (or their administrators and executives) to restrict, limit or violate the fundamental right, whether through their negligence or incompetence

in running the election, or in unconstitutionally delegating that authority to others. *Classic, supra* at 315-316. See also *Wesberry v. Sanders*, 376 US 1, 7-8; 84 S Ct 526; 11 L Ed 2d 481 (1964).

This Court is the best to interpret its own orders. The actual controversy that Petitioner seeks to have resolved is that another court will be considering the legal effects of this Court's order based on an actual controversy that is still ongoing between Petitioner and the Respondent, Special Prosecutor. It is also necessary for the Court to interpret its order to unequivocally clarify and confirm that the Attorney General and/or the Secretary of State have (and had) no authority to bypass the legislative processes and the powers and duties and obligations of this Court and the constitutional officers with custody over their voting systems, and choose instead to violate Petitioner's and others' rights by prosecuting them for abiding by this Court's orders, and the constitutional and statutory mandate.

Any fundamental change in the rights and obligations of constitutional officers and the rights of parties acting under their auspices, must come from the Michigan Legislature – and even then, the Legislature cannot curtail the powers and duties of constitutional officers. Hence, no one can usurp the powers of the judiciary and the legislature and instead of abiding by the law simply choose to prosecute those who disagree, which is what has happened in the underlying criminal case. What is happening here is instead of choosing to follow the law, the Attorney General and Secretary of State have chosen to weaponize their offices and go after what they deem to be political dissidents. There is no justification for it, and instead, it was the Attorney General and Secretary of State who violated the laws by interfering with the judiciary, the duties and obligations of township clerks, the experts and lawyers that were chosen to assist the citizens in exercising their fundamental constitutional rights to transparency and integrity in the voting systems used in elections. Furthermore, the Attorney General and Secretary of State colluded with the Special

Prosecutor and violated MCL 49.158, because this provision clearly prohibits a prosecutor (here the Special Prosecutor is also the prosecutor in Muskegon County, Michigan), from colluding with state officials in prosecuting or aiding in the prosecution of any person for an alleged criminal offense where he is engaged or interested in any civil suit or proceeding depending upon the same state of facts, against such person directly or indirectly. Here, the Attorney General feigned to have removed herself from the prosecution of Petitioner, but in the case before this Court, she and the Secretary of State were already instructed to allow the examinations of voting systems to occur, and warned that any such challenge thereto had to be sought from the Michigan Legislature. Instead, and despite this Court's limiting instructions, the Attorney General began investigating Petitioner and other attorneys and experts involved in this and other cases, and further colluded with the Respondent, Special Prosecutor to achieve what she and the Secretary of State could not achieve in this civil litigation – remove any potential examination of voting systems, even though same were completely within the rights of the Petitioner and others targeted.

Petitioner is facing criminal charges as a result of the Attorney General's and Secretary of State's unlawful violation of this Court's prior orders and the actions and conduct in collusion with the Special Prosecutor. Accordingly, this declaratory judgment is being filed to compel this Court to fulfill its duty to interpret and enforce its orders, and to make legal conclusions concerning the actions of Petitioner acting as an attorney in the capacity of her joint representation of William Bailey, and too, with respect to the actions and conduct of the Attorney General, the Secretary of State, and Respondent (the Special Prosecutor).

The original claim was filed in Antrim County by the Plaintiff William Bailey and the Secretary of State successfully intervened. The Attorney General was the civil counsel for the Secretary of State. After the Court entered its discovery order on December 4, 2020 (**Attachment**

1, December 4, 2020 Discovery Order). The Attorney General disregarded the requirements of this order and began to investigate Petitioner, the other attorneys, and the experts engaged in this Court to conduct examinations of elections systems used in the 2020 election.

The Attorney General participated in an extensive criminal investigation and then just before submitting the evidence to the grand jury acknowledged her conflict and sought to have a special counsel appointed, which is Respondent, D.J. Hilson, the Muskegon County Prosecutor. (**Attachment 9**, Appointment Order). As he was not a party to the lawsuit but is prosecuting attorney Stefanie Lambert for her conduct in her capacity as an attorney acting under her claim that she was within the scope of the authority of the order and/or otherwise permitted by constitution and law to participate in an investigation of voting equipment systems used in the 2020 election.

Furthermore, in accordance with that order, there is a material fact that was presented before this court in that the Secretary of State conceded during the case that she was not authorized to prevent the parties from examining the voting systems. She further acknowledged that she lacked the authority to control the voting machines and/or examination by authorized officials and appointed individuals. Indeed, in March of 2021, the Michigan Court of Claims had already admonished the Secretary of State and, by extension, the Attorney General, that the unilateral and unauthorized dictates to constitutional officers and local governmental officials concerning their handling and authorizations with respect to voting systems was not authorized. See *Genetski v Benson*, Michigan Court of Claims, Case No. 20-000216-MM (**Attachment 10**).

The Court's Discovery Order, the Secretary of State's acknowledgment, and the further decisions of the Michigan Court of Claims, as well as the directives and guidance from state constitutional officers, following constitutional and statutory law, provided and induced Petitioner,

other attorneys, and experts, to rely upon and act lawfully concerning the examination of voting systems used in the 2020 election. These are material facts that arose in the course and scope of Petitioner's representation in this Court, and as well, pertinent to this Court's orders directing and instructing the parties, including the Attorney General and Secretary of State. These facts are further material.

The petitioner Stefanie Lambert is a Michigan attorney and was at all times during the acts in which she was indicted was acting as an attorney in her capacity as a member of William Bailey's legal team. The court was overseeing a case in which the court had entered a discovery order that permitted access to certain township voting systems for examination. The court specifically ordered the tabulators to be made available. (**Attachment 1**). However, the Court's order did not exclude expert comparison with other voting systems to formulate opinions, and in fact, nowhere did the court limit use or prevent other tabulators from being analyzed to compare with the election management system results. But for this black box comparison and testing, there would never have been the discovery of vote shifting, which is why the SOS and AG sought to prevent further analysis of tabulators, going so far as to begin threatening prosecution and ultimately charging clerks and lawyers with crimes.

The William Bailey legal team received the court order to examine the devices and found a computer cellular modem that allowed the devices to connect to the internet. More significantly the computer chip was hidden in that it was in a location showing an intent to conceal. (Expert Report citation). This discovery was national news. Recall that during a Senate hearing in Michigan, Dominion Voting Systems CEO John Polus testified under oath that the Dominion Voting Systems were not capable of connecting to the internet. This was false and obvious perjury based on the conclusions in the expert reports.

It was into this legal and political environment that a request was made to have the experts retained to support the legal team of William Bailey examine other devices to see whether Antrim County was an anomaly as asserted by Dominion Voting Systems, the Michigan Secretary of State and the Michigan Attorney General OR whether there was a connectivity issue and evidence of remote entry into the voting systems of the Michigan 2020 election. Recall also that many people were concerned about the results not matching their expectations formed from conversations and observations in their precincts with their neighbors. It is clear that William Bailey was actively seeking additional discovery and an audit of the 2020 General election.

It is anticipated that the respondent will raise the timing of the expert investigation of other voting systems as being after the court entered a final order dismissing the lawsuit. The defendant had perfected an appeal which was still pending. Newly discovered evidence would also be relevant in both the Antrim action or additional actions as Mr. Bailey pursued his Michigan constitutional right to an audit. The timing is not material or relevant to the questions presented.

DISCUSSION AND ARGUMENT

An action for declaratory relief is authorized by Michigan Court Rules and law and lies as a remedy that may be sought as against government officials and individuals in litigation concerning disputes over the proper role or roles, rights, and obligations of the respective parties, and allocations of legal duties and powers of the one seeking a declaration of such respective rights and obligations. See, e.g., *Demorest v Di Pentima*, 118 Mich App 299, 303; 324 NW2d 634 (1982); *Gyarmati v Bielfield*, 245 Mich App 602, 605; 629 NW2d 93 (2001); see also MCR 2.605(A). The latter statute further provides: “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” Circuit, district,

and probate courts have jurisdiction in any case in which they would have jurisdiction if other relief was sought. MCR 2.605(A)(2).

“[D]eclaratory relief is not mandatory.” *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 550; 904 NW2d 192 (2017). “[T]he language in [MCR 2.605] is permissive, and the decision whether to grant declaratory relief is within the trial court’s sound discretion.” *Id.* (holding that a trial court may still deny declaratory relief even where a party’s claims have merit). A declaratory judgment has “the force and effect of, and are reviewable as, final judgments.” MCR 2.605(E).

There must be an actual controversy that causes a party to seek a declaration of rights or legal relationships. MCR 2.605(A)(1); MCR 2.111(B)(2). “An ‘actual controversy’ under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues. However, by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred. The essential requirement of an ‘actual controversy’ under the rule is that the plaintiff pleads and proves facts that demonstrate an adverse interest necessitating the sharpening of the issues raised. *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (quotation marks and citations omitted).

While it is true that a declaratory judgment is usually obtained before there has been an interference with the rights of a party, such interference is not necessarily a bar to such an action. “The distinctive characteristic of a declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words, such a judgment does not involve executory or coercive relief. The essential distinction between an action for declaratory judgment

and the usual action is that no actual wrong need have been committed or loss have occurred in order to sustain the declaratory judgment action, but there must be no uncertainty *that the loss will occur or that the asserted right has been or will be invaded*. The purpose of the declaratory judgment is to permit adjudication of the rights or status of the parties without the necessity of a previous crime or breach.” *Demorest*, supra (cleaned up) (emphasis added).

Generally, an actual controversy exists where a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve the plaintiff’s legal rights and responsibilities. What is essential to an “actual controversy” under the declaratory judgment rule is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised. *Citizens for Common Sense in Gov’t v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000) (cleaned up). The Michigan Supreme Court has stated that “[t]he declaratory judgment rule was intended and has been liberally construed to provide a broad, flexible remedy with a view to making the courts more accessible to the people.” *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978). The Court has also consistently recognized that the declaratory judgment avenue is available to guide and inform litigants before a legal insult occurs. “One great purpose is to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, that they may guide their actions accordingly and often may be able to keep them within lawful bounds.” *Merkel v Long*, 368 Mich 1, 13; 117 NW2d 130 (1962) (cleaned up).

“‘Courts continually declare rights which have not become fixed under an existing state of facts, but are prospective only; they may not, however, be so remote and speculative as to be hypothetical and abstract.’” *Id.*, quoting Borchard, *Declaratory Judgments* (2d ed), pp 422-424. An actual controversy exists between the parties as to their rights and obligations under the

Michigan Election Code and the Court's December 4, 2020 Discovery Order (**Attachment 1**). The controversy resulting in the aforementioned order arose in Antrim County and this Court has jurisdiction and may declare the rights and obligations of the parties vis-à-vis one another.

ARGUMENT

I. THE COURT'S DISCOVERY ORDER IS PROPERLY INTERPRETED AS GRANTING PERMISSION IN LIEU OF THE CONSENT TO LAWFULLY ALLOW THE BAILEY LEGAL TEAM ACCESS TO INSPECT THE DOMINION VOTING SYSTEMS?

In *Bailey v Antrim County*, the Court entered the December 4, 2020 Discovery order to provide guidance and instruction to the parties as to their respective rights, obligations, and authority with respect to the conducting of examination of the voting systems used in the 2020 election. (**Attachment 1**). The Court's order was a product of a contested hearing in which the Central Lake Township did not at first consent. It had also been named as a defendant in the originally filed lawsuit. The Court's order then ruled on matters of the constitutionality and legality of authorizing the legal team of lawyers and experts the right to possess and examine the voting system outside of the time of the election (after certification). While there had been no consent originally, the Court's order and the fact that the team was in lawful possession of the voting systems equipment demonstrated that they were not violating state or federal laws. Furthermore, neither Dominion Voting Systems, nor any other company that had created the hardware and software, appeared as a named defendant or intervened. Although she intervened with the Attorney General, the Secretary of State disavowed any authority with respect to the voting systems and tabulators in her own testimony and through the actions of her agency and subsidiaries. (**Attachment 8**).

Supplementing that acknowledgment was the case against the Secretary of State in which she was admonished by the Court of Claims that she had no authority to issue guidance, directive,

rules, or other instructions directing the constitutional officers and those appointed and authorized to handle voting systems – indeed she and the Attorney General had no authority to do anything without legislative approval. (**Attachment 10**).

II. THE SECRETARY OF STATE HAS NO LEGAL AUTHORITY GRANTED BY STATUTE TO RESTRICT ACCESS TO THE VOTING SYSTEMS OWNED BY THE TOWNSHIPS AND MUNICIPALITIES AFTER THE TIME FOR CONDUCTING ELECTIONS

To begin this analysis, we are instructed by Michigan case law as to the limitations on the powers of the government. Governmental power is granted through the Michigan Constitution, which provides a broad framework detailing the duties and obligations of the judiciary, the legislature, and the executive branch. The constitutional form of government in Michigan is structured around the separation of powers among three branches: legislative, executive, and judicial. The legislative power is vested in a Senate and a House of Representatives, as stated in Article 4, Section 1 of the Michigan Constitution of 1963. See also, *Midwest Inst. of Health, PLLC v. Governor of Mich. (In re Certified Questions from the United States Dist. Court)*, 506 Mich. 332, 333, 337-338; 958 NW2d 1 (2020) (holding that the Governor did not possess the authority to declare a “state of emergency” or “state of disaster” based on the COVID-19 pandemic; and, second, the Governor ***does not possess the authority*** to exercise emergency powers under the Emergency Powers of the Governor Act of 1945 (the EPGA), MCL 10.31, et seq., because that act was an unlawful delegation of legislative power to the executive branch in violation of the Michigan Constitution and striking down the executive orders issued by the Governor as having no basis under Michigan law). The executive power is vested in the Governor, as per Article 5, Section 1 of the Michigan Constitution of 1963. And, The judicial power is vested exclusively in one court of justice, which is divided into the Supreme Court, Court of Appeals, Circuit Court, Probate Court, and other courts of limited jurisdiction established by the legislature.

Lawmaking in Michigan primarily resides with the Legislature, which has the authority to regulate public concerns and make laws for the state's benefit and welfare. *Midwest Inst. of Health*, 506 Mich. at 333. The people of Michigan also retain the power to propose and enact laws through the initiative process, as well as to approve or reject laws via referendum, and to propose constitutional amendments. See, e.g., *League of Women Voters of Mich. v. Sec'y of State*, 506 Mich. 561; 957 NW2d 731 (2020). These processes require the submission of petitions with a certain number of signatures to demonstrate voter support. *Id.*

Overall, the Michigan Constitution establishes a framework that balances the powers among the legislative, executive, and judicial branches while also providing mechanisms for direct democratic participation by the people in the lawmaking process. *League of Women Voters, supra*. Enforcing the separation of powers is about respecting the people's sovereign choice to vest the legislative power in Congress alone. Const 1963, art 4, § 1 provides that "the legislative power of the State of Michigan is vested in a senate and a house of representatives.". "The 'legislative power' has been defined as the power 'to regulate public concerns, and to make law for the benefit and welfare of the state.'" *46th Circuit Trial Court v Crawford County*, 476 Mich 131, 141; 719 NW2d 553 (2006), quoting Cooley, *Constitutional Limitations* (1886), p 92. "The power of the Legislative being derived from the People by a positive voluntary Grant and Institution, can be no other, than what that positive Grant conveyed, which being only to make Laws, and not to make Legislators, the Legislative can have no power to transfer their Authority of making Laws, and place it in other hands." Locke, *Two Treatises of Government* (New York: New American Library, Laslett ed, 1963), pp 408-409. Accordingly, "[o]ne of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws ***cannot be delegated by that department***

to any other body or authority.” Cooley, *Constitutional Limitations* (1886), pp 116-117 (emphasis added).

And protecting the legislative imperative discussed above is safeguarding a structure designed to protect the citizenry’s liberties and rights and giving fair notice as to the rule of law. So, when a case or controversy comes within the judiciary’s competence, the Constitution does not permit judges to look the other way; the judiciary must call foul when constitutional lines are crossed. *Midwest Inst. of Health*, 506 Mich. at 377-78 (cleaned up).

It is against the above backdrop that the constitutionality of the standards and legislative direction, or lack thereof, to the executive branch must be considered. The Secretary of State and the Attorney General are part of the executive branch, the branch with the least authority and the one which is subject to the most scrutiny in terms of abuse of power. This is evident in the framework of the constitutional form of government. Accountability to the citizenry, which is the reigning sovereign in a constitutional democracy, is the number one most important aspect of constitutional governance. Therefore, the citizenry controls the branches of government by electing members of the legislature, who then are charged with the duty to pass laws governing the conduct and operation of the other two branches. Except in the case of constitutional officers, of which county sheriffs and township clerks are included, the legislature controls the duties and obligations of all state officials through the passage of statutory law. The authorities and duties governing the conducting of elections are defined in statutory law, such as the Michigan Election Law (MCL 168.1 et seq.), which grants specific powers, duties, and responsibilities. The Secretary of State is generally tasked with overseeing elections, maintaining voter registration records, ensuring compliance with election laws, and certifying election results.

The “agency” of the Secretary of State, including all of its subsidiary agencies and entities, are also part of the executive branch. An agency, together with the elected official, and all agency employees, is only permitted to execute powers granted by the legislature.

None of the Secretary of State’s duties or powers allow her to take control and custody of voting machines, or dictate who may or may not do so. The latter is defined by statute and, in some instances, authorized by judicial decision. The Secretary of State does have duties, as distinguished from powers or authority, including, the following:

1. Chief Election Officer

The Secretary of State is designated as the chief election officer responsible for the overall supervision of elections in Michigan. MCL 168.21.

2. Promulgation of Rules and Instructions

The Secretary of State shall promulgate rules, issue instructions, and provide uniform guidelines necessary to implement and enforce Michigan election laws. MCL 168.31(1)(a).

3. Maintenance of Voter Registration Records

The Secretary of State oversees the maintenance of accurate and up-to-date voter registration records, ensuring the removal of ineligible voters. MCL 168.31(1)(b).

4. Issuance of Election Materials

The Secretary of State is responsible for designing, printing, and distributing necessary election materials, including ballots and voter registration forms. MCL 168.31(1)(c).

5. Training of Local Election Officials

The Secretary of State must establish training programs for local election officials, clerks, and their staff to ensure proper administration of elections. MCL 168.31(1)(d).

6. Investigation of Election Law Violations

The Secretary of State has the authority to investigate complaints and allegations of violations of Michigan election law, including voter fraud and campaign finance irregularities. MCL 168.31(1)(e).

7. Coordination of Emergency Preparedness

The Secretary of State must work with local election officials to establish emergency preparedness plans for elections to address natural disasters, technical failures, or other emergencies. MCL 168.31(1)(f).

8. Ensuring Accessibility for Disabled Voters

The Secretary of State must develop procedures to ensure that all voting systems and procedures accommodate voters with disabilities. MCL 168.31(1)(g).

9. Certification of Local Clerks and Election Officials

The Secretary of State is responsible for certifying local clerks and election officials who meet state training and competency requirements. MCL 168.31(1)(h).

10. Promulgation of Voter Education Programs

The Secretary of State must develop and implement voter education programs to inform the electorate about voting procedures, rights, and any changes in election law. MCL 168.31(1)(i).

11. Provision of Election Equipment and Supplies

The Secretary of State shall provide or approve all election equipment and supplies used in elections, ensuring their compliance with statutory and regulatory standards. MCL 168.31(1)(j).

12. Monitoring and Reporting on Election Day Activities

The Secretary of State is tasked with monitoring election day activities and reporting any issues or incidents related to the conduct of the election. MCL 168.31(1)(k).

13. Establishment and Maintenance of the Qualified Voter File (QVF)

The Secretary of State is responsible for establishing and maintaining the Qualified Voter File, a computerized voter registration system, ensuring its accuracy, security, and proper use. MCL 168.509o-q.

14. Administration of Voter Identification Requirement

The Secretary of State must ensure compliance with voter identification requirements at the polls, including issuing guidance on acceptable forms of identification. MCL 168.523.

15. Facilitation of Provisional Ballots

The Secretary of State must develop and implement procedures for issuing, tracking, and counting provisional ballots where voter eligibility is questioned. MCL 168.523a

16. Supervision of Election Recounts

The Secretary of State oversees recounts in statewide and multi-county elections, ensuring adherence to statutory procedures. MCL 168.862; MCL 168.879.

17. Handling of Initiative and Referendum Petitions

The Secretary of State is responsible for receiving, verifying, and certifying petitions for ballot initiatives, referenda, and constitutional amendments. MCL 168.477; MCL 168.482.

18. Approval of Voting Equipment

The Secretary of State must approve voting systems and equipment for use in Michigan elections, ensuring they meet security, accessibility, and accuracy standards. MCL 168.794a.

19. Administration of Absentee Voting Procedure

The Secretary of State oversees the administration of absentee voting, including issuing instructions for the distribution and return of absentee ballots. MCL 168.764a.

20. Certification of Election Results

The Secretary of State is required to certify statewide election results, including canvassing votes and confirming the accuracy of reported results. MCL 168.842.

21. Regulation of Political Party Conventions

The Secretary of State oversees the conduct and certification of political party conventions, including the procedures for selecting delegates and party nominees. MCL 168.599.

22. Maintenance of Election Returns and Records

The Secretary of State prepares and maintains official returns for statewide and federal elections and keeps records of all election results and certifications. MCL 168.827.

23. Approval of Precinct Boundary Changes

The Secretary of State reviews and approves any changes to precinct boundaries made by local jurisdictions. MCL 168.654a.

24. Supervision of Campaign Finance Compliance

The Secretary of State administers and enforces compliance with Michigan campaign finance laws, including the collection and publication of campaign finance disclosures. MCL 168.21; MCL 168.31.

25. Management of the Election Assistance Fund

The Secretary of State oversees the Michigan Election Assistance Fund, including the management and disbursement of funds for improving election administration and technology. MCL 168.795a.

26. Implementation of Federal Election Laws

The Secretary of State ensures Michigan's compliance with applicable federal election laws, including the Help America Vote Act (HAVA) and the Voting Rights Act. MCL 168.2.

27. Administration of Electronic Poll Books

The Secretary of State authorizes and sets standards for the use of electronic poll books, including the management and security of digital records. MCL 168.733a.

28. Oversight of Procedures for Military and Overseas Voters

The Secretary of State develops and oversees procedures for absentee voting by military and overseas voters under UOCAVA. MCL 168.759a.

29. Election Audits

The Secretary of State conducts audits of election procedures and results to ensure accuracy and compliance with state laws. MCL 168.31a.

30. Reporting of Voter Statistics

The Secretary of State compiles, analyzes, and publishes statewide voter statistics, including turnout data and registration statistics. MCL 168.31(2).

31. Online Voter Registration System Management

The Secretary of State establishes and manages an online voter registration system, allowing eligible citizens to register to vote electronically. MCL 168.495.

32. Procedures for Ballot Security

The Secretary of State develops and enforces procedures to ensure ballot security, including secure storage, handling, and transport of ballots. MCL 168.764b.

Nowhere in the list of duties has the Secretary of State been delegated the power and authority for the custody or control of the voting systems. The role is limited to certification under item 18 above – there is no right to control possession of the voting systems, period. The Secretary of State *does* have rulemaking authority duties to enact rules under MCL 168.31(19)(a) for the purpose of conducting elections and registrations. However, the scope of the rules must be

authorized by statute and follow the procedures. In the instant case, the authority or control over custody of voting machines, and what may be done with them outside of an election (after certification of the election) is not delegated by statute to the Secretary of State.

The Michigan Election Code also authorizes the Secretary of State to promulgate rules in several specific areas, including:

- Prescribing the form of election materials.
- Establishing procedures for conducting elections, including electronic voting systems.
- Providing rules for the training of election officials.
- Issuing security standards for election processes.
- Managing voter registration procedures.

These authorizations are subject to the requirements and limitations of the Michigan Administrative Procedures Act (APA), ensuring the rules are properly promulgated following statutory guidelines. These rules follow a process and are part of formal agency action. All rulemaking activities by the Secretary of State must be conducted pursuant to the Michigan Administrative Procedures Act (APA) of 1969, which imposes procedural requirements such as notice, public comment, and hearings.

Concerning elections, the Michigan Election Code, MCL 168.31(1)(f) explicitly states that the Secretary of State must “issue instructions and promulgate rules pursuant to the Administrative Procedures Act of 1969, necessary to establish uniformity, clarity, and consistency in the application, operation, and interpretation of election laws.” The Michigan Administrative Procedures Act (APA), MCL 24.201 et seq., governs the processes by which all state agencies, including the Secretary of State, must promulgate rules. The requirement to follow the APA means that any rules promulgated by the Secretary of State must comply with these procedural steps, ensuring transparency, accountability, and public participation.

The Secretary of State also has certain limited statutory authority. The Secretary of State's authority is limited to those areas specifically enumerated in the Election Code. Rules must align with the purposes set out in the statute and cannot exceed the authority explicitly or implicitly granted. The Secretary of State can prescribe the form of election materials required to be printed under the Election Code. Under MCL 168.31(1)(a), the Secretary of State is mandated to issue instructions and promulgate rules pursuant to the Administrative Procedures Act for the *conduct of elections and registrations* in accordance with the laws of this state. This provision establishes the general authority of the SOS to create rules for election administration. Also included among the statutory powers is MCL 168.31(2), which specifies that the SOS must promulgate rules establishing uniform standards for state and local nominating, recall, and ballot question petition signatures. Further, MCL 168.765a(17) requires the SOS to develop binding instructions for the conduct of absent voter counting boards or combined absent voter counting boards used in elections conducted by counties, cities, or townships. The SOS is also tasked with furnishing a manual of instructions that includes procedures and forms for processing challenges, consistent with the Michigan Election Law.

The rulemaking and statutory powers nowhere authorize the Secretary of State to commandeer and take custody and control of voting machine systems. And, in fact, the statutory provisions that *do exist* in this regard, allow the constitutional officers, i.e., township clerks, *inter alia*, to have exclusive authority, control, custody, and supervisory authority, as well as the right to hire lawyers and experts to conduct investigations and examinations of voting machine systems.

Under MCL 41.65, township clerks, who are constitutional officers, have custody of all records and books, including all tabulators and voting machines. County and township clerks are constitutional officers in Michigan, and as such, they have unilateral and exclusive constitutional,

common-law and statutory duties to include keeping and maintaining “all records”. See, 1963 Mich Const Art. VII, § 4; § 18; MCL 41.65. The latter statute states, in pertinent part, the following: “The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law....” MCL 41.65. No duties provided by law under the Constitution to constitutional officers can be transferred or delegated to another by statute, executive order, or otherwise. *Dubois v. Riley Twp. Bd.*, 126 Mich. 587; 85 NW 1067 (1901).

The Court in the *Bailey v Antrim* case merely reaffirmed that the Secretary of State and Attorney General had no power to prohibit the examination of voting machine systems outside of the time of conducting elections, i.e., after the election was certified. (Attachment 1). Indeed, the Court recognized that this right could be provided to the litigants and authorized the conducting of said examinations by the Petitioner, the other lawyers, and the retained experts. This is demonstrated not only by the Court’s order, but also by the expert reports that were conducted and presented. (**Attachments 4 through 6**).

The statutes confine, that is, limit the Secretary of State’s rulemaking authority to specific areas and none of them allow her to restrict access to the voting systems outside of the time for conducting elections.

Returning to the hierarchy established for the branches of government and their delegated, but limited powers vis-à-vis the citizenry, it is clear that if the statutes do not grant this authority to the Secretary, either directly, or indirectly through the authority of making rules, then the Secretary and the Attorney General, by extension, cannot exceed their authority by issuing policy guidance, instructions, memoranda, etc., directing or otherwise dictating what those that *are* authorized may or may not do with the voting machine systems. Again, this Court merely

reconfirmed the constitutional and statutory framework surrounding the authority of the parties, and did urge the Legislature to clarify the circumstances for future cases. As there is no direct statutory authority, and no indirect statutory authority allowing the Secretary to make rules concerning custody and control of election voting systems, no future asserted authority can exist. *People v. Turmon*, 417 Mich. 638, 650 (1983). Moreover, if such authority is not given either explicitly, or by implication, then the Secretary of State and the Attorney General cannot feign to prosecute individuals, here Petitioner here, other lawyers, and experts, who have been given judicial authority, or who have been delegated authority by a constitutional officer with the right to allow examinations and analysis of voting machines. See MCL 41.65 (constitutional officers have exclusive rights to hire experts and lawyers to conduct investigations and examinations of the voting machine systems used in elections in their jurisdiction).

Further, the Michigan Supreme Court in *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42; 921 NW2d 247 (2018), highlighted that any administrative action by the Secretary of State must be based on a clear statutory grant of authority. If a statute does not expressly or implicitly authorize a particular action, the Secretary of State lacks the power to undertake that action. See also, *SBC Mich v PSC (In re Complaint of Rovas)*, 482 Mich 90; 754 NW2d 259 (2008).

Finally, it must be elaborated that the Secretary of State can be precluded by statute from encroaching upon the premises delegated to another branch or executive office under the constitution. *Genetski v Benson*, Michigan Court of Claims, Case No. 20-000216-MM (**Attachment 10**). There, the Court of Claims held that the guidance issued by Secretary of State Jocelyn Benson concerning absentee ballot signature verification constituted a “rule,” and could not be enforced or otherwise recognized without having gone through the vetting procedures

established by Michigan’s APA, which include public notice, comment, and formal adoption procedures. For a township clerk, this ruling means that any directive from the Secretary of State that affects how the clerk performs his or her duties – such as authorizing access to a voting system – must be reviewed to determine if it qualifies as a “rule” under the APA. If it purports to direct township clerks to perform or refrain from performing certain activities, it must be promulgated as a rule under the APA.

This also assumes that there is no statutory provision that is more specific relating to the Secretary’s authority. In the case of MCL 41.65, township clerks as constitutional officers have been delegated exclusive jurisdiction and authority over their voting machine systems. Under that statute, township clerks, who are constitutional officers, have custody of all records and books, including all tabulators and voting machines. County and township clerks are constitutional officers in Michigan, and as such, they have unilateral and exclusive constitutional, common-law and statutory duties to include keeping and maintaining “all records”. See also, 1963 Mich Const Art. VII, § 4; § 18; MCL 41.65. (“The township clerk of each township shall have custody of all the records, books, and papers of the township, when no other provision for custody is made by law....”). No duties provided by law under the Constitution to constitutional officers can be transferred or delegated to another by statute, executive order, or otherwise. *Dubois v. Riley Twp. Bd.*, 126 Mich. 587; 85 NW 1067 (1901).

In the criminal case that was initiated by the Secretary of State’s and Attorney General’s ignoring the decision of this Court in *Bailey v Antrim County*, see **Attachment 1**, in contravention of the *Genetski* decision, MCL 49.158 (disallowing collusion between prosecutors and the secretary of state in prosecuting or aiding in the prosecution of any person for an alleged criminal offense where the prosecutor is engaged or interested in any civil suit or proceeding depending

upon the same state of facts, against such person directly or indirectly), and MCL 41.56 (which delegates *exclusive jurisdiction* and *authority* to the township clerks to authorize, appoint, hire, and retain experts and lawyers to investigate voting machine systems under their jurisdiction, custody and control), and despite this Court's limiting instructions, the Attorney General began investigating Petitioner and other attorneys and experts involved in this and other cases, and further colluded with the Respondent, Special Prosecutor to achieve what she and the Secretary of State could not achieve in this civil litigation – remove any potential examination of voting systems, even though same were completely within the rights of the Petitioner and others targeted. This Court clearly directed and authorized the clerks to allow the examination and investigation of voting systems. Included in this directive was authorization to locate the records of configuration for connection to ensure the 2020 election was secure, as well as examining computer process files including access, audit, adjudication and more.

There is no other authority to dictate or control access to the voting systems outside the time for the conducting of elections, which end when the election is certified, and which commences only when the Logic and Accuracy Test begins prior to the election. Rather than abiding by this Court's orders, and following the constitutional and statutory limitations placed upon them, as well as the subsequent Michigan case law restricting and confining their authority and power, i.e., *Genetski, supra, inter alia*, the Secretary of State and the Attorney General colluded with a Special Prosecutor to intimidate and bully those who might question the integrity of Michigan elections. The Secretary of State in collaboration with the Attorney General have violated the APA no less than 7 different times in an effort to usurp the Michigan Constitution and the statutes passed by the citizenry limiting their powers.

- III. CONSISTENT WITH CONSTITUTIONAL AND STATUTORY LAW, THE TRIAL COURT'S DISCOVERY ORDER PROVIDED CONSENT AND AUTHORITY TO EXAMINE AND REPORT ON THE INTERNAL INVESTIGATION OF THE DEVICE; TO EXAMINE ALL HARDWARE AND SOFTWARE AS CONFIGURED AND TO RETRIEVE SYSTEM OPERATIONAL LOGS; TO DETERMINE WHETHER THE SYSTEM OPERATED AS INTENDED; AND TO INSPECT FOR ANY EVIDENCE OF REMOTE ENTRY DURING THE ELECTION AS DEFINED FROM THE LOGIC AND ACCURACY TEST TO THE CERTIFICATION OF RESULTS.

The Court followed the constitution and statutes concerning authority to examine voting machines and systems, and rightly concluded that it was acting within the scope of its judicial power. There were no statutes that prohibited the Circuit Court from allowing the examinations, despite the Secretary's initial objections. Furthermore, if the court merely granted consent in an adversarial process, the scope of actions permitted with the consent of another election clerk would likewise not be in violation of law. The analysis of a voting system is part of maintenance and the preparation for a voting system. If there is access before the logic and accuracy test under the control of the custodian by authorized persons and the voting system is able to pass its next logic and accuracy test to be qualified to be used in the election and sealed until certification, where is the violation of law for an analysis and examination in between?

- IV. AS A CONSTITUTIONAL OFFICER, THE CUSTODIAN OF A TOWNSHIP VOTING SYSTEM WITH LEGAL DUTIES AND POWERS THE TOWNSHIP CLERK CAN GRANT PERMISSION TO A LEGAL TEAM TO HAVE POSSESSION OF A VOTING SYSTEM AND TO INSPECT THE SYSTEM OUTSIDE OF THE ELECTION AS DEFINED FROM THE LOGIC AND ACCURACY TEST TO THE CERTIFICATION OF RESULTS WITHOUT VIOLATING ANY CRIMINAL LAWS.

The legal team involves an officer of the court as an attorney who is overseeing an expert inspect a voting system. When this is done with the permission of the clerk, where is there any violation of the law? The prosecution relies upon a declaratory action of MCL 168.932(b) filed in

the Oakland Circuit Court on March 10, 2023, in which a Circuit Court declared in a non-binding opinion an interpretation of the statute at dispute. (**Attachment 7**)

MCL 168.932 (b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. ***A person shall not obtain undue possession of that ballot box or voting machine.*** A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision.

The Oakland Circuit judge essentially determined that the clause “***A person shall not obtain undue possession of that ballot box or voting machine.***” Is independent of the first clause limits the not duly authorized person from acting *during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained*. Obviously, the court is not bound by that determination but that is not the argument raised in this request. Instead, the question is “undue possession” which is directly related to the court granting possession of the Central Lake Township voting systems and the claim that as a matter of law the clerk may authorize ‘due possession’ to inspect, maintain, repair or prepare a voting system.

As previously discussed, a township clerk, as a constitutional officer may provide all authority and powers of examination and investigation to the items under his or her authority, custody, and control. MCL 41.65. Further, the constitutional officer’s powers are defined by the Constitution, statute, and common law, and may not be usurped or encroached upon by any other governmental entity. County and township clerks are constitutional officers in Michigan, and as such, they have unilateral and exclusive constitutional, common-law, and statutory duties to include keeping and maintaining “all records”). See also, 1963 Mich Const Art. VII, § 4; § 18 (No

duties or rights provided by the Michigan Constitution to constitutional officers can be transferred or delegated to any other office or entity by statute, executive order, or otherwise. *Dubois v. Riley Twp. Bd.*, 126 Mich. 587; 85 NW 1067 (1901)). Any interpretation of MCL 168.932(b) which would ignore these statutes and constitutional hierarchy would be error.

Moreover, a controversy exists for this Court to determine whether an interpretation inconsistent with its prior order, and its rulings in *Bailey v Antrim County*, renders the statute at issue void for vagueness. See, e.g., *People v Turmon*, 417 Mich 638, 655-56; 340 NW2d 620 (1983). A statute may be challenged for vagueness on the following three grounds: (1) that it is overbroad and impinges on First Amendment freedoms; (2) that it does not provide fair notice of the proscribed conduct; or (3) that it is so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether the law has been violated. *People v Rogers*, 249 Mich App 77, 94-95; 641 NW2d 595 (2001). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *People v Burkman*, ___NW3d___; 2024 Mich. LEXIS 1080, at *46 (June 13, 2024) (quotation marks and citation omitted). “The vagueness doctrine incorporates notions of fair notice or warning and requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.” *Id.* (quotation marks and citation omitted). “Accordingly, a statute may be considered unconstitutionally vague if it fails to provide fair notice of the conduct proscribed or encourages arbitrary and discriminatory enforcement.” *Id.* “To afford proper notice of the conduct proscribed, a statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. A statute cannot use terms that require persons of ordinary intelligence to speculate regarding its meaning and differ about its application. For a statute to be sufficiently definite, its meaning must be fairly ascertainable by

reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words.” *People v Sands*, 261 Mich App 158, 161; 680 NW2d 500 (2004) (citations omitted). See also *Burkman*, *supra* at *46 (“A statute provides fair notice when it gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and such knowledge may be acquired by referring to judicial interpretations, common law, dictionaries, treatises, or the common meaning of words.”) (cleaned up). “A statute is not vague if the meaning of the words in controversy can be fairly ascertained by referring to their generally accepted meaning.” *People v Harris*, 495 Mich 120, 138; 845 NW2d 477 (2014).

It is a fundamental principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. *Burkman*, *supra*. The vagueness doctrine “incorporates notions of fair notice or warning” and “requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement.” *Id.*, see also, *Smith v Goguen*, 415 US 566, 572-573; 94 S Ct 1242; 39 L Ed 2d 605 (1974) (quotation marks and citation omitted). Accordingly, a statute may be considered unconstitutionally vague if it “fail[s] to provide fair notice of the conduct proscribed” or “encourage[s] arbitrary and discriminatory enforcement.” *People v Harris*, 495 Mich 120, 133, 135; 845 NW2d 477 (2014). “When a defendant’s vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in [the] case.” *People v Newton*, 257 Mich App 61, 66 (2003).

A controversy exists because a conflict has arisen between what this Court previously authorized, and constitutionally and statutorily sanctioned, versus the disobeying of this Court's interpretation and the ignoring of controlling precedent and statutes in the prosecution of the Petitioner under the vaguest of statutes in circumstances where clearly there was authorized, not undue, possession. The Court may declare the rights of the parties vis-à-vis one another in this context.

CONCLUSION

The Secretary of State, the Attorney General, and by extension, Respondent, the Special Prosecutor violated this Court's directives and guidance, ignored constitutional and statutory laws, exceeded their authority and powers under the law, and interpreted statutory provisions in a manner inconsistent with prevailing case law and statutory law governing the jurisdiction, authority, control, and custody of voting machine systems, and the rights and duties of the constitutional officers and judges that are charged with the obligations to protect them, and to legitimately inquire and investigate to ensure that the citizens of the state of Michigan will not be victimized by compromised elections. Instead of following the Court's directives, and allowing the Petitioner, her colleagues, and the experts retained to conduct their examinations, and to fulfill their respective duties, the Secretary of State and the Attorney General colluded with the Respondent in violation of MCL 49.158 to prosecute Petitioner, and others, in attempt to suppress transparency and defraud the citizenry of their constitutional rights to free and fair elections.

RELIEF REQUESTED

WHEREFORE, for the reasons stated in Petitioner's complaint and as supported in this brief, Petitioner requests the Court to declare the rights, duties, and liabilities of the parties as follows:

- a. THAT THE COURT'S DISCOVERY ORDER IS PROPERLY INTERPRETED AS GRANTING AUTHORITY TO POSSESS OFFICIAL VOTING SYSTEMS FOR TESTING ;
- b. THAT THE SECRETARY OF STATE HAS NO LEGAL AUTHORITY GRANTED BY STATUTE TO RESTRICT ACCESS TO THE VOTING SYSTEMS OWNED BY THE TOWNSHIPS AND MUNICIPALITIES OUTSIDE THE TIME FOR CONDUCTING ELECTIONS AS DEFINED FROM THE LOGIC AND ACCURACY TEST THROUGH CERTIFICATION AND PAST THE TIME OF RECOUNT.
- c. THAT NO FORMAL OR INFORMAL AGENCY ACTION OF THE MICHIGAN SECRETARY OF STATE EXISTED AS TO THE POSSESSION OF THE VOTING SYSTEMS AT THE TIME OF THE EXPERT ANALYSIS THAT RESULTED IN INDICTMENT.
- d. THAT THE SCOPE OF THE COURT'S DISCOVERY ORDER GRANTED DISCOVERY AUTHORITY THAT NECESSARILY INCLUDED THE RIGHT TO EXAMINE AND REPORT ON THE INTERNAL INVESTIGATION OF THE DEVICE; TO EXAMINE ALL HARDWARE AND SOFTWARE AS CONFIGURED AND TO RETRIEVE SYSTEM OPERATIONAL LOGS; TO DETERMINE WHETHER THE SYSTEM OPERATED AS INTENDED; AND TO INSPECT FOR ANY EVIDENCE OF REMOTE ENTRY DURING THE ELECTION AS DEFINED FROM THE LOGIC AND ACCURACY TEST TO THE CERTIFICATION OF RESULTS;
- e. THAT TOWNSHIP CLERKS AS THE CUSTODIAN OF TOWNSHIP VOTING SYSTEMS WITH LEGAL DUTIES AND POWERS GRANTED BY CONSTITUTION AND LAW UNDER 1963 MICH CONST ART. VII, § 4; § 18; AND MCL 41.65, CAN GRANT PERMISSION TO A LEGAL TEAM TO HAVE POSSESSION OF A VOTING SYSTEM AND TO INSPECT THE SYSTEM OUTSIDE OF THE ELECTION AS DEFINED FROM THE LOGIC AND ACCURACY TEST TO THE CERTIFICATION OF RESULTS WITHOUT VIOLATING ANY CRIMINAL LAWS AND WITHOUT THE PERMISSION OF THE SECRETARY OF STATE OR COURT ORDER;

- f. THAT THE SPECIAL PROSECUTOR'S NOVEL INTERPRETAION OF MCL 168.932(b) RUNS CONTRARY TO LAW
- g. THAT THIS COURT'S DISCOVERY ORDER WAS INTENDED WITHIN ITS SCOPE TO HAVE THE VOTING SYSTEMS TESTED WHICH NECESSARILY REQUIRED POSSESSION AND SUCH POSSESSION WAS NOT UNDUE UNDER MCL 168.932(c).
- h. THAT THE TERM UNDUE POSSESSION WAS VOID FOR VAGUENESS AS IT FAILS TO APPRISE DEFENDANTS OF THE CONDUCT PROSCRIBED AS WELL AS CHARGING PROSECUTORS.
- i. TO GRANT TO THE PETITIONER ALL OTHER RELIEF ALLOWED BY LAW AND AS JUSTICE REQUIRES.

Respectfully submitted,

/s/ Stefanie Lambert
Stefanie Lambert Juntilla (P71303)
Law Office of Stefanie L. Lambert PLLC
Attorney for Plaintiff / Appellant
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26th Floor
Detroit, MI 48234
www.stefanielambert.com
attorneylambert@protonmail.com

Dated: September 30, 2024

CERTIFICATE OF SERVICE

Undersigned states that the attached pleadings were served upon counsel of record in accordance with the Michigan Court Rules, and electronically served where allowed by the Court Rules and MIFILE electronic filing system.

Respectfully submitted,

/s/ Stefanie Lambert
Stefanie Lambert Juntilla (P71303)
Law Office of Stefanie L. Lambert PLLC
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attorneylambert@protonmail.com

Dated: September 30, 2024

ATTACHMENT 1

Discovery Order, December 4, 2020,
William Bailey v. Antrim County, et al.,
Case No. 20200009238-CZ

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

WILLIAM BAILEY,

Plaintiff,

v

File No. 2020009238CZ
HON. KEVIN A. ELSSENHEIMER

ANTRIM COUNTY,

Defendant.

Matthew S. DePerno (P52622)
Attorney for Plaintiff

Haider A. Kazim (P66146)
Attorney for Defendant

DECISION AND ORDER REGARDING
PLAINTIFF'S MOTION FOR AN EX PARTE TEMPORARY RESTRAINING ORDER,
SHOW CAUSE ORDER AND PRELIMINARY INJUNCTION

The above captioned Plaintiff is a resident of Central Lake Township, Antrim County, Michigan. Plaintiff voted in person in the most recent election held November 3, 2020. Subsequently, Plaintiff filed a complaint on November 23, 2020, including the following counts: (1) constitutional right to accuracy and integrity of elections; (2) violation of “purity of elections clause;” (3) election fraud [pursuant to] MCL 600.4545(2) and MCL 158.861; (4) common law election fraud; (5) equal protection violation; and (6) statutory election law violations. Along with his complaint, the Plaintiff also filed a Motion for an Ex Parte Restraining Order, Show Cause Order and Preliminary Injunction. The proposed order, submitted by Plaintiff, would permit Plaintiff to take forensic images from the 22 precinct tabulators and investigate those images, thumb drives, software and the County Clerk’s “master tabulator.”¹ Additionally, the order would

¹ Defendant asserts that there is no “master tabulator” and that the Dominion tabulator in its possession is the same type used by the individual precincts.

prohibit destruction of evidence relating to the November 3, 2020 election and prohibit turning on the Dominion tabulators or connecting the tabulators to the internet.

The Court heard oral arguments on the Plaintiff's motion on December 3, 2020, and took the matter under advisement. For purposes of this Decision and Order, the Court adopts the Defendant's statement of facts as to the events leading up to and immediately after the election. Moreover, the Defendant has agreed to preserve and protect all records in its possession used to tabulate votes in Antrim County, to not turn on the Dominion tabulator in its possession and to not connect the Dominion tabulator in its possession to the internet.² Therefore, the only remaining issue to be considered by the Court is whether the Plaintiff is permitted to obtain the requested forensic images.

Injunctive relief is generally considered an extraordinary remedy that issues where justice requires, there is an inadequate remedy at law, and there is a real and imminent danger of irreparable injury.³ A preliminary injunction requires a particularized showing of irreparable harm; an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural.⁴ To determine whether an injury constitutes irreparable harm, as would support a preliminary injunction the injury is evaluated in light of the totality of the circumstances affecting, and the alternatives available to, the party seeking injunctive relief.⁵ The irreparable-harm factor is considered an indispensable requirement for a preliminary injunction.⁶ In determining whether to issue a preliminary injunction, the trial court must evaluate whether: (1) the moving party made the required demonstration of irreparable harm, (2) the moving party showed that it is likely to prevail on the merits, (3) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, and (4) there will be harm to the public interest if an injunction is issued.⁷

First, Plaintiff asserts that he will suffer irreparable harm via the loss of his constitutional right to have his vote counted if the temporary restraining order and preliminary injunction are not granted. Specifically, in the recent election, the Village of Central Lake included a proposed

² According to Defendant, it only retains possession of one Dominion tabulator machine. The remaining Dominion tabulator machines are in the custody, control and/or possession of the 22 individual precincts.

³ *Mich AFSCME Council 25 v Woodhaven-Brownstone School Dist*, 293 Mich App 143; 809 NW2d 444 (2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Detroit Fire Fighters Ass'n v City of Detroit*, 482 Mich 18; 753 NW2d 579 (2008).

initiated ordinance to authorize one marihuana retailer establishment within the village on the ballot. There were 524 votes cast regarding this proposal, with 262 for and 262 against. According to the tabulation on November 3, 2020, with the votes tied the proposal failed. However, when the ballots were retabulated on November 6, 2020, the result went from a tied vote to the proposal passing by one vote.⁸ According to the Clerk of Central Lake Township and the ASOG Forensic Report, three ballots were damaged when they were retabulated. Allegedly the damaged ballots were manually re-filled out and re-run through the tabulation machine, yet the final numbers do not reflect that the damaged/cured ballots were included. Plaintiff argues that failure to include the damaged ballots in the retabulation resulted in the marihuana proposal passing and violated his constitutional right to have his vote counted. The temporary, let alone total, loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law.⁹ As such, the Court finds that Plaintiff has met the requirement for irreparable harm.

Second, Plaintiff asserts that he is likely to prevail on the merits of his claim because, pursuant to the Michigan Constitution and by statute, his right to vote was violated and he is entitled to have the results of the recent election audited in order to ensure its accuracy and integrity. Defendant counters that Plaintiff is not likely to succeed on the merits of his claims because he lacks standing to bring the constitutional claims and his statutory claims are inapplicable.

A litigant has standing whenever there is a legal cause of action, but even if no legal cause of action is available, a litigant may have standing if he or she has a special injury or right or substantial interest that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.¹⁰ While the Defendant argues that Plaintiff has failed to allege an injury in fact, the Court disagrees. As discussed above, assuming that Plaintiff's ballot was one of those damaged during the retabulation, failure to include his vote on the marihuana proposal potentially resulted in passage of the ordinance. Moreover, failure to include the Plaintiff's ballot would amount to the loss of his right to vote, which is an injury specific to Plaintiff. As the Court has determined that

⁸ See Declaration of Judith L. Kosloski.

⁹ *Garner v Mich State Univ*, 185 Mich App 750; 462 NW2d 832 (1990).

¹⁰ *Lansing School Ed. Ass'n v Lansing Bd of Ed.*, 487 Mich 349, 372; 792 NW2d 686 (2010).

the Plaintiff has standing to bring the constitutional claims, it is unnecessary to analyze whether the Plaintiff will succeed on the merits of his statutory claims.¹¹

Third, Plaintiff asserts he will suffer greater harm than the Defendant if the injunction is not granted as he will lose his constitution freedom to vote, whereas the Defendant has a duty to ensure the election process is conducted without fraud. Defendant argues that granting the Plaintiff's request for preliminary injunction would violate the License Agreement with Dominion and essentially force Antrim County to commit breach of contract. The Plaintiff is entitled to have his vote counted and the Defendant has a duty to maintain an accurate and secure election. The Court believes that Defendant's duty to ensure that no eligible Antrim County voter is disenfranchised outweighs its potential duties or obligations under the Licensing Agreement. Moreover, MCR 2.302(C) allows for protective orders that trade secrets or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way. Thus, any forensic investigation into the Dominion voting equipment can be limited to safeguard the company's intellectual property through a protective order.

Finally, Plaintiff asserts the public interest weighs in favor of granting temporary injunctive relief because confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy. Defendant claims that harm to the public interest, via reverse engineering of Dominion software (presumably for malicious purposes), outweighs any potential harm to the Plaintiff. The Court believes that confirming the accuracy, integrity and security of the electoral process is a greater public interest at this juncture than the potential future misuse of reverse engineered data. Therefore, the public interest weighs in favor of granting the Plaintiff's preliminary injunction.

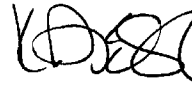
For the reasons stated herein, the Court finds that Plaintiff has met the necessary requirements for issuance of a preliminary injunction and thus, Plaintiff's Motion for an Ex Parte Restraining Order, Show Cause Order and Preliminary Injunction is granted.

¹¹ MCL § 600.4545(1) applies whenever it appears that material fraud or error has been committed at any election at which there has been submitted any constitutional amendment, question, or proposition to the electors of the state or any county, township or municipality thereof. Defendant argues that this statute is inapplicable because any fraud or error would not have affected the outcome of the election.

IT IS ORDERED that Antrim County maintain, preserve and protect all records in its possession used to tabulate votes in Antrim County, to not turn on the Dominion tabulator in its possession and to not connect the Dominion tabulator in its possession to the internet.

IT IS FURTHER ORDERED, pursuant to MCR 2.302(C), that to protect the respective interests of the parties, this Decision and Order shall also serve as a Protective Order restricting use, distribution or manipulation of the forensic images and/or other information gleaned from the forensic investigation without further order of this Court.

IT IS SO ORDERED.



12/04/2020
05:11PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge

ATTACHMENT 2

Grievances Dismissed Against Ms. Lambert

**State of Michigan
Attorney Discipline Board**

**Grievance Administrator,
Michigan Attorney Grievance Commission,**

Petitioner,

ADB Case No. 23-31-GA

v

Stefanie Junttila, P71303,

Respondent.

NOTICE OF VOLUNTARY DISMISSAL

Now comes Petitioner by and through its counsel Kimberly L. Uhuru and voluntarily dismisses the charges of professional misconduct against Respondent Junttila.

Wherefore, Petitioner respectfully requests that the hearing panel issue an order of dismissal as to Respondent Junttila.

Dated: July 10, 2023

**MICHIGAN ATTORNEY
GRIEVANCE COMMISSION**

/s/ Kimberly L. Uhuru

KIMBERLY L. UHURU, P61966

Deputy Administrator

755 W. Big Beaver Rd., Suite 2100

Troy, MI 48084

(313) 961-6585

kluhuru@agcmt.com

ATTACHMENT 3

Speckin Report,
July 26, 2023

Speckin Forensics, LLC

120 N. WASHINGTON SQUARE, SUITE 300
PMB 5068
LANSING, MICHIGAN 48933
517-349-3528 • FAX 954-839-8219

PLEASE DIRECT CORRESPONDENCE & PAYMENT HERE:
2450 HOLLYWOOD BOULEVARD, SUITE 700
HOLLYWOOD, FLORIDA 33020
954-763-6134 • FAX 954-839-8219

www.4N6.com

LEONARD A. SPECKIN
RETIRED DOCUMENT ANALYST

MICHAEL J. SINKE
RETIRED LATENT PRINT SPECIALIST
RETIRED CRIME SCENE RECONSTRUCTION
RETIRED FORENSIC DOCUMENT ANALYST

DR. GEORGE F. JACKSON Ph.D.
FORENSIC TOXICOLOGIST

MICHAEL P. MULDERIG
FORENSIC FIREARMS
BALLISTICS SPECIALIST

ERICH J. SPECKIN
FORENSIC DOCUMENT ANALYST
INK DATING SPECIALIST
CRIME SCENE RECONSTRUCTION

THOMAS K. HUARD Ph.D.
DNA ANALYST & CONSULTANT

JUAN RUIZ
COMPUTER, MOBILE DEVICE SPECIALIST

MARSHAUN J. BLAKE
ARSON INVESTIGATOR
VEHICLE FIRE SPECIALIST

ANTHONY A. MILONE
COMPUTER & GRAPHICS SPECIALIST
FORENSIC DOCUMENT SPECIALIST

DR. JULIE A. HOWENSTINE
SEROLOGIST
DNA ANALYST & CONSULTANT
CRIME SCENE RECONSTRUCTION

Amended Report of July 26, 2023

July 27, 2023

I was asked to examine and recount ballots, the envelopes, totals tapes, record books and other associated documents for the 2020 election. This included AVCBs 1-134 and Precincts 1- 503 for the City of Detroit in their possession. This process took from the 17th of April 2023 to the 17th of May 2023. Additional photos were taken from 17th of July 2023 to 24th of July 2023.

Upon my arrival at the Detroit Department of Election Office located at 2978 W. Grand Blvd., Detroit, MI 48202, we were greeted, and the ground rules were explained and provided by the management staff. The rules included but are not limited to, no touching of the ballots, envelopes or register tapes. We could only direct the staff there to move, show, count, etc. the items desired. I was not allowed to proceed beyond the lobby area without being accompanied by a supervisor.

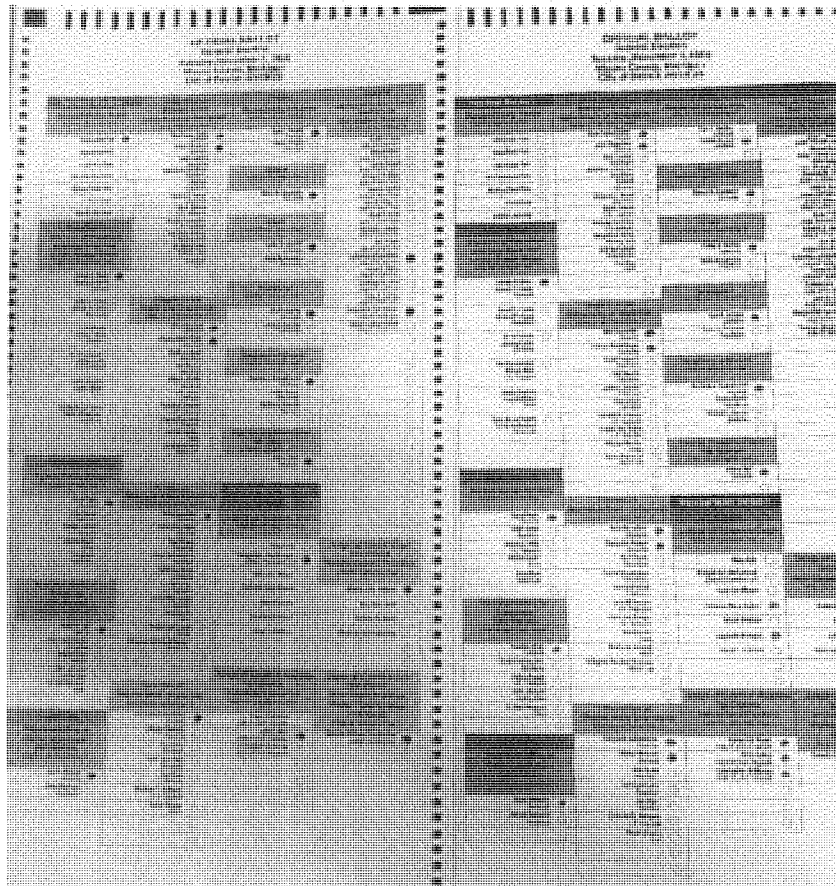
The ballots were located in locked cabinets that had a tag on them that had to be cut off. There were 17 cabinets in total of which 12 were filled with AVCB ballots and the other 5 were filled with Precinct Ballots. The ballots were stored in these cabinets by AVCB 1-8, 8-17, 17-24, 24-30, 31-36, 37-41, 42-51, 52-61, 62-70, 71-81, 82-92, 93-134 and by Precincts 1-88, 89-207, 208-301, 302-384, and 385-503. The ballots were all stacked in the cabinets one on top of the other and had to be sorted by the City staff upon removal from the cabinet.

The manner in which the ballots were counted was by the representative from the Election office moving the ballots from one pile to another while my team was tallying the vote totals. The tallies were recorded by Presidential candidate (Biden, Trump, or other) and by Congressional Senator candidate (Peters, James or other). In this context, the term "other could be anything other than the two main candidates such as another party, write in, undervote (blank), or overvote. This category was designed as a placeholder to keep the number of ballots total as well as the main parties' vote totals. While the ballots were in front of my team, we were able to observe that the printing on the mail in ballots have some inconsistencies, for example some have darker printing than others.

At the same time when this printing anomaly was noted, many of the City of Detroit staff commented to each member of my team that the ballot paper felt different on some of the ballots. We were unable to touch the paper or examine completely to determine this. It occurred while the representative was flipping the ballots, some were sticking to one another, and they made comments that some ballots felt

thicker than others. In my opinion, further examination should occur on these ballots and AV boards to confirm these differences, the number of instances where this may have occurred, patterns that may exist on voting on the different paper stock, and any further determinations that can be made from either paper that exists. This can be crucial evidence in light of the possibility of additional ballots being introduced as discussed in affidavits and evidenced by videos.

Below is a photograph of two ballots showing the representative difference in printing appearance that can be seen between two ballots from AV 26, similar differences were found in other AV boards.



The mail in envelopes, absentee applications, register tapes and record books were located in the same storage room as the ballots in file-like storage drawers. These drawers were not locked or sealed like the ballots at the time of our arrival.

The method used to count the envelopes was to observe the representative from the Election office count the envelopes in stacks of a 100 (sometimes 50 or 25), we then counted the total and I recorded that number. With regards to the register tapes and the record books; the City representative removed the tapes and record book from the envelope, I then documented the totals that were recorded and the materials were placed back in the same envelope.

In several of the AV boards, a comparison was made from the applications for mail in ballots to the envelopes. I was told by the City staff that many applications were sent out (even unsolicited in cases) for

mail in ballots in 2020. However, it was confirmed by the staff that in order to receive a mail in ballot, an application needed to be received, either by return mail or delivered in person.

This was a very time-consuming process to match up each returned ballot with a corresponding application, therefore only 2 AV boards were done like this as time allowed. In the two AV boards compared (AV 79 and AV 122), there were 289 mail-in ballots (249 in AV 79 and 40 in AV 122) found that had NO application in the file to receive the ballots. In some of those instances post it notes were found in the files that included "Ballot doesn't match poll book"; "not on list in QVF"; and "Not on list".

I have now been provided with what I am told is a "permanent AV voter list". I then compared the ballot return envelopes that have no corresponding application for AV ballot request to the "permanent list".

Looking into the math involved, AV 79 had a total of 1249 ballots counted according to the total printouts. 249 showed no application for the ballot, this is nearly 20%. When the "permanent list" is compared to these 249 without applications, 155 of them were still not found on this list or with an application. This is over 12%.

For AV 122 the total ballots shown in the printouts is 511, with 40 having no corresponding application which is approximately 8%. When the "permanent list" is compared to these 40 without applications, 33 of them were still not found on this list or with an application. This is over 6%.

It would follow that if all the boards were compared in this manner, with approximately 170,000 AV ballots, the range at 8%-20% would be 13,600 to 34,000 ballots with no application requesting the ballot.

My office will continue to analyze records and compare additional boards in the same manner as AV 79 and AV 122 above.

After the envelopes were counted, the total number of envelopes were compared to the total number of ballots for each AVCBs. Many of these boards had unexplainable differences. In some, the number of ballots was more than the number of envelopes. In a few instances, there were more envelopes than ballots present to be counted. A small discrepancy can exist by simple human error of an envelope missing or misfiled of course, but the differences in some cases are much bigger. For example, AV 18 contains 43 more envelopes than ballots; AV 38 contains 40 more ballots than envelopes; AV 40 contains 62 more ballots than envelopes. There are dozens of such examples, while other AVs match exactly or nearly exactly.

A comparison was then made to the vote totals on the tapes (in person) or printouts (AVCB) to the ballots present to be counted. Three AV boards had totals of ZERO votes on the printouts, but votes were recorded to the state. These boards are AV 33, AV 57, and AV 58. It is unclear how the totals were reported when the printouts show ZERO. At 11:23pm AV 33 shows the totals of zero, for AV 57 at 11:50pm shows zero, and for AV 58 at 11:50pm shows zero. These three AV envelopes showed no totals on any printouts.

See photos on the following page:

Statement of Votes Cast

General Election

Wayne County, Michigan

November 03, 2020

SOVC for: All Contests, Detroit, Detroit AVCB ICC 33, AV Counting Board

City of Detroit AVCB 33 - Adjudication Report Tape

| precinct | Registered Voters | Card Cast | Verbal Cast | Is Turnout |
|-------------------------------|----------------------|-----------|-------------|------------|
| Township/City | | | | |
| Detroit | | | | |
| City of Detroit - Precinct 33 | | | | |
| AV Counting Board | 0 | 0 | 0 | N/A |
| Total | 0 | 0 | 0 | N/A |
| Detroit - Total | 0 | 0 | 0 | N/A |
| Township/City - Total | 0 | 0 | 0 | N/A |
| AV Counting Board | 0 | 0 | 0 | N/A |

R. J. M. M. M.
Barry J. R. R. R.

Statement of Votes Cast

General Election

Wayne County, Michigan

November 03, 2020

SOVC for: All Contests, Detroit, Detroit AVCB ICC 57, AV Counting Board

City of Detroit AVCB 57 - Adjudication Report Tape

| precinct | Registered Voters | Card Cast | Verbal Cast | Is Turnout |
|-------------------------------|----------------------|-----------|-------------|------------|
| Township/City | | | | |
| Detroit | | | | |
| City of Detroit - Precinct 57 | | | | |
| AV Counting Board | 0 | 0 | 0 | N/A |
| Total | 0 | 0 | 0 | N/A |
| Detroit - Total | 0 | 0 | 0 | N/A |
| Township/City - Total | 0 | 0 | 0 | N/A |
| AV Counting Board | 0 | 0 | 0 | N/A |

Statement of Votes Cast

General Election

Wayne County, Michigan

November 03, 2020

SOVC for: All Contests, Detroit, Detroit AVCB ICC 58, AV Counting Board

City of Detroit AVCB 58 - Adjudication Report Tape

| precinct | Registered Voters | Card Cast | Verbal Cast | Is Turnout |
|-------------------------------|----------------------|-----------|-------------|------------|
| Township/City | | | | |
| Detroit | | | | |
| City of Detroit - Precinct 58 | | | | |
| AV Counting Board | 0 | 0 | 0 | N/A |
| Total | 0 | 0 | 0 | N/A |
| Detroit - Total | 0 | 0 | 0 | N/A |
| Township/City - Total | 0 | 0 | 0 | N/A |
| AV Counting Board | 0 | 0 | 0 | N/A |

For AV 13, the ballots counted by hand and the vote totals reported to the state are nearly identical (1565 vs 1566), but the number of ballots scanned and shown on the printouts are 1621. This is over 50 ballots for this AV board that show as scanned but are not present in the ballots presented to us.

As for AV 14, the number of ballots on the totals printout as scanned and the votes reported are very similar (1764 vs 1757) this is also very similar to the number of envelopes counted for that AV board of 1765. However, the number of ballots actually present is 1740. This is approximately 25 more envelopes present than ballots. I am unable to determine where these previous approximately 25 ballots have gone.

In AV 15, the number of ballots present and the total ballots on the printout are similar (1762 vs 1765). The number of envelopes counted for the AV is 1795. This is approximately 30 more envelopes present than ballots. I am unable to determine where these previous approximately 30 ballots have gone.

In AV 19, the total number of ballots counted by my team and the number of ballots on the total printout are similar (2301 vs 2300). There were only 2270 envelopes counted for this AV board. This would leave approximately 30 ballots appearing and counted that have no corresponding envelope received.

In AV 23, the total envelopes counted, and the number of ballots scanned on the totals printout are similar (2858 vs 2855). The totals ballots presented in our count was only 2818. This would be a difference of 40 ballots missing, or possibly the same ballots that were also rescanned to account for scanned total than total ballots present.

In AV 26, the total number of ballots present, and the total number scanned on the printout are similar (3426 vs 3430). The number of envelopes returned for this AV board was 3385. This is approximately 45 more ballots presented and counted than envelopes found to return the ballots.

Similar anomalies in the ballot count, envelope count, or total votes scanned exist in the following additional AV boards: AV 27, AV 28, AV 32, AV 36, AV 38, AV 40, AV 41, AV 42, AV 43, AV 45, AV 62, AV 64, AV 68, AV 69, AV 77, AV 79, AV 82, AV 87, AV 88, AV 89, AV 95, AV 96, AV 101, and AV 122.

Further anomalies existed in the totals for an individual candidate, for instance in AV 49 the total we counted within the ballots present in the presidential race for Biden is 902, however, the total reported as votes cast and counted for AV board is 965 for Biden. It is unclear where these additional 63 votes would have come from as they are not present in the ballots presented. Duplicate scanning and counting of ballots is possible and could account for this discrepancy but the computer and system data including the scans of the ballots from the tabulators would need to be examined to confirm or deny this possibility.

Similar anomalies (of 10 or more votes) in total votes on the printouts of compared to the totals in the ballots exist in the following AV boards: AV 1 (32), AV 3 (22), AV 4 (16), AV 6 (10), AV 10 (-13), AV 12 (-12), AV 13 (53), AV 17 (57), AV 21 (16), AV 22 (13), AV 23 (36), AV 24 (19), AV 25 (15), AV 28 (46), AV 30 (-12), AV 35 (11), AV 36 (-15), AV 37 (-22), AV 40 (-10), AV 41 (53), AV 42 (10), AV 43 (27), AV 44 (-29), AV 45 (-41), AV 47 (23), AV 49 (63), AV 62 (92), AV 67 (19), AV 68 (-19), AV 72 (13), AV 73 (11), AV 75 (16), AV 77 (12), AV 84 (13), AV 86 (19), AV 88 (59), AV 92 (16), AV 93 (14), AV 94 (15), AV 95 (19), AV 99 (63), and AV 130 (46).

Based on these types of anomalies between scanned totals and ballots currently present, it is my opinion that the computer data relating to the scanning and tabulation from this 2020 election should be examined and compared for discrepancies as well as time sequences. This data should include ballot images to check for duplicate scans, comparison of totals, times of scanning, and other related features and possible access from outside sources. My office is ready and able to perform this additional analysis. The data and computer hardware should be preserved until complete analysis can be performed.

A handwritten signature in black ink, appearing to read 'E. Speckin', with a long horizontal stroke extending to the right.

Erich J. Speckin

Forensic Document Analyst

ATTACHMENT 4

Qualifications and Reports of Jeff Lenberg

Exhibit B – Jeffrey Lenberg CV

Retired Distinguished Member of the Technical Staff Sandia National Laboratories Chief Technology Officer World Light Power LLC, World Light Africa Limited

Jeff Lenberg graduated from the University of New Mexico with a Bachelors degree (1978) and Masters degree (1980) in Electrical Engineering. While in college he gained two years experience at the NASA Dryden Flight Research Center at Edwards AFB, CA working on the development of flight simulators.

In 1980 Jeff joined Sandia National Laboratories. He retired in December, 2011 after thirty-one plus years at the labs. He spent several years as a first level supervisor and finished his career as a Distinguished Member of the Technical Staff.

The first twelve years at Sandia, Jeff developed satellite systems involving flight hardware, test software, test systems, project management, and supervisor roles.

For two and a half years, he led the development of secure national and international networks for export control while on assignment at DOE headquarters in Washington DC. While in DC and on his own time, he was involved in the investigation of potential election fraud associated with the 1994 Maryland gubernatorial election. He assisted the FBI with data analysis in their investigation which was initiated in March 1995.

After returning from Washington and for the rest of his career, Jeff performed national vulnerability assessments and led the development of national security related projects. These projects required systems analysis, hardware (including low power microsystems) and software design, team development, project management, and program development. These projects varied from a one person, \$100K project to a one hundred person, \$20M project.

While working on national security projects, Jeff held high level security clearances. He worked on projects with several governmental

agencies. He led “black hat” teams whose objective was to expose vulnerabilities by developing ways to break in (if possible) to what were considered to be secure systems and demonstrate that it could be done (physical security, secure hardware, and secure software systems).

In 2012 after Jeff retired from Sandia Labs, he started a renewable energy development company and in 2014 started a company based in Nairobi, Kenya to help create African jobs and bring energy to those who are without it.

Analyst: Jeffrey Lenberg

Date: May 3, 2021

Executive Summary

Vote modification in Antrim County was consistent with technical manipulation of the election project file. This project file was generated and deployed by ElectionSource for the November 3, 2020 election.

ElectionSource configured and deployed Antrim County's project files that resulted in the modification of the votes during the election. The modification demonstrates manipulation of any and all races on the ballot. Administrator access (via administrator password) permits modification to these project files and creates inaccurate vote tally results observed during the election in Antrim County.

The SQL Management Studio Version 17.1 was found to be installed on the Antrim County Election Management System (EMS) (see Douglas Logan's Report dated 4/9/2021). This software is not certified by the Election Assistance Commission for use on electronic voting systems. This software tool was utilized in expert testing to replicate the Antrim County November 3, 2020 election vote tally manipulation. Testing using this software tool was consistent with technical manipulation of the project file resulting in inaccurate vote tallies.

The ElectionSource staff responsible for the creation and deployment of the project have direct access to make specific modifications to the project files. Testing indicates that vote modification can be pre-planned and deployed prior to an election. ElectionSource staff possesses all of the administrative access to make selective modification of the project files to manipulate the vote tally for any targeted county, precinct, or race.

Logs from the EMS indicate ElectionSource technicians responsible for deploying the project files to Antrim County also had access to numerous other counties project files to include:

| | | | | |
|-----------|------------|-----------|--------------|-------------|
| Alcona | Alger | Alpena | Arenac | Berrien |
| Calhoun | Charlevoix | Cheboygan | Gogebic | Houghton |
| Iosco | Isabella | Keweenaw | Manistee | Marquette |
| Menominee | Midland | Otsego | Presque Isle | Schoolcraft |
| Wayne | Wexford | | | |

It is unclear if modifications to the above counties listed impacted the Antrim County project file.

Project Files

Testing of Antrim County project files indicates that modification of the project files can replicate the election inaccuracies observed in the November 3, 2020 election. In addition, further testing revealed that selective modification of the project files resulted in tailored manipulation of the votes tallied. The manipulation can be tailored to modify a specific county, precinct, or race. The steps used to manipulate the vote tally are listed below:

- Modify the specific precinct election files
 - Edit the VIF_BALLOT_INSTANCE.DVD
 - Note: Technical access to ElectionSource corporate resources would allow for these types of manipulations to the elections.
- Burn Compact Flash cards with the configurations for the tabulators
- Run the Election (Process the Ballots through the Tabulator)

The results of the modifications to the project file will show vote totals changed on the tabulator's printed tape as well as modified vote totals in the Results Tally Reporting (RTR) system.

In order to validate these findings; two test cases were run:

1. The swap of Trump and Jorgenson vote totals on both the paper tape and the RTR results
2. The swap of Biden and Trump (Presidential Race) and Ferguson and Bergman (Congressional) while leaving the Senate race unmodified on both the paper tape and the RTR results

Exhibit A contains photos of all the ballots that were run for test case number 2 as well as the paper tapes and RTR tallies showing the manipulations.

Both test cases were successful in that the modifications were made without any alerts or error messages being generated by the EMS or the tabulator. The test cases would not have been detected during the canvassing process because both the paper tapes and the RTR results matched.

SQL Database Tools on the EMS

The SQL Management Studio Version 17.1 was found on the EMS (see Douglas Logan's report dated 4/9/2021) and this software is not certified by the Election Assistance Commission (EAC) for use on electronic voting systems. The SQL tool is a utility that enables the modification of project files and databases on the EMS.

Testing shows the replication of the Antrim County election vote manipulation as asserted by Halderman from November 3, 2020 modifying the vote totals on the EMS by utilizing the SQL tool resident on the EMS. The use of SQL tool requires no special access beyond being able to log into the EMS itself. Therefore, any actor with access to the EMS could create this manipulation of the election results.


ElectionSource Staff Access to Other Counties

ElectionSource staff that worked on the Antrim County project file also had access to a number of other counties across Michigan to include:

| | | | | |
|-----------|------------|-----------|--------------|-------------|
| Alcona | Alger | Alpena | Arenac | Berrien |
| Calhoun | Charlevoix | Cheboygan | Gogebic | Houghton |
| Iosco | Isabella | Keweenaw | Manistee | Marquette |
| Menominee | Midland | Otsego | Presque Isle | Schoolcraft |
| Wayne | Wexford | | | |

These counties appeared in the UserInfo log file on the EMS as being previously opened projects that were being utilized by the ElectionSource technician during the same timeframe that the ElectionSource technicians was working to configure and deploy project files for Antrim County.


It is certain that the ElectionSource technician had access project files for more than just Antrim County. It is unclear whether the configuration of the other counties had an impact on the Antrim county election.


Jeffrey Lenberg
Date: 5/3/2021

MICHIGAN NOTARY ACKNOWLEDGEMENT

State of Michigan
County of Michigan

The foregoing instrument was acknowledged before me on this 3rd day of May, 2021 by Jeffrey
Lenberg.

Notary Public Signature: 
Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023

ANN M. HOWARD
Notary Public, State of Michigan
County of Oakland
My Commission Expires 02-24-2023
Acting in the County of Oakland

Exhibit A – Test Case #2 – Presidential and Congressional Swap Only

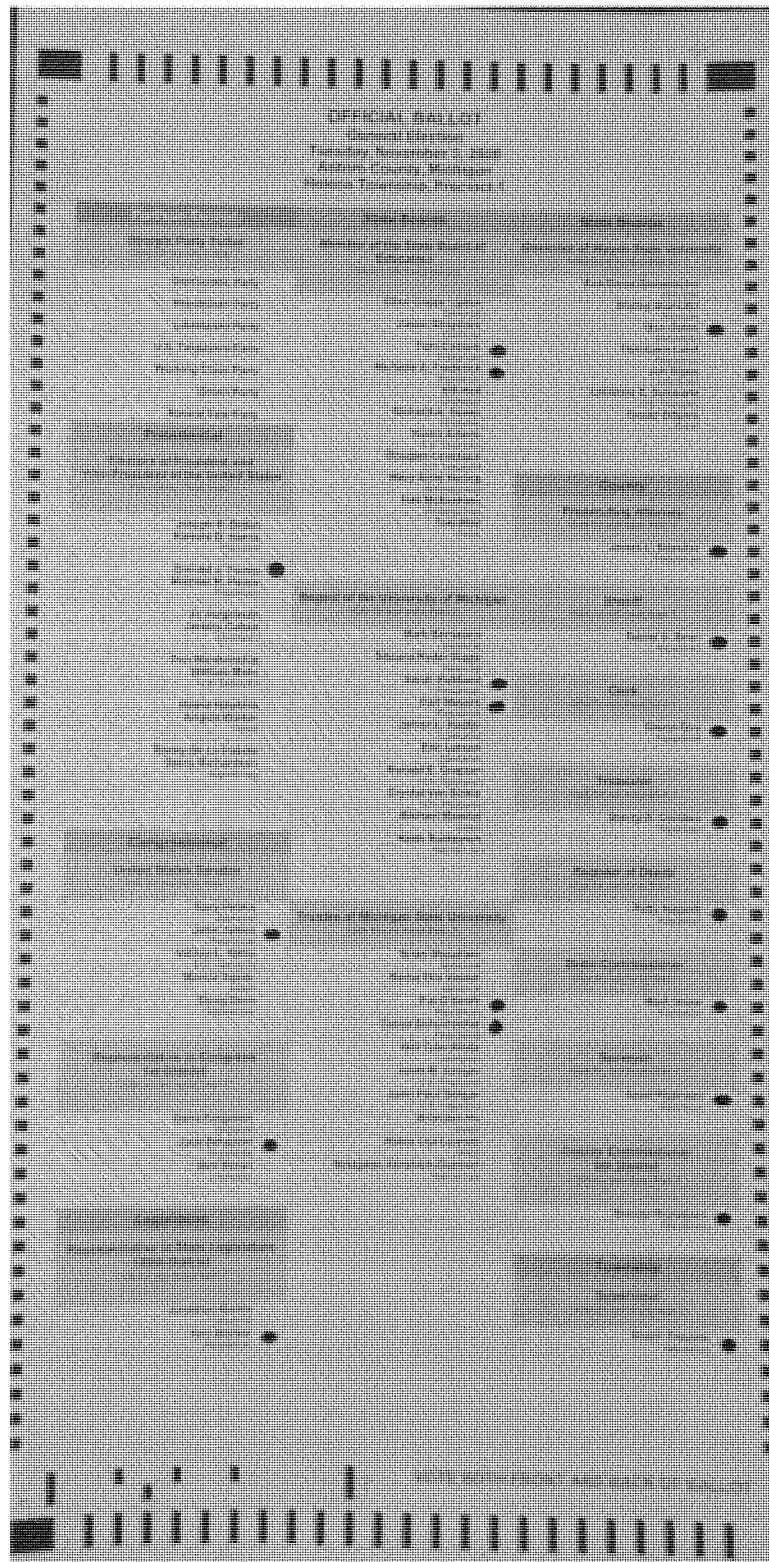


Figure 1 - Trump/James/Bergman

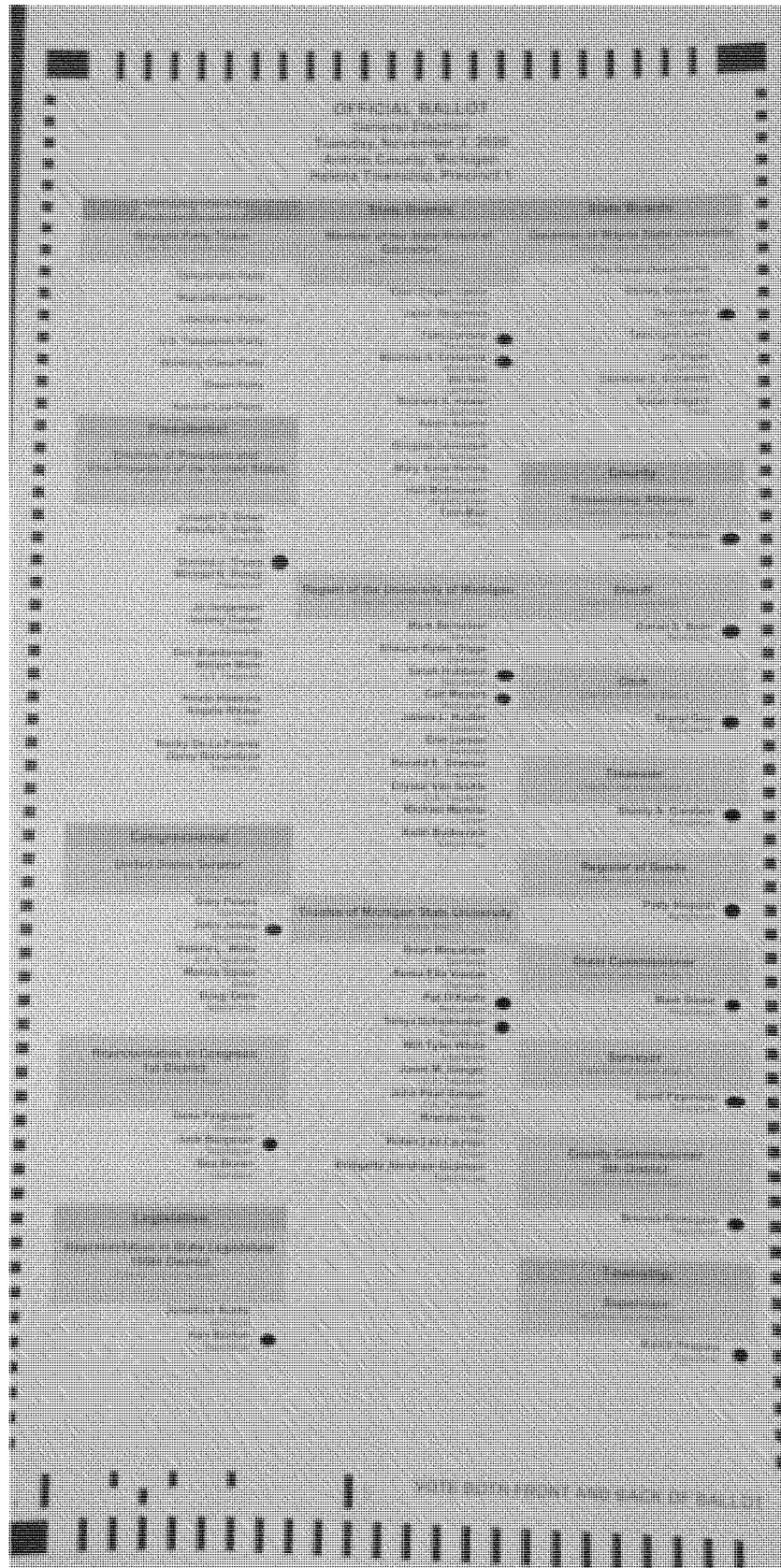


Figure 3 - Trump/James/Bergman

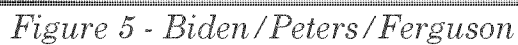


Figure 5 - Biden/Peters/Ferguson

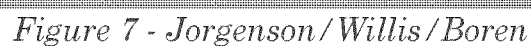


Figure 7 - Jorgenson/Willis/Boren

| | | | |
|------------------------|--|--|--|
| Contest: | President and Vice President of the United States | | |
| Number Of Positions : | 1 | | |
| Precinct Portion: | Helena Township, Precinct 1 | | |
| Ballot Manifestation : | 1124 | | |

| | | | |
|---------------------|---|--|--|
| Ballot Statistics | | | |
| Contest Results | | | |
| Overvotes: | 0 | | |
| Undervotes: | 0 | | |
| Blank: | 0 | | |
| Double Votes: | 0 | | |
| Invalid Votes: | 0 | | |
| Write-in Overrides: | 0 | | |

| Candidate Results | | | |
|-------------------|---------------------------------------|-------|-------|
| | Name | Party | Votes |
| | Joseph R. Biden / Kamala D. Harris | DEM | 4 |
| | Donald J. Trump / Michael R. Pence | REP | 2 |
| | Jo Jorgensen / Jeremy Cohen | LIB | 1 |
| | Don Blankenship / William Mohr | UST | 0 |
| | Howie Hawkins / Angela Walker | GRN | 0 |
| | Rocky De La Fuente / Darcy Richardson | NLP | 0 |
| | Write-in | | 0 |

Figure 8 - Trump/Biden Flipped on RTR

| | | | |
|------------------------|--|--|--|
| Contest: | United States Senator for State | | |
| Number Of Postions : | 1 | | |
| Precinct Portion: | Helena Township, Precinct 1 | | |
| Ballot Manifestation : | 1124 | | |

| | | | |
|--------------------|---|--|--|
| Ballot Statistics | | | |
| Contest Results | | | |
| Overvotes: | 0 | | |
| Undervotes: | 0 | | |
| Blank: | 0 | | |
| Double Votes: | 0 | | |
| Invalid Votes: | 0 | | |
| Writein Overrides: | 0 | | |

| Candidate Results | | | |
|-------------------|-------------------|-------|-------|
| | Name | Party | Votes |
| | Gary Peters | DEM | 2 |
| | John James | REP | 4 |
| | Valerie L. Willis | UST | 1 |
| | Marcia Squier | GRN | 0 |
| | Doug Dern | NLP | 0 |
| | Write-in | | 0 |

Figure 9 - Senate - Correct - No Flip

| | | | |
|------------------------|---|-------|-------|
| Contest: | Representative in Congress 1st District | | |
| Number Of Postions : | 1 | | |
| Precinct Portion: | Helena Township, Precinct 1 | | |
| Ballot Manifestation : | 1124 | | |
| Ballot Statistics | | | |
| Contest Results | | | |
| Overvotes: | 0 | | |
| Undervotes: | 0 | | |
| Blank: | 0 | | |
| Double Votes: | 0 | | |
| Invalid Votes: | 0 | | |
| Writein Overrides: | 0 | | |
| Candidate Results | | | |
| | Name | Party | Votes |
| | Dana Ferguson | DEM | 4 |
| | Jack Bergman | REP | 2 |
| | Ben Boren | LIB | 1 |
| | Write-in | | 0 |

Figure 10 - Congressional District - Ferguson/Bergman Flipped

| President and Vice President of the United States (1) | |
|--|---|
| Joseph R. Biden / Kamala D. Harris (Democrat) | 3 |
| Donald J. Trump / Michael R. Pence (Republican) | 2 |
| Jo Joe Biden / J. Jerome Cohen (Libertarian) | 1 |
| Don Blankenship / William Ahr (U.S. Libertarian) | 0 |
| House Holder / Angela Walker (Green) | 0 |
| Rocky De La Fuente / Garcia Richardson (National Lead) | 0 |
| Write-in | 0 |
| Total Votes | 7 |

| United States Senator for State (1) | |
|-------------------------------------|---|
| Baro Peters (Democrat) | 2 |
| John Jones (Republican) | 4 |
| Danette L. Ellis (U.S. Libertarian) | 1 |
| Marcia Vance (Green) | 0 |
| David Bern (National Lead) | 0 |
| Write-in | 0 |
| Total Votes | 7 |

| Representative in Congress (1) | |
|--------------------------------|---|
| David F. Johnson (Democrat) | 4 |
| Jack Benjamin (Republican) | 2 |
| Sam Smith (National Lead) | 1 |
| Write-in | 0 |

Figure 11 - Paper Tape Results Showing Presidential/Congressional Flipped - Senate Correct

Subject: Preliminary Report of Subversion in the Antrim County Election Management System, Results Tallying and Reporting Application
Date: 5/9/2021
Analyst: Jeffrey Lenberg

Executive Summary

The Antrim County Dominion Democracy Suite, Election Management System (EMS), Results Tallying and Reporting (RTR) application has been found to be subverted. Numerous error conditions that are identified by the tabulator are ignored by the EMS/RTR. The error conditions are easily reproduced and displayed on the tabulator, yet the EMS/RTR has been subverted in a fashion to purposefully ignore vote manipulation. This technical behavior is consistent with a subversion being deployed in the Antrim County EMS/RTR and is designed to mute such error reporting. This subversion technique is common among malicious actors seeking to proactively handle error conditions that would jeopardize their ability to modify software's performance.

The J Alex Halderman expert report dated March 26, 2021 does not accurately describe the conditions that occurred in the Antrim election. The shifting of votes described by Halderman during the November 3, 2020 election should have resulted in Biden's votes being shifted to the Natural Law Party, Straight Party Vote, which in turn would have resulted in Rocky De La Fuente (the Natural Law Party Candidate) receiving a large number of votes as a result, or an error condition should have occurred on the EMS/RTR for a vote shift outside of the Presidential contest. Neither of these scenarios occurred because the EMS/RTR was subverted in a fashion to handle such an error silently and treat that situation as an undervote (no vote for the Presidential race at all).

Testing of related scenarios has shown the ImageCast Precinct (ICP) tabulator properly reported a critical error and shut down the tabulator when there were votes shifted between contests. However, when the EMS/RTR was presented with the same results file processed on the tabulator, it reported no errors, but instead erroneously reported those vote choices as blanks (undervotes) instead of generating a critical error.

The evidence of a subversion in the EMS/RTR is sufficient that an expert review of the source code for the EMS/RTR is warranted to determine the extent of the subversion and breadth of the configuration options available to the malicious actors that would employ it.

This assessment is based on the review of the Antrim County EMS/RTR and testing with an ICP tabulator. If more forensic information and source code becomes available for review, this assessment will be reevaluated in the light of the new

evidence available. Upon receipt of the source code a specific evaluation of the error handling routines will be conducted along with static and dynamic code analysis to definitively determine the specific behavior of the software.

Details

Discovery of Subversion of the Antrim County EMS/RTR

A specific test was designed to determine how the Antrim County EMS/RTR along with the tabulator would handle the swap of Biden votes with the Natural Law Party (Straight Ticket Vote from the Contest Above on the ballot).

The rationale for making this test was the fact that Halderman indicated that the shift of votes that occurred would have changed the index of the candidate selection to cross the boundary from the Presidential contest to the Straight Party Ticket contest. This shifting across the boundary of a contest should have created a critical error condition during the processing of votes, however, in the case of Antrim County election it did not.

The test scenario is as follows:

Ballot Style: Helena Township, Precinct 1 (1124)
DVD File Name: 1120_8_8_0_DETAIL.DVD
internalMachineID for Biden: 3016
internalMachineID for Natural Law Party: 3015

Votes Cast on Test Ballots (See Appendix A):

Biden: 2
Trump: 4
Jorgenson: 1

Both the EMS/RTR and the ICP tabulator used exactly the same DVD file listed above.

The test scenario implemented a swap between the internalMachineID fields of Biden and the Natural Law Party in the VIF_BALLOT_INSTANCE.DVD file to attempt to cause Biden's votes to be swapped with the Straight Party/Natural Law Party.

The expected outcome was that Biden's votes would be assigned to the Natural Law Party (Straight Party Vote) and the result would be Biden's votes being tallied for the Natural Law Party Presidential Candidate Rocky De La Fuente.

The test revealed the following:

- The ICP reported a critical error and does not finish processing the vote file, does not print a paper tape, writes the error to the log file, and forces a mandatory shutdown of the tabulator
- The EMS/RTR loads the same file with no errors and takes all of the Biden votes and treats them as undervotes

The 1120_8_8_0_DETAIL.DVD file is a result file containing the votes that are cast on the ICP. When the poll is closed, the ICP software processes the file containing the votes and produces a paper tape with the tallies for each candidate. This process works normally as long as the internalMachineID is not modified or the modification stays within the boundaries of the those “expected” for the specific contest, for example the Presidential Contest. In other words, a malicious actor can swap internalMachineIDs within the same Contest for any candidate so long as the index remains in the correct range for that same contest.

However, for the purposes of this test the internalMachineIDs were swapped between different Contests, the software in the ICP reports a critical error (see Figure 1). The ICP does not finish processing the vote file (Figure 1), does not print a paper tape, requires the operator to shut-down the tabulator (see Figure 2), and records details of the error in the slog.txt file (Figure 3) on the compact flash card. The tabulator takes drastic action to inform the operator that a very serious problem has been encountered. Note that the vote result file 1120_8_8_0_DETAIL.DVD is still correctly stored on the compact flash card.

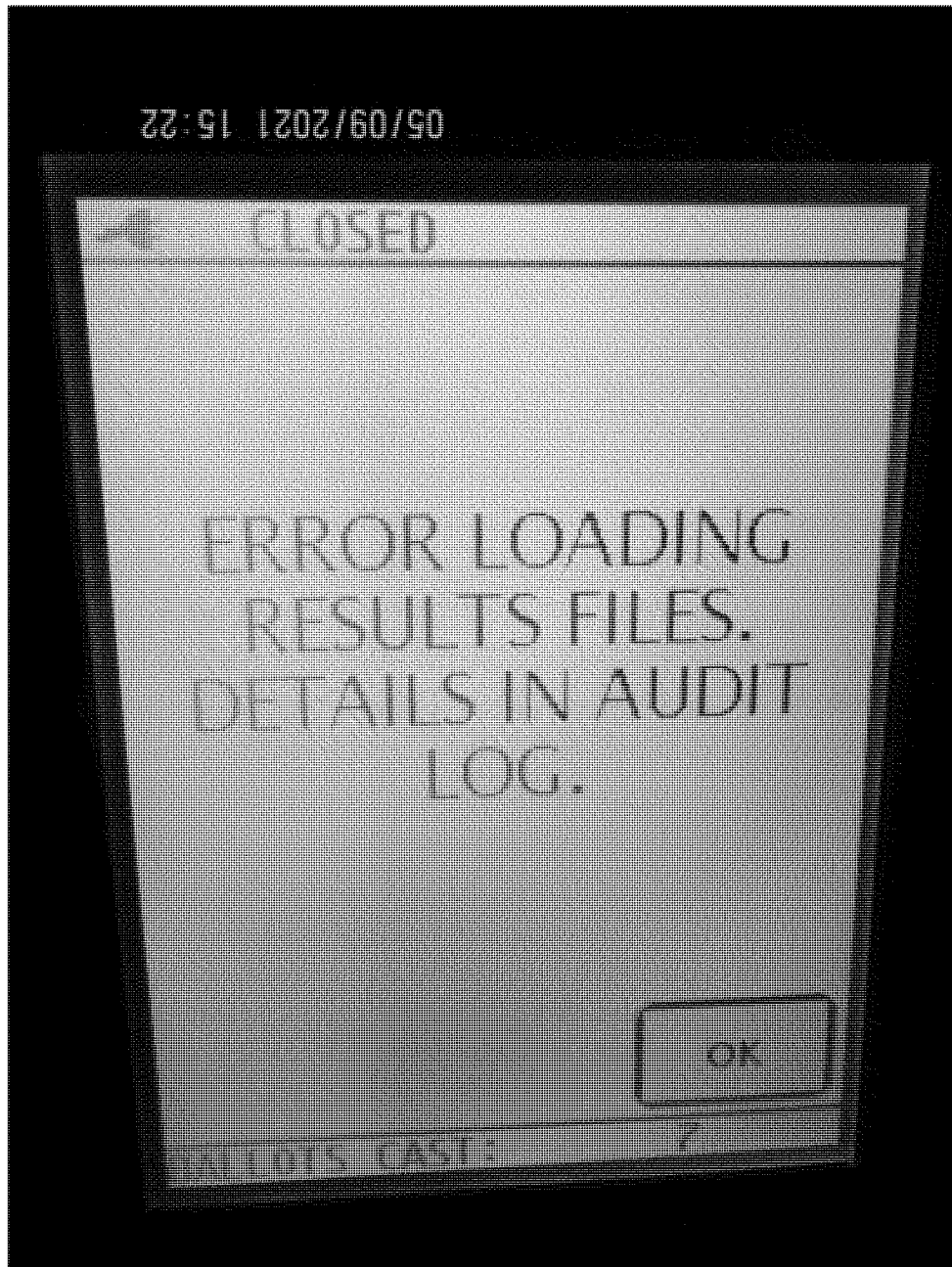


Figure 1 - ICP Error Loading Results File

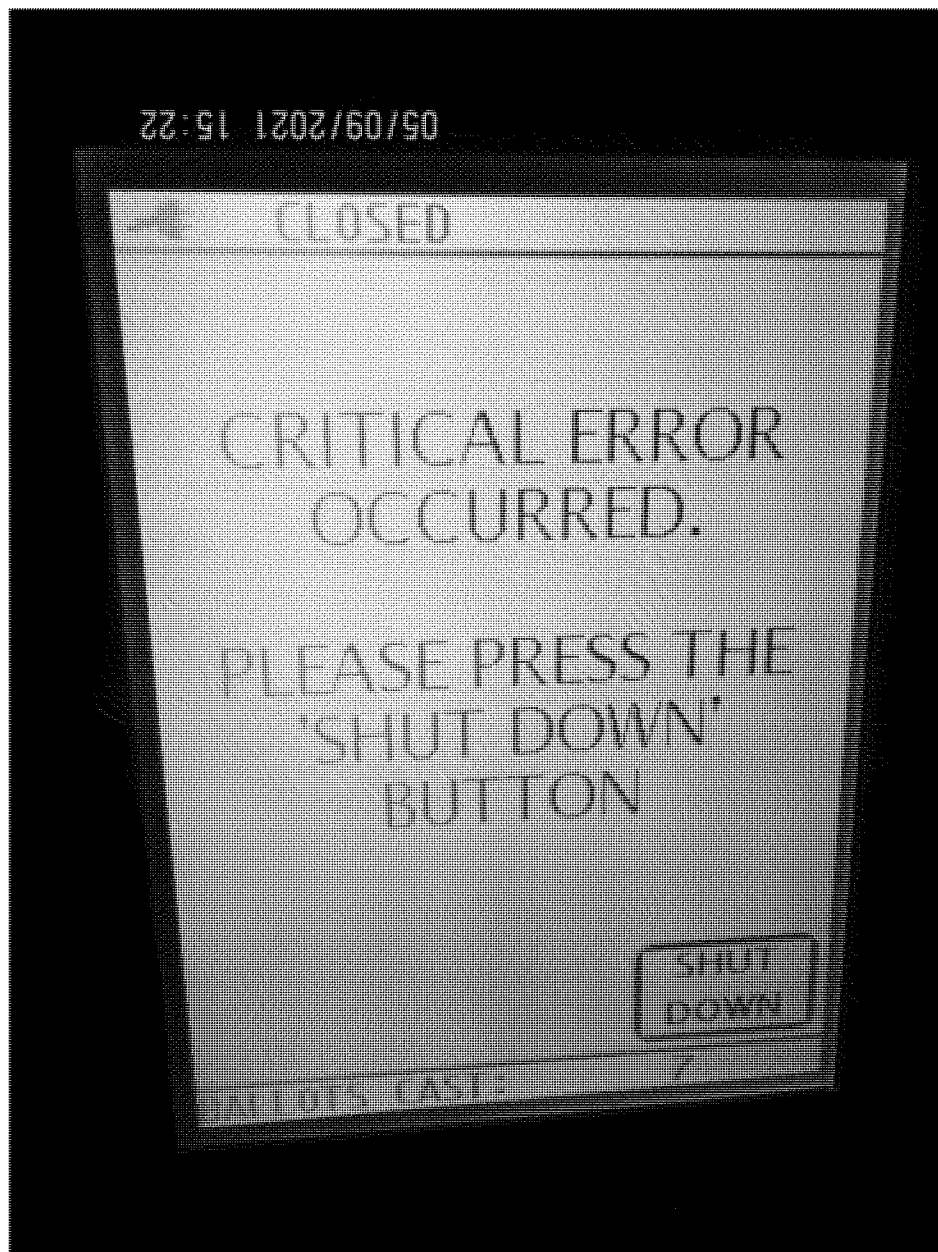


Figure 2 - ICP Critical Error - Shutdown Required

```

Nov 03/2020 06:34:48 ScanVote Total number of ballots = 4
Nov 03/2020 06:34:58 ScanVote Ballot 1124 processed successfully
Nov 03/2020 06:35:55 ScanVote Total number of ballots = 5
Nov 03/2020 06:37:09 ScanVote Ballot 1124 processed successfully
Nov 03/2020 06:37:09 ScanVote Total number of ballots = 6
Nov 03/2020 06:37:20 ScanVote Ballot 1124 processed successfully
Nov 03/2020 06:37:20 ScanVote Total number of ballots = 7
Nov 03/2020 06:38:13 Security Audit Administrator key for 'Admin' detected
Nov 03/2020 06:38:13 Admin Audit Administrative Key inserted
Nov 03/2020 06:44:23 Admin Audit Admin chose to Close the Poll
Nov 03/2020 06:44:55 Admin Warning Error Reading Admin key
Nov 03/2020 06:44:57 Security Audit Administrator key for 'Admin' detected
Nov 03/2020 06:44:57 Admin Audit Administrative Key inserted
Nov 03/2020 06:45:10 Admin Audit Admin chose to Close the Poll
Nov 03/2020 06:45:24 Admin Correct passcode entered for Close
Nov 03/2020 06:45:24 Admin Requesting confirmation to close poll
Nov 03/2020 06:45:35 Admin Starting election database close poll procedure
Nov 03/2020 06:45:35 Election Saving Poll-Close time
Nov 03/2020 06:45:36 Election Beginning to create Total Results file
Nov 03/2020 06:45:36 Election Error TotalOneContest: Raw Results, cannot find choice instance 3016)
Nov 03/2020 06:45:36 Election Warning - Problem (30023) creating Total Results file - Raw Results will be used instead
Nov 03/2020 06:45:37 Election Error TotalOneContest: Raw Results, cannot find choice instance 3016)
Nov 03/2020 06:45:46 Admin Audit Advising Administrator of error (30023) printing report RESULTS TAPE
Nov 03/2020 06:45:46 Admin Critical HandlePollSelection: Error 30023: Fixing shutdown
Nov 03/2020 06:45:46 Admin Audit Shutdown system
Nov 03/2020 06:45:57 Control >> DnsShutdown(just 00000000)
Nov 03/2020 06:45:57 Control >> Shutting down AVS
Nov 03/2020 06:45:57 Control >> Module ( WinDecoder) shutdown successful
Nov 03/2020 06:45:59 Control >> Module ( Event) shutdown successful
Nov 03/2020 06:45:59 Control >> Module ( Election) shutdown successful
Nov 03/2020 06:45:59 Control >> Module ( Admin) shutdown successful
Nov 03/2020 06:45:59 Control >> Module ( Diagnostic) shutdown successful

```

Figure 3 - slog.txt File Contents from Compact Flash Card

The same compact flash card is then loaded on to the Antrim EMS/RTR software. The card reports that it loaded successfully both the vote results and the log file (See Figure 4). Prior to loading this compact flash card the EMS database is directly manipulated in the same way that the file sent to the tabulator was manipulated by swapping 3015 and 3016 internalMachineID in the ChoiceManifestation table of 5744 vote choices spanning all of the contests on all of the 49 ballots types.

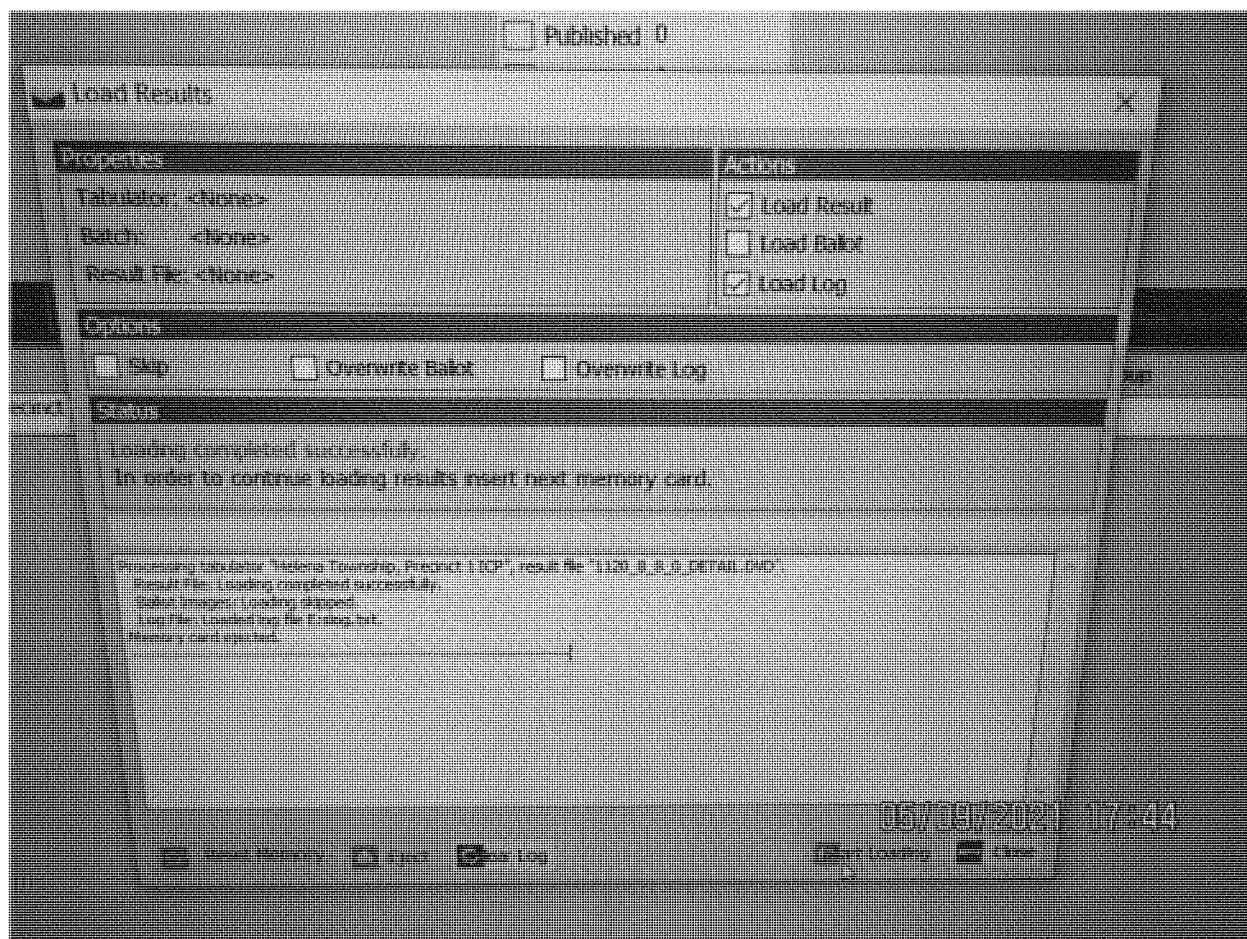
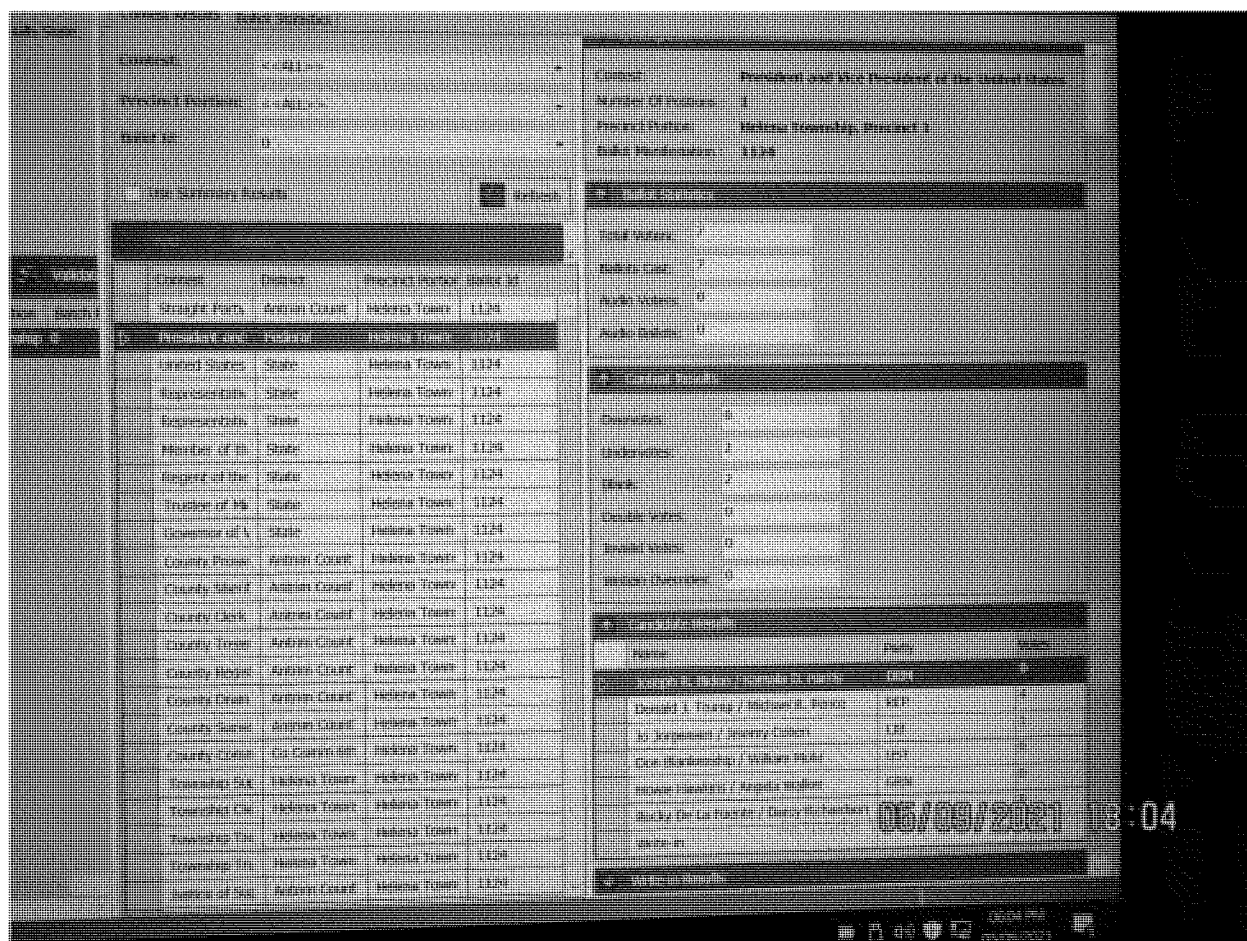


Figure 4 - EMS Successfully Loads Results File

The displayed results indicated that Biden is missing his votes and they are reported as blank ballots and undervotes for that contest (See Figure 5). One of two things should have happened. Either Biden's votes should have been assigned to the Straight Party/Natural Law (internalMachineID = 3015) in which case Bidens vote for President would have been assigned to De La Fuente and note that this did not occur. The other possibility is that the software was able to check the range for internalMachineID range for the contest in which case it would not have found the reference for the Biden vote choice and it should have created an error very similar to what the ICP output. This would be a critical error that should have stopped the application from further processing the compact flash card. Because the Biden vote choice must exist and it did not exist, the application should have stopped loading the results with an error message as to the fact that the results were corrupted. However, no errors were indicated of any kind by the EMS/RTR. The Biden votes just became blank votes (no choice) when there clearly is a choice on the ballot. In summary, either the shifted votes should have gone to De La Fuente (via Straight Party – Natural Law Party) or the application should have created a critical error that would have kept the votes from being tallied and reported.



The conclusion of this test indicates EMS/RTR technical behavior consistent with a technical subversion. Further in-depth analysis of source code would be required to gain definitive clarity on the specific nature of the subversion. This would include analysis of the error handling routines, code traces, static and dynamic code analysis.

Under the penalties of perjury, I declare that I have read the foregoing report and that the fact stated in it are true.

Jeffrey Lenberg
Date: 5/9/2021

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this 9th of May, 2021 by Jeffrey
Lenberg.

Ann M. Howard

Notary Public

Printed Name: Ann M. Howard

My Commission Expires: 2/24/2023

ANN M. HOWARD
Notary Public, State of Michigan
County of Oakland
My Commission Expires 02-24-2023
Acting in the County of Oakland

Appendix A – Ballots Used in Test

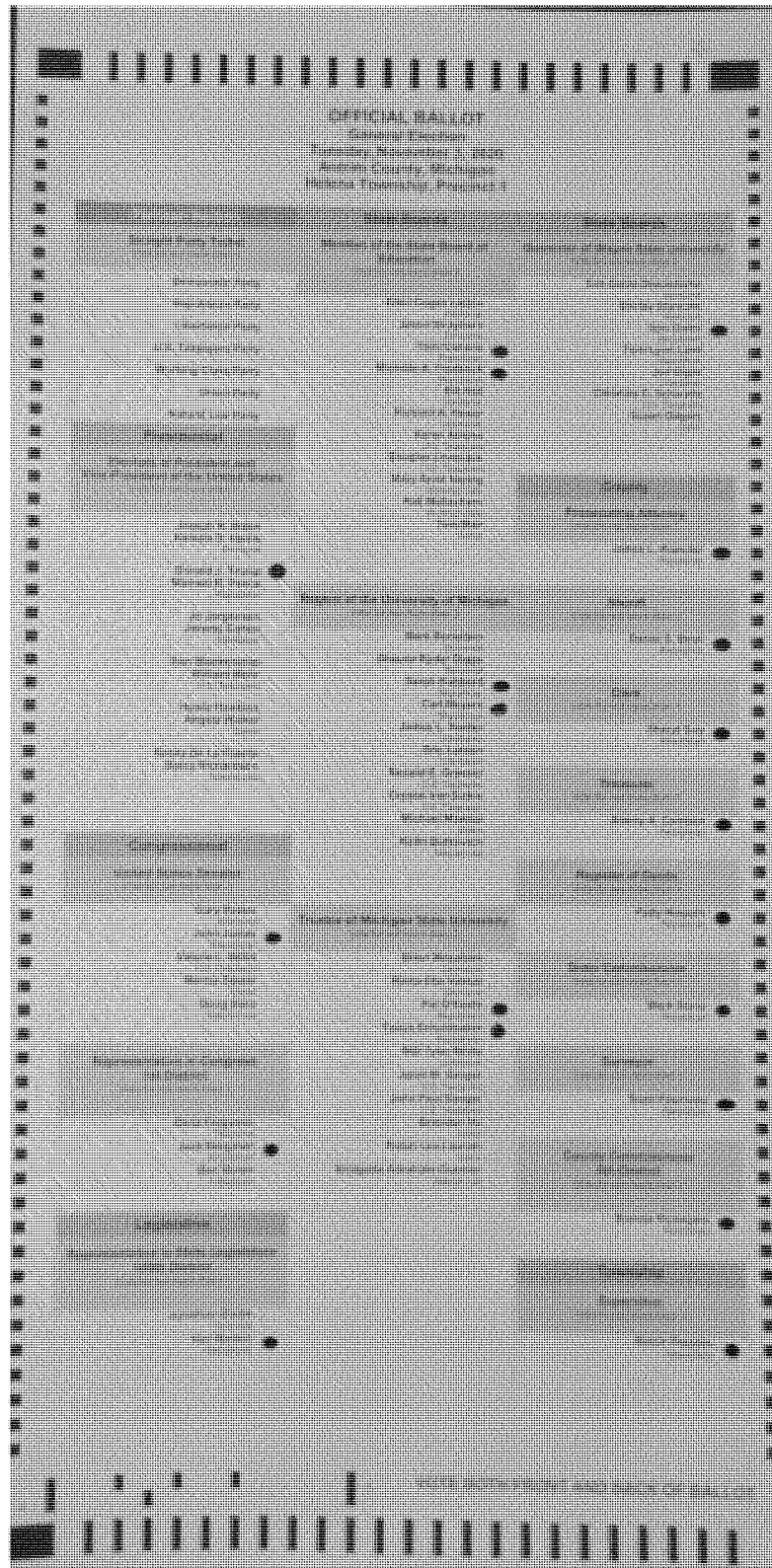


Figure 6 - Trump/James/Bergman

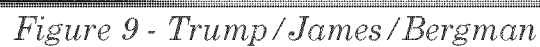


Figure 9 - Trump/James/Bergman

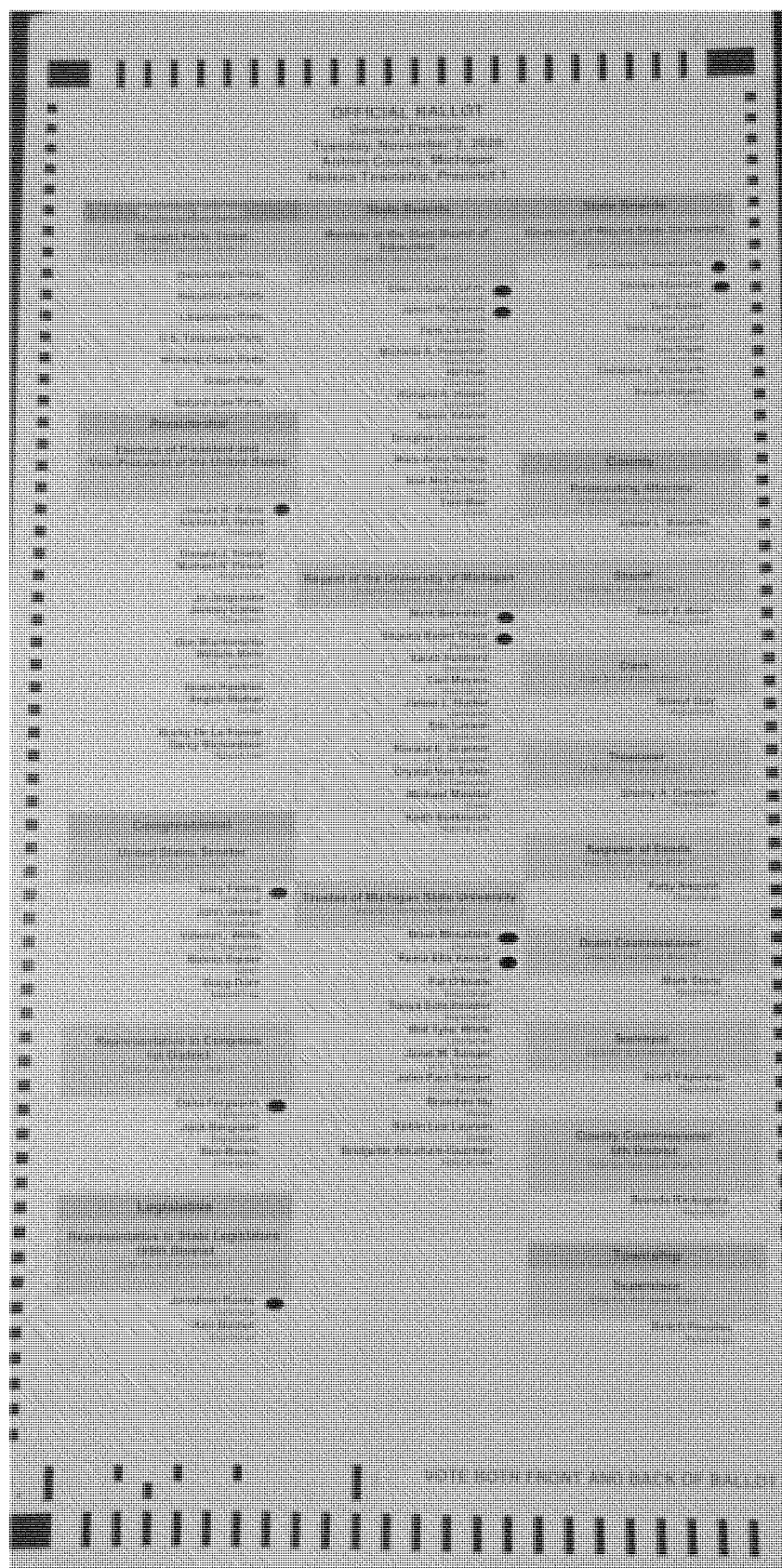


Figure 10 - Biden/Peters/Ferguson

Date: 5/15/2021

Subject: Evidence of Vote Shifting in Barry County Michigan

Analyst: Jeffrey Lenberg

Executive Summary

The Dominion Voting Systems Election Management Systems (EMS), Results Tally & Reporting (RTR) application was subverted during the course of the November 3, 2020 election in Barry County Michigan. There is evidence of the same vote shifting discovered in Antrim County, Michigan occurring in Barry County during election night.

In a previous report by this author dated May 9, 2021, a subversion in the EMS/RTR system was demonstrated where critical errors were disregarded, and the processing of votes continued despite error conditions that should have triggered a critical error in the system.

One of the specific subversions to the error handling in the EMS/RTR noted was the use of logical “bumpers” that prevented the shifting of votes from one contest to another. These logical bumpers account for the shifted Biden votes in the Antrim County election going to the status of “undervote” for the Presidential contest. Without this subversion the vote shifting would result in votes being assigned to the Natural Law Party in the Straight Party Ticket contest on the ballot. The votes shifted from Biden to the Natural Law Party, Straight Party Ticket vote, would then result in the Presidential candidate Rocky De La Fuente receiving Biden’s votes.

An affidavit from Jada Chadwick of Hastings, Barry County, Michigan dated December 5, 2020 indicates that she observed Rocky De La Fuente leading in the race with 8,883 votes at 11:17PM with 47% of the precincts reporting on November 3, 2020. Jada Chadwick attached a photo of her computer screen to her affidavit documenting Rocky De La Fuente leading the race.

The candidate Rocky De Law Fuente’s final total vote count in Barry County was 16 votes. This type of aberration occurring during a live election is consistent with a subversion being employed operationally by a malicious actor in a misconfigured mode. We have established that the subverted EMS/RTR in Antrim County will not allow Biden votes to be shifted to the Natural Law Party, Straight Party Ticket vote. However, in Barry County during election night November 3, 2020 it is apparent that the subversion was misconfigured resulting in the shifting of votes and consequently causing votes to accrue to the Natural Law Party Candidate, Rocky De Law Fuente.

It is highly likely that the required error handling subversion observed in Antrim was not in place in Barry as would be required to force the cross-Contest vote shift to go to undervote. The accidental but observable extreme results generated from this vote manipulation were anticipated by the malicious actor and likely required a rapid deployment of a pre-planned software fix or an updated configuration to correct for this obvious error in logic. This update would have needed to be deployed across the State of Michigan on all Dominion Voting Systems EMS/RTR systems where the incomplete subversion had a similar malfunction when manipulating the vote totals. This could have been done by an unwitting technician or a download if there existed any remote path into the EMS computer.

The evidence of EMS/RTR subversion in Barry County is relevant to Antrim County because the same contractor, ElectionSource, was likely responsible for the design and deployment of the election project files in both Antrim and Barry County that take advantage of this subversion in order to manipulate votes. A definitive conclusion on the observed behavior of the EMS in Barry County and its relation to the subversion in Antrim can only be completed with a full forensic examination of the equipment and removable media in Barry County. The Michigan Secretary of State has previously ordered destruction of some removable media related to the November 3, 2020 election (See Appendix C). The removable media (compact flash card(s)) is crucial to understand the nature of the subversion that occurred.

Details

This author's report dated May 9, 2021 indicated the presence of a subversion in the Dominion Voting Systems EMS/RTR system. The subversion specifically pertained to how the EMS/RTR system processed results files where a shift occurs in the targeted race.

The Antrim County shift impacted the internalMachineID field of the table named Choice_Manifestation in the EMS database. The subversion of the Antrim County EMS/RTR includes a logical bumper that does not allow the shifting of votes from one contest to another, only shifting of votes within the same contest. The subversion prevents the system from raising a critical error and permits the EMS/RTR to continue processing and posting results without any error or warning messages.

In Antrim County, Biden's votes (internalMachineID index) were shifted to the index number assigned to the Straight Party Ticket Contest, Natural Law Party vote. However, due to the logical bumpers deployed as part of the subversion, all of Biden's shifted votes were counted as "undervotes" by the EMS/RTR in Antrim. Without the subversion it would be expected that shifted Biden votes would cross into the Straight Party Ticket contest, leaving the Presidential contest with no vote within. The internalMachineID index selected as a result of the shift would be the

Natural Law Party, Straight Party Ticket vote. If this selection were to be accurately executed by the Dominion Imagecast Precinct (ICP) and the EMS/RTR, the result would be a vote for the Natural Law Presidential candidate Rocky De La Fuente.

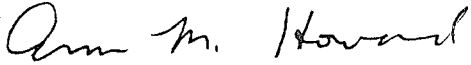
See Figure 1 containing a graphical explanation of the internalMachineID index of vote bullets on the ballot are assigned and used by the ICP and EMS/RTR.

MICHIGAN NOTARY ACKNOWLEDGEMENT

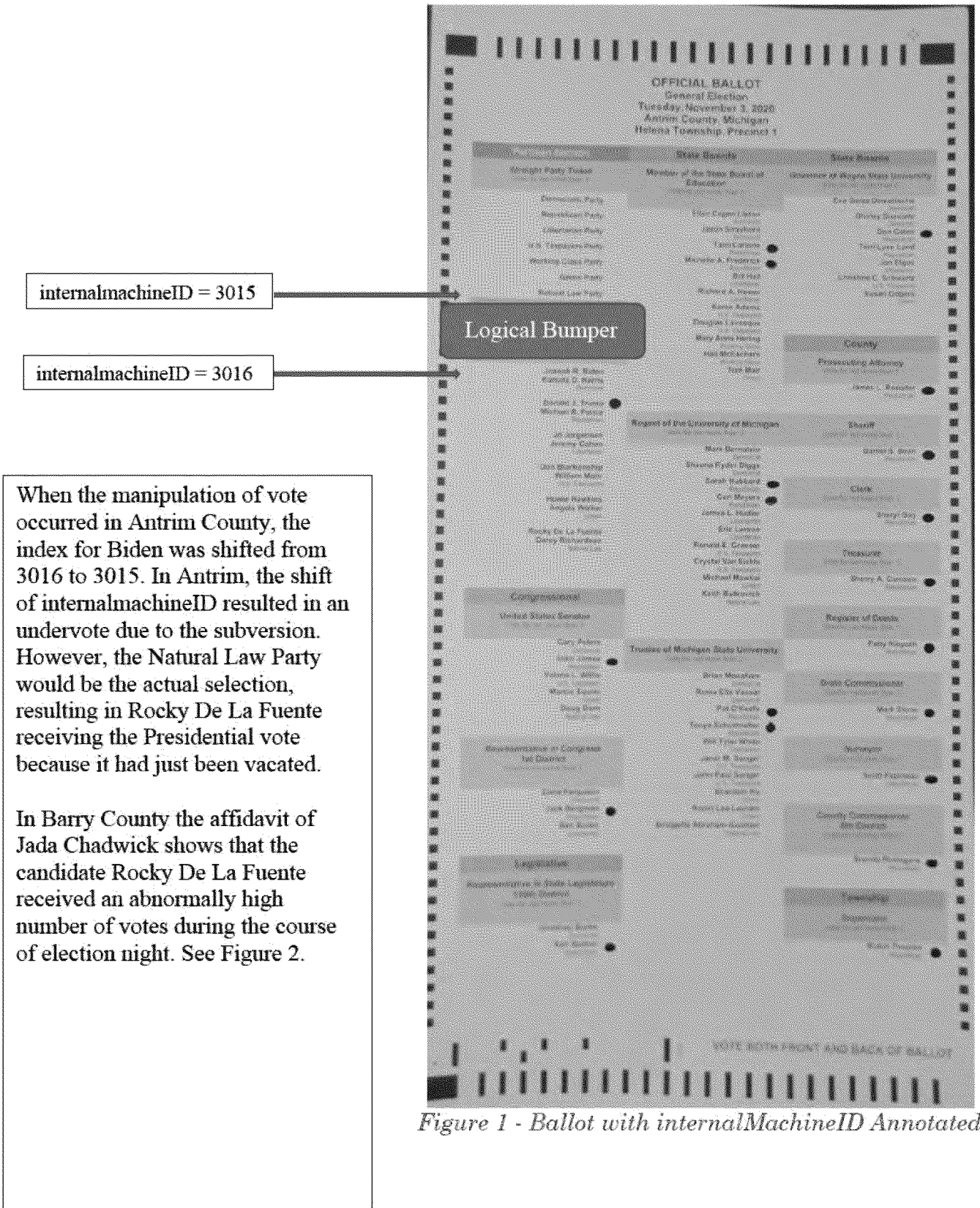
State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 15th day of May,
2021 by Jeffrey Lenberg.

Notary Public Signature:

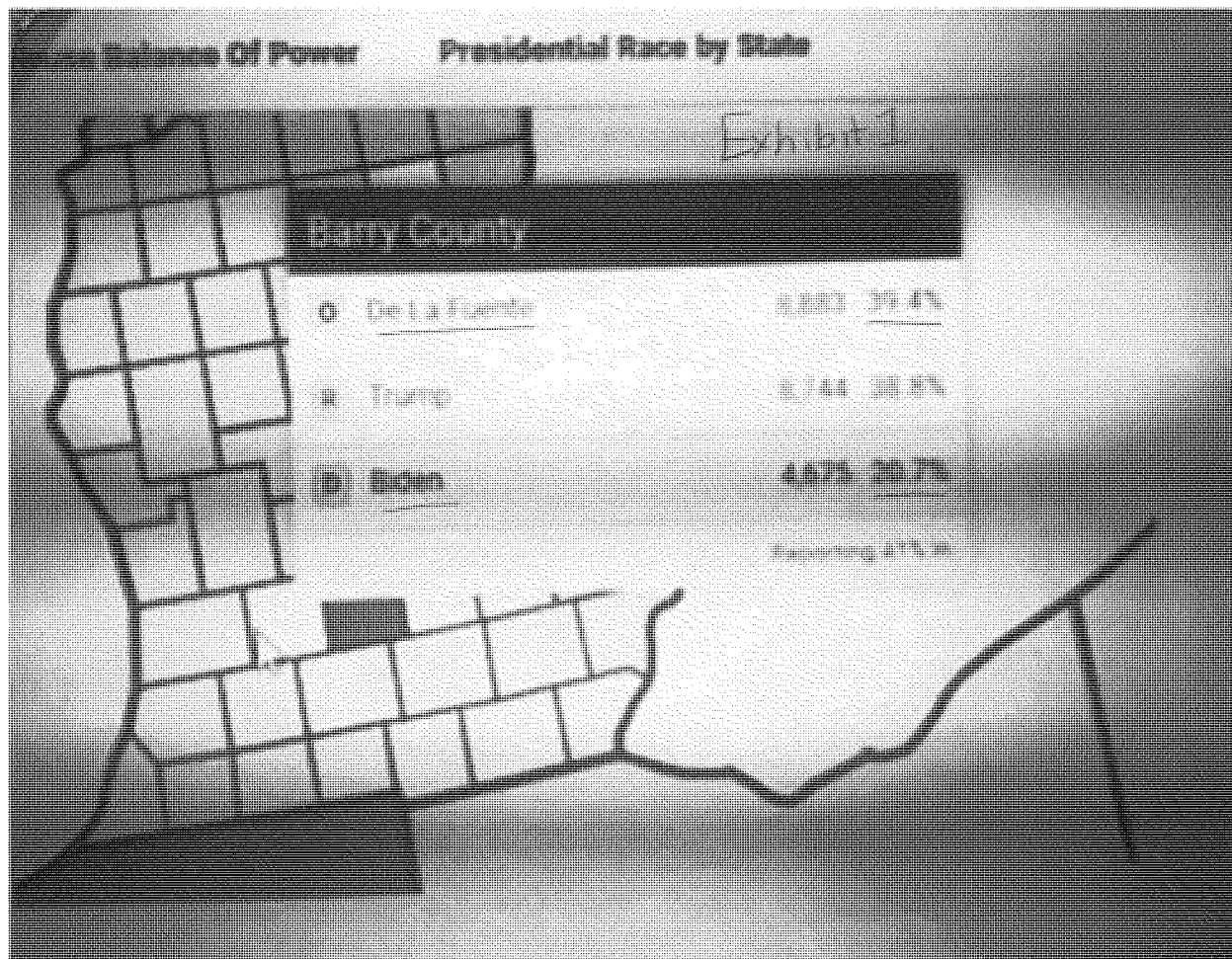
A handwritten signature in cursive script that reads "Ann M. Howard".

Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023



Evidence of Subversion in Barry County, Michigan

An affidavit filed by Jada Chadwick of Hastings in Barry County, Michigan dated December 5, 2020 indicated that she observed Rocky Del La Fuente leading in the Presidential contest having 8,883 votes at 11:17PM with 47% of the precincts reporting on November 3, 2020. Figure 2 is the screenshot that Ms. Chadwick took of the vote totals from her computer screen.



*Figure 2 - Barry County Election Live Update 11:17PM November 3, 2020
See Appendix A for full Affidavit from J Chadwick*

The final vote totals for Barry County reflect that the candidate Rocky De La Fuente received only 16 total votes vice the 8,883 votes reported on election night when he was in the lead.

President/Vice-President of the United States (Vote for 1)

Precincts Reported: 24 of 24 (100.00%)

| | | Election Day | AV Counting | Total | |
|-------------------------------------|-------|--------------|-------------|------------|-----|
| | | | Boards | | |
| Times Cast | | 21,099 | 15,047 | 36,146 / 0 | N/A |
| Candidate | Party | Election Day | AV Counting | Total | |
| | | | Boards | | |
| Joseph R. Biden/Kamala D. Harris | DEM | 4,522 | 7,275 | 11,797 | |
| Donald J. Trump/Michael R. Pence | REP | 16,088 | 7,383 | 23,471 | |
| Jo Jorgensen/Jeremy Cohen | LIB | 297 | 182 | 479 | |
| Don Blankenship/William Mohr | UST | 24 | 35 | 59 | |
| Howie Hawkins/Angela Walker | GRN | 50 | 33 | 83 | |
| Rocky De La Fuente/Darcy Richardson | NLP | 12 | 4 | 16 | |
| Total Votes | | 20,993 | 14,912 | 35,905 | |
| | | Election Day | AV Counting | Total | |
| | | | Boards | | |
| Unresolved Write-In | | 33 | 23 | 56 | |

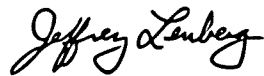
Figure 3 - Barry County, Michigan Final Vote Totals

Conclusion

The subversion that impacted Antrim County was present yet not fully implemented in the EMS/RTR in Barry County on election night. The manifestation of votes being shifted to Rocky De La Fuente is consistent with the EMS/RTR subversion previously identified in Antrim County. The large number of votes for Rocky De La Fuente in Barry County during the live election results reporting can be attributed to a misconfiguration of the subversion or inadequate planning on the part of the subversion developer when writing the code to support the subversion. It is highly likely that a software update or some sort of “patch” had to be deployed to correct this issue and then the results files had to be reprocessed and reposted to the state and the election night reporting system.

The Antrim County subversion is not an isolated incident, and it is apparent that whoever is responsible for creating election project files exercised their ability to manipulate voting in Barry County as well as Antrim County.

Under the penalties of perjury, I declare that I have read the foregoing report and that facts stated in it are true.



Jeffrey Lenberg

Appendix A – Jada Chadwick Affidavit

Exhibit 3

Pages 1 of 3 ^(1C)

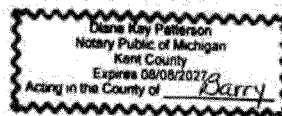
Affidavit & Sworn Statement

I, Jada Chadwick, residing at [REDACTED],
Barry County Hastings, State of Michigan, do swear and
attest under the penalties of perjury and upon personal knowledge that the contents of this
sworn statement are true, accurate, and correct, and that I am competent to testify.

Description of account

1. On November 3 2020 I voted for the presidential and
2. local election. At the Hastings Baptist Church. at 10:30 AM
3. I went with my husband, Shawn Chadwick. When
4. we arrived the parking lot was full. We made our
5. way inside and was directed to our ward, Ward 1.
6. We both stood in line waiting to vote for about 20
7. minutes. My husband voted before me and the lady at
8. the table handed him his ballot but ^{she} noticed that all
9. the booths were in use. There were 5 booths in total.
10. There was a basket full of Sharpie markers that were
11. provided to us. I noticed the person before us grab one
12. and my husband and I used one. There were the
13. only writing utensils provided. I went to the booth
14. to vote and noticed the marker bleed to the other
15. side of my ballot and it looked like a dalmatian
16. with dots everywhere. I turned my ballot in and
17. it went into the counter but I didn't know if

Dated this 5th day of December 2020
Signature Jada Chadwick



SUBSCRIBED AND SWORN to before me this 5th day of December

Diane Kay Patterson

2
0
2
0
1
0

Exhibit 3

Pages 2 of 3 (1C)

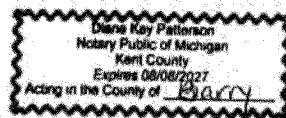
Affidavit & Sworn Statement

I, Jada Chadwick, residing at [REDACTED],
Barry County Hastings, State of Michigan, do swear and
attest under the penalties of perjury and upon personal knowledge that the contents of this
sworn statement are true, accurate, and correct, and that I am competent to testify.

Description of account

1. it was accepted we both turned in our sharpies into a volunteer who wiped them with a cloth wipe.
2. After the election was over, it was about 11:00pm and I was watching Fox News. I noticed that
3. Eaton County had its final count in and Barry
4. had not. I clicked on Barry County and the count was:
5. De La Ferte at 8,883 39.4% Exhibit 1 (1C)
Trump at 8,744 38.8%
6. Biden at 4,675 20.7%
Reporting at 41%. I took a screen shot of this.
7. This concerned me because I had used a sharpie marker
8. and I never used one before. I then went to the
9. SOS.org to see what voting system was being used in Barry County and Eaton county. Barry was using Exhibit 2 & 3 (1C)
Dominion voting system and Eaton was using
10. Heart voting system. I took screen shots of this as well. I ~~also~~ also viewed a screen shot of

Dated this 5th day of December 2020
Signature Jada Chadwick



SUBSCRIBED AND SWORN to before me this 5th day of December
Diane Kay Patterson
2020

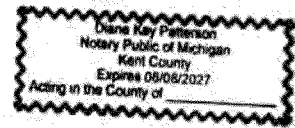
Affidavit & Sworn Statement

Jada Chadwick, residing at [REDACTED],
Barry County Hastings, State of Michigan, do swear and
attest under the penalties of perjury and upon personal knowledge that the contents of this
sworn statement are true, accurate, and correct, and that I am competent to testify.

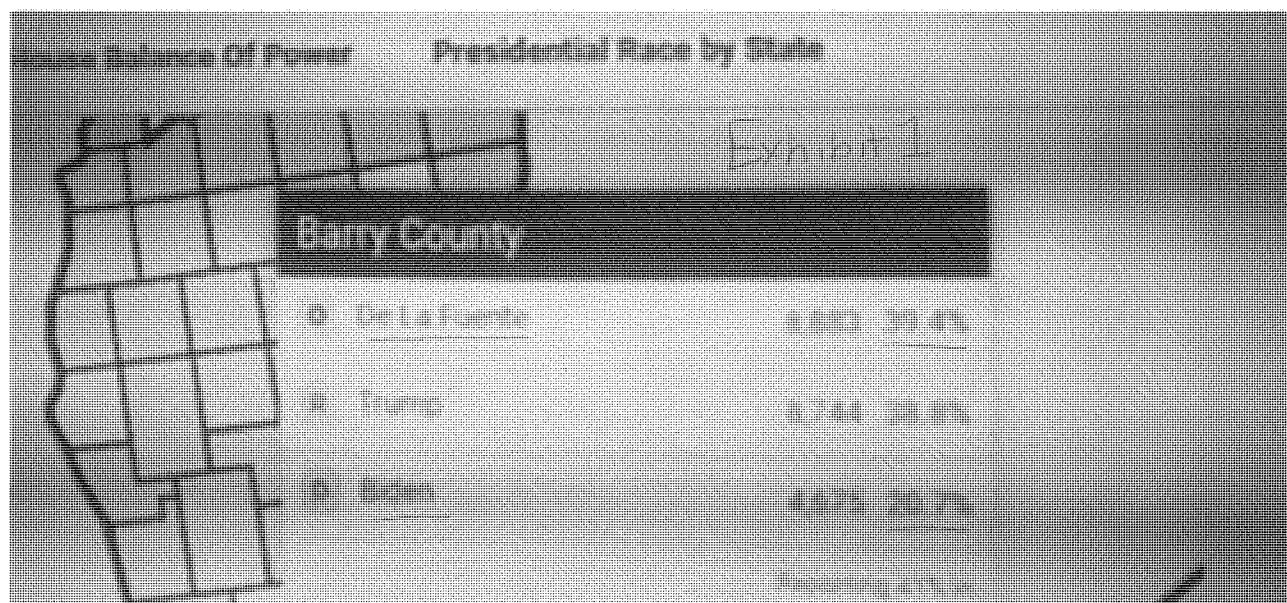
Description of account

1. a ballot that look very similar to mine that ^{Exhibit 4 (1c)}
2. Night. Truly on December 5th 2020 I viewed ^{Exhibit 5 (1c)}
the SOS.org website and it is now deleted.
3. I have no idea if my vote was even counted
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Dated this 5th day of December 20 20
Signature Jada Chadwick



SUBSCRIBED AND SWORN to before me this 5th day of December
Diane Kay Patterson
2020



Verizon 12:30 PM 92%
State Representative Jack O'Malley's Post

X michigan.maps.arcgis.c...



2 of 2



EATON COUNTY

Vendor/Manufacturer: Hart InterCivic

Voting System Name: Hart InterCivic Verity Voting 2.2.2

Tabulator: Verity Scan

Number of Tabulators: 57.00

Accessible Equipment: Verity Touch Writer

Number of Accessible Equipment: 38.00

Implementation Timeframe: 2018

...

Send

Exhibit 2

Verizon 12:30 PM 92%
State Representative Jack O'Malley's Post

X michigan.maps.arcgis.c...

1 of 2

BARRY COUNTY

Vendor/Manufacturer: Dominion

Voting System Name: Dominion Democracy Suite 5.5

Tabulator: ImageCast Precinct

Number of Tabulators: 28.00

Accessible Equipment: ImageCast X

Number of Accessible Equipment: 24.00

Implementation Timeframe: 2018

...

Send

Exhibit 3

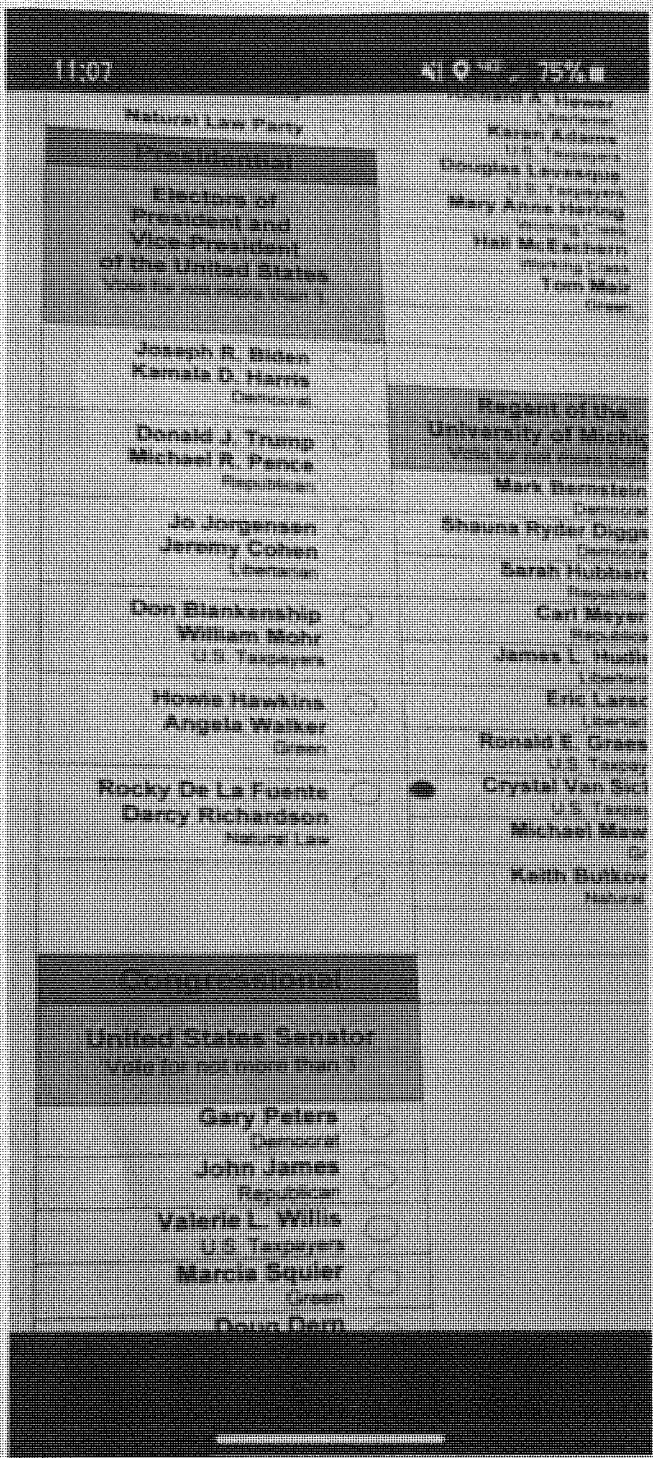
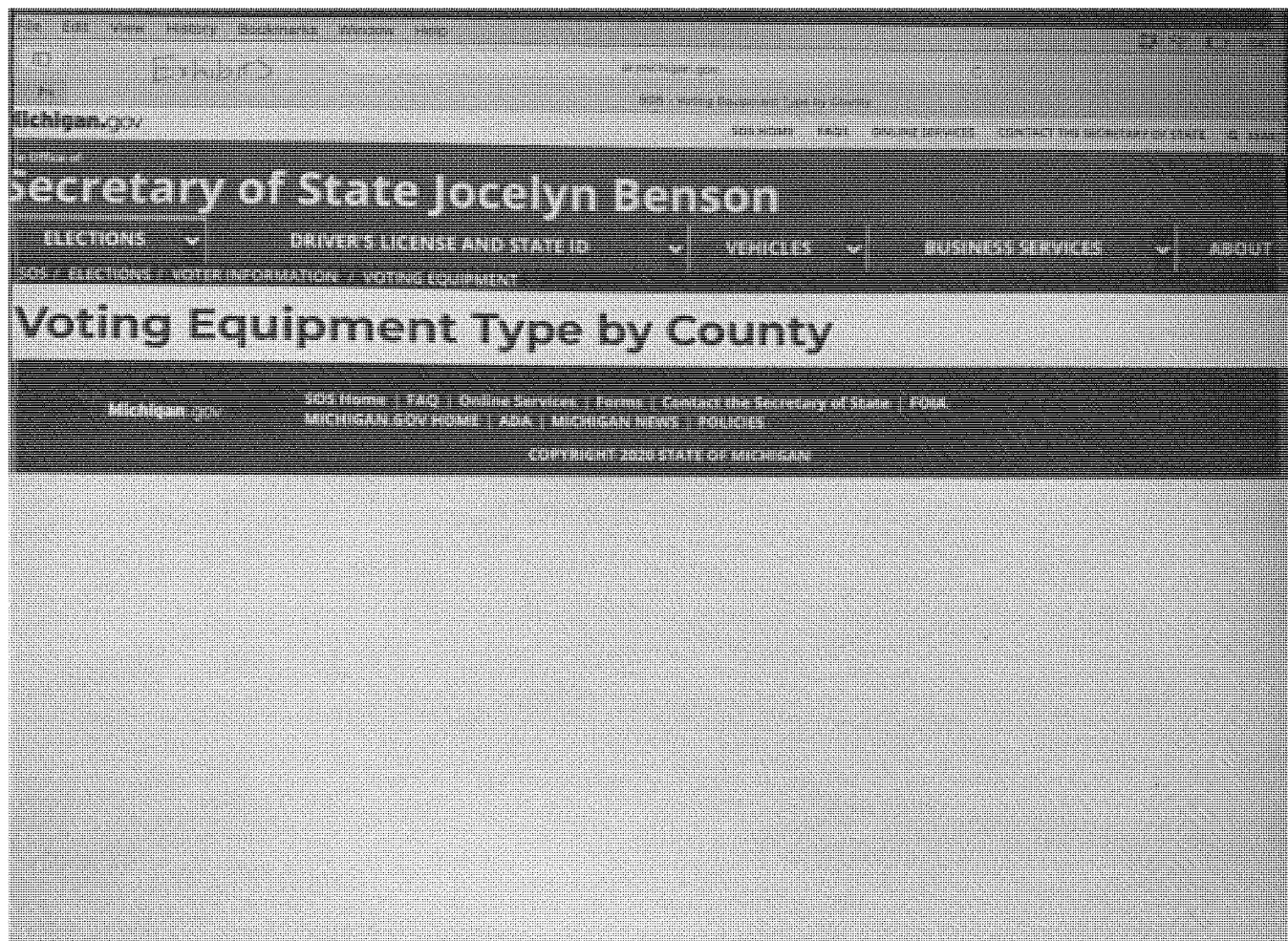


Exhibit 4



Appendix B – Official Election Results from Barry County, Michigan

Page: 1 of 49

11/17/2020 11:57:45 AM

Election Summary Report

General Election

Barry County, Michigan

November 03, 2020

Summary for: All Contests, All Precincts, All Tabulators, All Counting Groups

Precincts Reported: 24 of 24 (100.00%)

Registered Voters: 36,146 of 0 (N/A)

Ballots Cast: 36,146

Straight Party Ticket (Vote for 1)

Precincts Reported: 24 of 24 (100.00%)

| | | Election Day | AV Counting | Total | |
|----------------------|-------|--------------|-----------------------|------------|-----|
| Times Cast | | 21,099 | 15,047 | 36,146 / 0 | N/A |
| Candidate | Party | Election Day | AV Counting Boards | Total | |
| Democratic Party | DEM | 2,069 | 3,214 | 5,283 | |
| Republican Party | REP | 9,649 | 4,442 | 14,091 | |
| Libertarian Party | LIB | 87 | 35 | 122 | |
| U.S. Taxpayers Party | UST | 8 | 15 | 23 | |
| Working Class Party | WCP | 68 | 23 | 91 | |
| Green Party | GRN | 22 | 13 | 35 | |
| Natural Law Party | NLP | 16 | 0 | 16 | |
| Total Votes | | 11,919 | 7,742 | 19,661 | |
| | | Election Day | AV Counting Boards | Total | |
| Unresolved Write-In | | 0 | 0 | 0 | |

President/Vice-President of the United States (Vote for 1)

Precincts Reported: 24 of 24 (100.00%)

| | Election Day | AV Counting | Total | |
|------------|--------------|-------------|------------|-----|
| Times Cast | 21,099 | 15,047 | 36,146 / 0 | N/A |

| Candidate | Party | Election Day | AV Counting Boards | Total | |
|-------------------------------------|-------|--------------|--------------------|--------|--|
| Joseph R. Biden/Kamala D. Harris | DEM | 4,522 | 7,275 | 11,797 | |
| Donald J. Trump/Michael R. Pence | REP | 16,088 | 7,383 | 23,471 | |
| Jo Jorgensen/Jeremy Cohen | LIB | 297 | 182 | 479 | |
| Don Blankenship/William R. Mohr | UST | 24 | 35 | 59 | |
| Howie Hawkins/Angela Walker | GRN | 50 | 33 | 83 | |
| Rocky De La Fuente/Darcy Richardson | NLP | 12 | 4 | 16 | |
| Total Votes | | 20,993 | 14,912 | 35,905 | |

| | Election Day | AV Counting Boards | Total | |
|---------------------|--------------|--------------------|-------|--|
| Unresolved Write-In | 33 | 23 | 56 | |

United States Senator (Vote for 1)

Precincts Reported: 24 of 24 (100.00%)

| | Election Day | AV Counting | Total | |
|------------|--------------|-------------|------------|-----|
| Times Cast | 21,099 | 15,047 | 36,146 / 0 | N/A |

| Candidate | Party | Election Day | AV Counting Boards | Total | |
|-------------------|-------|--------------|--------------------|--------|--|
| Gary Peters | DEM | 4,428 | 6,941 | 11,369 | |
| John James | REP | 15,958 | 7,541 | 23,499 | |
| Valerie L. Willis | UST | 195 | 171 | 366 | |
| Marcia Squier | GRN | 132 | 109 | 241 | |
| Doug Dern | NLP | 64 | 31 | 95 | |
| Total Votes | | 20,777 | 14,793 | 35,570 | |

| | Election Day | AV Counting Boards | Total | |
|---------------------|--------------|--------------------|-------|--|
| Unresolved Write-In | 22 | 10 | 32 | |

Appendix C – Michigan Secretary of State Memo December 2, 2020



STATE OF MICHIGAN BUREAU OF ELECTIONS LANSING

MEMORANDUM

DATE: December 1, 2020
TO: County Clerks
FROM: Michigan Bureau of Elections
SUBJECT: Recounts; Release of Voting Equipment

Please be advised of the following:

STATE RECOUNTS: The Board of State Canvassers completed its canvass of the November 3, 2020 general election on November 23, 2020. The deadline for filing a petition for a recount with the Secretary of State elapsed on November 30, 2020. The following lists the recount requests received by the Secretary of State by the recount petition filing deadline:

- 71st State House District: Eaton County

CONDUCT OF LOCAL RECOUNTS: Recounts requested for local offices that overlap the district listed above may not proceed until clearance is received through this office. Recounts requested for local offices that do not overlap the district listed above may proceed at this time.

DEADLINE FOR COMPLETION OF RECOUNTS: After a general election, each requested recount must be completed no later than 30 days after 1) the deadline for filing a counter petition or 2) the first date the recount may lawfully begin (MCL 168.875).

CONDUCT OF POST-ELECTION AUDITS: If a recount has been requested involving a precinct that has been selected for a post-election audit, the audit may not begin until after the recount has been completed. All other post-election audits may proceed at this time. All of the resources you will need to conduct post-election audits may be found at this link: [Post-Election Audit Resources](#).

The post-election procedure audit includes a hand count of the ballots for the U.S. Senate race in each precinct selected for audit. Additionally, we will be conducting a state-wide Risk Limiting Audit of the Presidential race.

RELEASE OF VOTING EQUIPMENT: The security of ballots and election equipment is released as follows:

BUREAU OF ELECTIONS
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 420 W. ALLEGAN • LANSING, MICHIGAN 48918
www.Michigan.gov/elections • (800) 292-5973

Ballots, programs and related materials: The security of all optical scan ballots, programs, test decks, accuracy test results, edit listings and any other related materials will be released once all post-election audits are completed.

E-Pollbook laptops and flash drives: The EPB software and associated files must be deleted from all devices by the seventh calendar day following the final canvass and certification of the election (November 30, 2020) unless a petition for recount has been filed and the recount has not been completed, a post-election audit is planned but has not yet been completed, or the deletion of the data has been stayed by an order of the court or the Secretary of State.

FEDERAL BALLOT RETENTION REQUIREMENT: If the office of President, U.S. Senator or U.S. Representative in Congress appears on the ballot (all appeared on the November 3, 2020 general election ballot), federal law requires that all documents relating to the election -- including optical scan ballots and the programs used to tabulate optical scan ballots -- be retained for 22 months from the date of the certification of the election. To comply with the requirement, the Bureau of Elections recommends that optical scan ballots and the programs relating to federal elections be stored in **sealed ballot bags** in a secure place during the 22-month retention period. The documents subject to the federal retention requirement must not be transferred to ballot bags for extended retention until after they are released under Michigan election law as detailed in this memo.

Questions?

If you have any questions, please contact us via email at elections@michigan.gov, or by phone at (517) 335-3234 or (800) 292-5973.

Date: 5/16/2021

Subject: Summary of Security Deficiencies in the Antrim County Voting Systems

Analyst: Jeffrey Lenberg

Executive Summary

This summary describes a subset of the critical deficiencies in the security of the electronic voting systems used in Antrim County, Michigan for the November 3, 2020 election.

Election workers/contractors with the technician/supervisor passcode can change the date/time on the Imagecast Precinct (ICP) tabulator tapes by resetting the time on the tabulator after they enter their passcode. The election worker/contractor can then proceed to print a new election tape from the tabulator with whichever data/time stamp they prefer. If a malicious election worker/contractor wished to run additional ballots outside of the election window or after hours, the ability to reset the time to print new tapes makes it extremely difficult to identify fraudulent activities because the paper tapes figure prominently in the canvassing process. See the expert report by Penrose dated May 3, 2021 that shows in the EMS the technician passcode of "123456".

All of the Antrim County election workers and contractors that perform work on the EMS utilize the same account to work on the system. This account has administrative access and can be used to modify the EMS database to manipulate vote totals. The 6 account first name/last names pairs listed in the system database are as follows: Ben/Smythe, John/Smith, Ryan/Smoth, MRO/M01, Return Office/Admin, MRESuper/Admin. These are the only users that account for log entries regardless of who is actually logged into the system and making changes.

The password enforcement policies on the EMS are substandard, they even allow the users to set purposefully "weak" passwords as a feature.

The absence of best practice security procedures to require individual accounts for users to protect accounts and passwords is inexcusable in a system that is used to conduct elections. In addition, the ability to reset date/time on tabulators, reopen the polls, reprint tapes makes fraud very feasible for even low sophistication actors.

Details

Election workers have the ability to set the time on a tabulator at any time in order to print paper tapes that show the appropriate date/time stamp. The technician/supervisor password enables the workers to have this capability. The

process is straightforward and is performed by traversing the menus on the tabulator itself.

For this demonstration scenario, the following steps were performed to illustrate that the ICP paper tabulator tapes can be custom modified to show a specific time of poll closure for the election, regardless of the actual date and time.

- The ICP is powered on.
- The ICP Poll is opened by scanning the security key fob on the ICP sensor and entering the poll worker security passcode of “11032020”, and a zero tape is printed.
- 7 demonstration ballots (same reference ballots from Lenberg report dated May 3, 2020 Exhibit A) are fed into the tabulator demonstration purposes.
 - The vote breakdown on the original ballots for the Presidential Contest is as follows:
 - 4 votes for Trump
 - 2 votes for Biden
 - 1 vote for Jorgenson
 - The vote breakdown on the original ballots for Senate
 - 4 votes for James
 - 2 votes for Peters
 - 1 vote for Willis
- The ICP Poll is closed by placing the security key fob on the ICP sensor which brings up an administrative menu to close the poll. As soon as the poll is closed a paper tape of the tabulation is automatically printed. The paper tape includes a flip of Trump and Biden votes.
 - The vote breakdown on the paper tape for the Presidential Contest is as follows:
 - 2 votes for Trump (flipped from Biden to Trump)
 - 4 votes for Biden (flipped from Trump to Biden)
 - 1 vote for Jorgenson
 - The vote breakdown on the paper tape for Senate
 - 4 votes for James
 - 2 votes for Peters
 - 1 vote for Willis
- The ICP Poll is reopened by placing the security key fob on the ICP sensor and entering the technician passcode “123456”

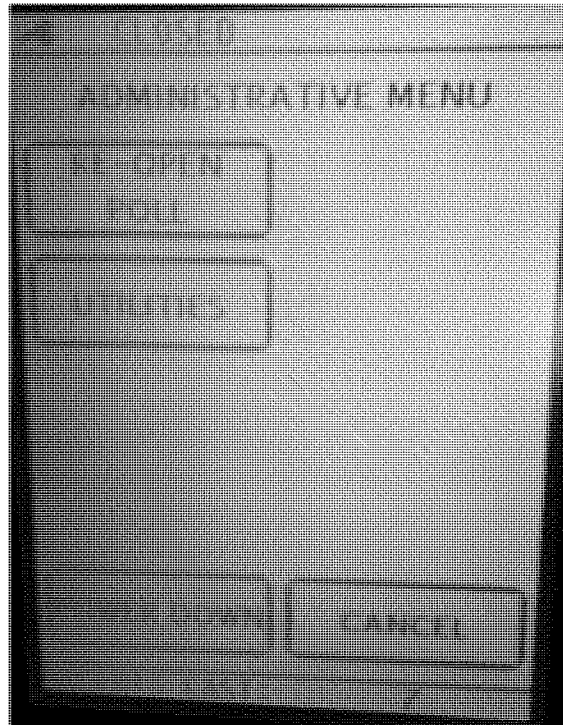


Figure 1 - ICP LCD Closed Poll Menu



Figure 2 - ICP LCD Menu to Re-open the Poll

- 7 ADDITIONAL demonstration ballots are fed into the system with the same original ballot breakdown as the initial group of ballots used in the demonstration.
- The security key fob is placed on the ICP sensor, and a menu appears automatically ICP LCD showing CLOSE THE POLL, UTILITIES, BALLOT REVIEW, POWER DOWN, and CANCEL

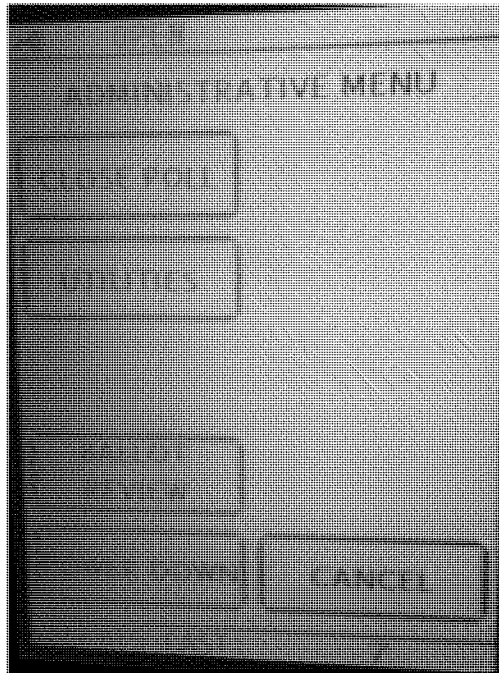


Figure 3 - ICP LCD Administrative Menu

- The following menu selection is made on the tabulator LCD
 - UTILITIES -> DIAGNOSTICS -> INDIVIDUAL -> INTERNAL CLOCK -> SET DATE AND TIME
 - See Figures 4-9

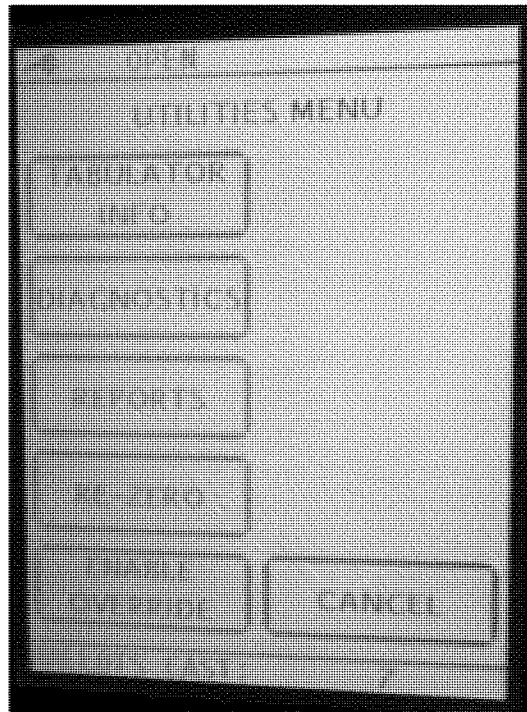


Figure 4 - ICP LCD Utilities Menu

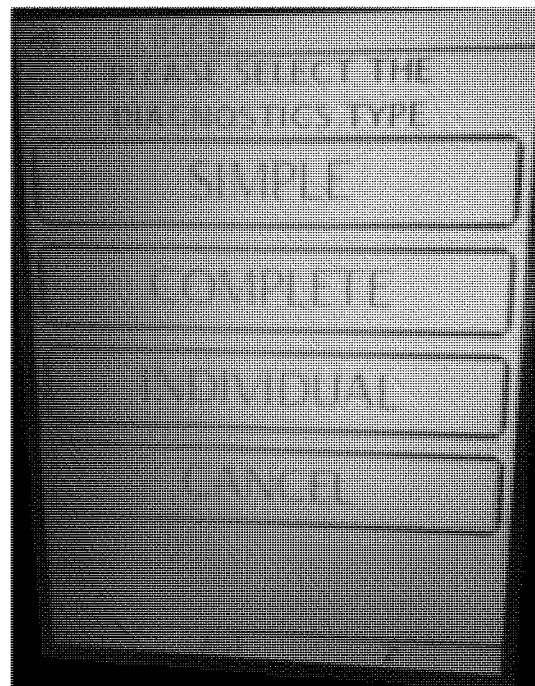


Figure 5 - ICP LCD Selection Diagnostics Type

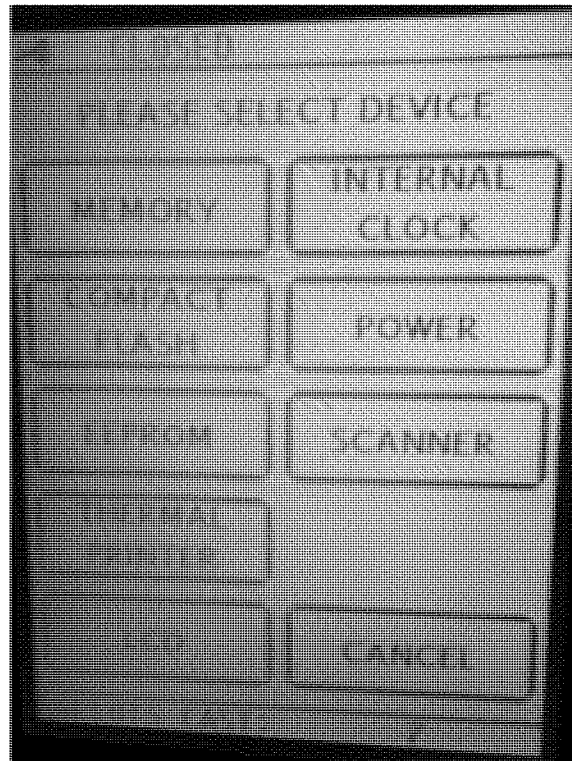


Figure 6 - ICP LCD Device Selection Menu

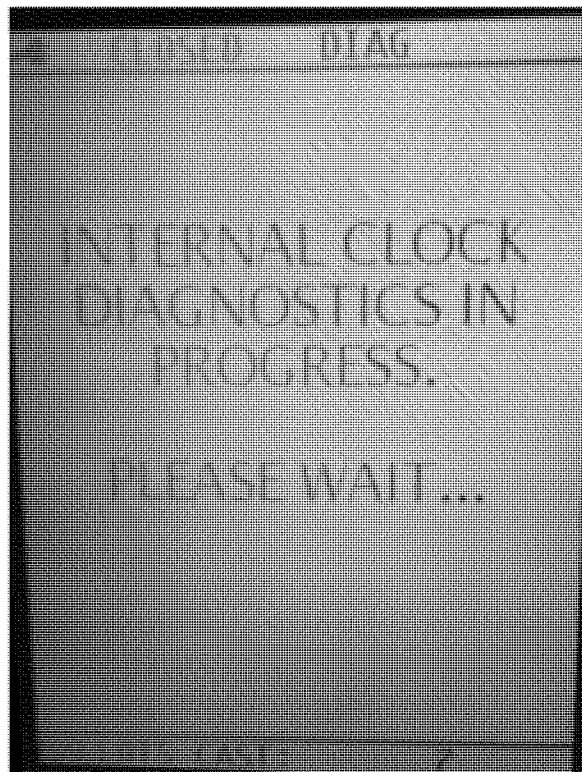


Figure 7 - ICP LCD Clock Diagnostic



Figure 8 - ICP LCD Set Date/Time

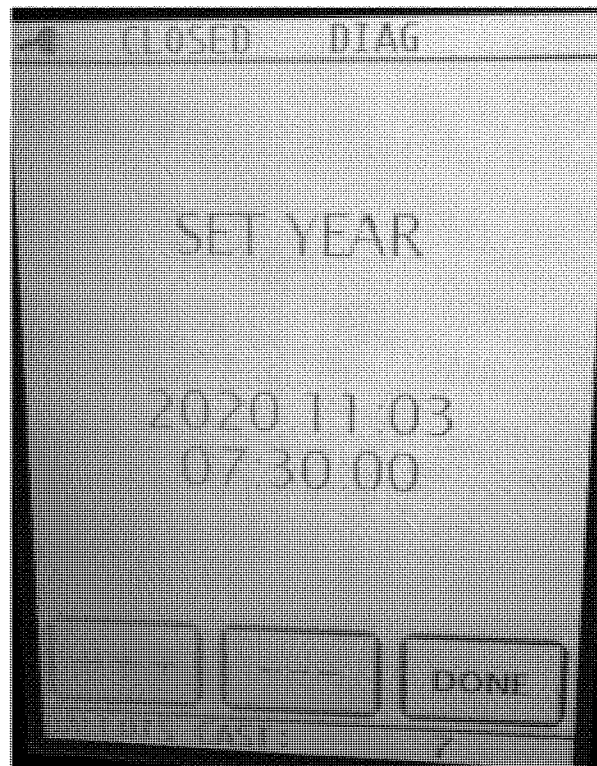


Figure 9 - ICP LCD Dialogue to Set Time

- Set the date/time to the election date/time the poll was originally closed
 - This specific action represents the most egregious vector for fraud for local election workers/contractors with administrative access to the tabulators and to any ballot(s)
 - The ballot images are stored on the EMS and additional blank ballots are in the possession of Election Source contractors and any local official with physical access to the media. (see Penrose report dated May 3, 2021)
 - The poll worker/technician passcodes along with access to additional ballots (could be only one) would be sufficient to perpetrate this fraud
- On the ICP LCD select CANCEL on the DIAGNOSTICS sub-menu
- On the ICP LCD select CLOSE POLL and enter the poll worker passcode “110302020”
- The malicious actor initially makes an estimate the number of fraudulent votes needed to win the election and programs for that scenario. However, often they need to add additional votes beyond the pre-planned fraud estimates, requiring the polls to be *re-opened again* to add additional fraudulent votes to achieve their objectives.
- The ICP Poll is reopened by placing the security key fob on the ICP sensor and entering the technician passcode “123456”
 - Once again, 7 ADDITIONAL demonstration ballots are fed into the system with the same original ballot breakdown as the initial group of ballots used in the demonstration.
 - The security key fob is placed on the ICP sensor, and a menu appears automatically ICP LCD showing CLOSE THE POLL, UTILITIES, BALLOT REVIEW, POWER DOWN, and CANCEL
 - The following menu selection is made on the tabulator LCD
 - UTILITIES -> DIAGNOSTICS -> INDIVIDUAL -> INTERNAL CLOCK -> SET DATE AND TIME
 - Set the date/time to the election date/time the poll was originally closed
 - Again, this is done to ensure the paper tapes printed from the tabulator remain consistent and fraud is not detected during the canvassing process.
 - On the ICP LCD select CANCEL on the DIAGNOSTICS sub-menu
 - On the ICP LCD select CLOSE POLL and enter the poll worker passcode “110302020”

- This demonstration continues to follow the same process of injecting fraudulent votes and maintaining the exact same date and time for the poll opening, closing, and printout to the minute.
 - This is done for two more rounds of adding 7 more fraudulent ballots per round
 - The total number of fraudulent ballots added is 21 in this demonstration while maintaining the same date and time to the minute as the original election results on the ICP tabulator paper tape.
- The fraudulent actor may run this attack ad infinitum at their leisure.

| Column 1 | Column 2 | Column 3 | Column 4 |
|--|--|--|--|
| President and Vice President of the United States (1) | President and Vice President of the United States (1) | President and Vice President of the United States (1) | President and Vice President of the United States (1) |
| Joseph R. Biden / Kamala H. Harris (Democrat) | Joseph R. Biden / Kamala H. Harris (Democrat) | Joseph R. Biden / Kamala H. Harris (Democrat) | Joseph R. Biden / Kamala H. Harris (Democrat) |
| Donald J. Trump / Michael R. Pence (Republican) | Donald J. Trump / Michael R. Pence (Republican) | Donald J. Trump / Michael R. Pence (Republican) | Donald J. Trump / Michael R. Pence (Republican) |
| Jo Ann Benson / Robert Cohen (Libertarian) | Jo Ann Benson / Robert Cohen (Libertarian) | Jo Ann Benson / Robert Cohen (Libertarian) | Jo Ann Benson / Robert Cohen (Libertarian) |
| Don Blankenship / William H. Miller (Republican) | Don Blankenship / William H. Miller (Republican) | Don Blankenship / William H. Miller (Republican) | Don Blankenship / William H. Miller (Republican) |
| Mike DeLoe / Christopher R. Smith (Republican) | Mike DeLoe / Christopher R. Smith (Republican) | Mike DeLoe / Christopher R. Smith (Republican) | Mike DeLoe / Christopher R. Smith (Republican) |
| Rocky DeLoe / Christopher R. Smith (Republican) | Rocky DeLoe / Christopher R. Smith (Republican) | Rocky DeLoe / Christopher R. Smith (Republican) | Rocky DeLoe / Christopher R. Smith (Republican) |
| Richardson National Guard | Richardson National Guard | Richardson National Guard | Richardson National Guard |
| Write in | Write in | Write in | Write in |
| Total Votes | Total Votes | Total Votes | Total Votes |
| United States Senator for State (1) | United States Senator for State (1) | United States Senator for State (1) | United States Senator for State (1) |
| Joe Manchin (Democrat) | Joe Manchin (Democrat) | Joe Manchin (Democrat) | Joe Manchin (Democrat) |
| John Robert (Republican) | John Robert (Republican) | John Robert (Republican) | John Robert (Republican) |
| Robert L. Miller (U.S. Senator) | Robert L. Miller (U.S. Senator) | Robert L. Miller (U.S. Senator) | Robert L. Miller (U.S. Senator) |
| Write in | Write in | Write in | Write in |
| Total Votes | Total Votes | Total Votes | Total Votes |
| Representative in Congress for District (1) | Representative in Congress for District (1) | Representative in Congress for District (1) | Representative in Congress for District (1) |
| Joe Manchin (Democrat) | Joe Manchin (Democrat) | Joe Manchin (Democrat) | Joe Manchin (Democrat) |
| John Robert (Republican) | John Robert (Republican) | John Robert (Republican) | John Robert (Republican) |
| Robert L. Miller (U.S. Senator) | Robert L. Miller (U.S. Senator) | Robert L. Miller (U.S. Senator) | Robert L. Miller (U.S. Senator) |
| Write in | Write in | Write in | Write in |
| Total Votes | Total Votes | Total Votes | Total Votes |

Figure 10 - Manipulated Vote Totals on Tabulator Tapes

[illegible]

Figure 11 - Specific Times Manipulated on the Tapes Corresponding to Figure 10

Administrator Accounts and Passwords

The Dominion Election Management System (EMS) database accounts have the following user names: John Smith, MRO M01, Return Office Admin, Ben Smythe, MRESuper Admin, Ryan Smoth.

FROM [Antrim May 2020-2020-02-24-16-25-17]. [dbo]. [AppUser]

100 %

Results Messages

| | id | username | password | firstName | lastName | __classid | sal |
|---|--------------------------------------|-------------|---|---------------|----------|-----------|-----|
| 1 | 4004A444-6AF5-4A75-B22B-16C7564A05B5 | Techadvisor | 0xA1159E9DF3670D549D04524532629F5477CEB7DEEC9B45... | John | Smith | 9001 | 0x |
| 2 | 6CC70D62-8F0B-4D6E-8E78-3FC66BF81083 | MRO01 | 0xA1159E9DF3670D549D04524532629F5477CEB7DEEC9B45... | MRO | M01 | 9001 | 0x |
| 3 | 6CC70D62-8F0B-4D6E-8E78-3FC66BF8EF83 | ROAdmin | 0xA1159E9DF3670D549D04524532629F5477CEB7DEEC9B45... | Return Office | Admin | 9001 | 0x |
| 4 | 7AC70D62-8F0B-4D6E-8E78-3FC66BF8EF83 | Admin | 0xA1159E9DF3670D549D04524532629F5477CEB7DEEC9B45... | Ben | Smythe | 9001 | 0x |
| 5 | 9BC70D62-8F0B-4D6E-8E78-3FC66BF8EF83 | SAdmin | 0xA1159E9DF3670D549D04524532629F5477CEB7DEEC9B45... | MRESuper | Admin | 9001 | 0x |
| 6 | 57C10FCF-3412-4EDD-8C81-508F25D72C35 | RTRAdmin | 0xA1159E9DF3670D549D04524532629F5477CEB7DEEC9B45... | Ryan | Smoth | 9001 | 0x |

Figure 12 – Dominion EMS Database Administrator Accounts

| | | | |
|-------|--|-------------------------|--------------|
| Admin | Election Project has been created with Election Event Designer version 5.5.12.1 | 2019-01-08 09:27:28.340 | UserAction |
| Admin | Instance with name '4c95f7f1-51bc-4149-95ed-72f4c5f3ffe0' of type 'LanguageProfile' modified: name = 'English', isDefault=True; purpose = 'Ballot Content' | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | Instance with name '4c95f7f1-51bc-4149-95ed-72f4c5f3ffe0' of type 'LanguageProfile' with id = '4c95f7f1-51bc-4149-95ed-72f4c5f3ffe0' is created. | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | Instance with name '20fe3ee1-22e3-4eb2-839d-cb69d505ef27' of type 'LanguageProfile' modified: name = 'English', isDefault=True; purpose = 'Audio' | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | Instance with name '7ac70d62-bf0b-4d6e-8e78-3fc66bf8ef83' of type 'AppUser' modified: password changed; firstName changed from 'John' to 'Ben'; lastName changed from 'Smith' to 'Smythe'; position = ''; description = ''; contactAddress = ''; contactPhone1 = ''; contactPhone2 = ''; contactEmail = '' | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | Instance with name '20fe3ee1-22e3-4eb2-839d-cb69d505ef27' of type 'LanguageProfile' with id = '20fe3ee1-22e3-4eb2-839d-cb69d505ef27' is created. | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | User initiates generation of password. | 2019-01-08 09:27:28.343 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:27:32.063 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:27:32.063 | UserAction |
| Admin | Project security elements created | 2019-01-08 09:27:32.063 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:27:32.063 | UserAction |

Figure 13 - UserInfo Log Change from John Smith to Ben Smythe

Any user with access to the EMS using the EMS Admin username and password to log into the Dominion Democracy Suite Election Event Designer (EED) application will appear to be “Ben Smythe” in the log files. This obfuscates identity of the true user on the system and makes it impossible to perform security audits and ongoing monitoring for suspicious activities. The EED application is used to design the entire election, it is used to program the election files on to the compact flash cards, and it is used to program the security key fobs that are required to open, close, reopen, or rezero the polls.

If there were inappropriate or fraudulent activities occurring on the EMS they would be attributed to the shared account and follow-on investigations would be

stymied by the lack of specificity when it comes to the identity of the user active on the system.

Similarly, any user with access to the RTR using the EMS RTRAdmin username and password to log into the Dominion Democracy Suite Result Tallying and Reporting (RTR) application will appear to be “Ryan Smoth” in the log files. This was found in the template for Michigan (Figures 14 and 15). So one can assume that all counties in Michigan that were programmed using this template will all have Ryan Smoth as the RTRAdmin User. This obfuscates identity of the true user on the system and makes it impossible to perform security audits and ongoing monitoring for suspicious activities. The RTRAdmin operator account offers the option of choosing a “weak” password as a feature. (Figure 16) This option to choose a weak password is against all best security practices and leaves the RTR Operator role susceptible to exploitation by malicious cyber attackers. The RTR application is the one used to import, reject, validate, publish, and unpublish results contained on the compact flash cards and/or results transmitted via modem to a county-located Listener computer (proposed for Antrim but apparently not purchased) that then relays them to the EMS computer. Results can also be manually entered at this point overriding results from any other source. Once they are “published” into the reports that then go out to the media there is no external indication that the results were “manually” entered into the system instead of coming from the tabulators.

| | | | |
|-------|---|-------------------------|--------------|
| Admin | Instance with name '7ac70d62-bf0b-4d6e-8e78-3fc86bf8ef83' of type 'AppUser' modified: password changed; firstName changed from 'John' to 'Ben'; lastName changed from 'Smith' to 'Smythe'; position = "; description = "; contactAddress = "; contactPhone1 = "; contactPhone2 = "; contactEmail = "; | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | Instance with name '20fe3ee1-22e3-4eb2-839d-cb69d505ef27' of type 'LanguageProfile' with id = '20fe3ee1-22e3-4eb2-839d-cb69d505ef27' is created. | 2019-01-08 09:27:28.340 | TraceMessage |
| Admin | User initiates generation of password. | 2019-01-08 09:27:28.343 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:27:32.063 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:27:32.063 | UserAction |
| Admin | Project security elements created | 2019-01-08 09:27:32.063 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:27:32.063 | UserAction |
| Admin | Project ElectionSource.Famous Names Right Oval Closed | 2019-01-08 09:28:46.907 | UserAction |
| Admin | User initiates generation of password. | 2019-01-08 09:28:46.923 | UserAction |
| | Prompt warning: 'Ballot style has not been set. Go to Settings/Election Event Properties menu, Ballot Settings option and select applicable ballot style.'; User answered with: 'OK' | 2019-01-08 09:28:52.440 | UserAction |
| Admin | Project Michigan Template opened | 2019-01-08 09:28:57.657 | UserAction |

Figure 14 - Michigan Project Template Opened

| | | | | |
|-----|---------|---|-------------------------|--------------|
| 733 | Admin | Instance with name 'Transmit to Listener using SSL' of type 'NumberSystemParameter' modified: paramValue changed from '0' to '1'; | 2019-01-08 16:13:19.740 | TraceMessage |
| 734 | Admin | Instance with name 'Transmit Results via internal port' of type 'NumberSystemParameter' modified: paramValue changed from '0' to '1'; | 2019-01-08 16:13:19.740 | TraceMessage |
| 735 | Admin | Instance with name 'Disable SSL Certificate Verification' of type 'NumberSystemParameter' modified: paramValue changed from '0' to '1'; | 2019-01-08 16:13:19.740 | TraceMessage |
| 736 | Admin | Instance with name 'Transmit Totals Results' of type 'NumberSystemParameter' modified: paramValue changed from '0' to '1'; | 2019-01-08 16:13:19.740 | TraceMessage |
| 737 | Admin | Instance with name 'Transmit Results via external port' of type 'NumberSystemParameter' modified: paramValue changed from '0' to '1'; | 2019-01-08 16:13:19.740 | TraceMessage |
| 738 | Admin | Instance with name 'Cross-voted Ballot' of type 'NumberSystemParameter' modified: paramValue changed from '1' to '0'; | 2019-01-08 16:13:19.743 | TraceMessage |
| 739 | Admin | User initiates the Close Project activity | 2019-01-08 16:13:19.743 | UserAction |
| 740 | Admin | Instance with name 'write-in report enabled' of type 'NumberSystemParameter' modified: paramValue changed from '0' to '1'; | 2019-01-08 16:13:19.743 | TraceMessage |
| 741 | Admin | Project Michigan Template Closed | 2019-01-08 16:13:59.073 | UserAction |
| 742 | Techadm | Project Michigan Template opened | 2019-01-08 16:13:59.073 | UserAction |

Figure 15 - Michigan Project Template Closed

Thus “Ryan Smoth” can enter whatever numbers he would like while ignoring the original values on the encrypted compact flash cards and printed tapes. Mr. Smoth can then go back the next day or any day up until the day the canvass is performed and quietly reopen the polls, add a matching number of votes as he manipulated on election night, change the time to match the original paper tape, and print the results. When the canvass is performed the modified paper tape will match the modified manually entered results. This is obviously an unacceptable combination of features that should not be made available in a secure election system.

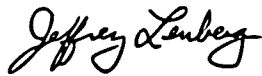
Ability to set “Weak Passwords”

The image shows a software dialog box titled "RTR Operator - Role". At the top, there are "Save" and "Save and Close" buttons. Below these, there is a "Role" label followed by an empty text field. Underneath, the "Role Name:" is set to "RTR Operator" and the "Application:" is set to "EMS RTR". The "Password Type:" dropdown menu is open, displaying three options: "Weak" (which is currently selected), "Default", and "Strong". At the bottom of the dialog, there is an unchecked checkbox labeled "Admin role".

Figure 16 - RTR Operator Password Strength Dialogue Box

The password policy enforcement tool for the EMS gives the following error when we attempt to enter the current passwords used on the Antrim County EMS system.

Under the penalties of perjury, I declare that I have read the foregoing report and that facts stated in it are true.

A handwritten signature in black ink, reading "Jeffrey Lenberg". The signature is written in a cursive style with a horizontal line underneath it.

Jeffrey Lenberg

MICHIGAN NOTARY ACKNOWLEDGEMENT

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 16th day of May, 2021 by Jeffrey
Lenberg.

Notary Public Signature: 

Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023

ATTACHMENT 5

Qualifications and Reports of Ben Cotton

AFFIDAVIT OF BENJAMIN R. COTTON 23 FEBRUARY 2022

I, Ben Cotton, being duly sworn, hereby depose and state as follows:

- 1) I am over the age of 18, and I understand and believe in the obligations of an oath. I make this affidavit of my own free will and based on first-hand information and my own personal observations.
- 2) I am currently the Vice President for Incident Response for eSentire and am the founder of CyFIR, LLC (CyFIR).
- 3) I have a master's degree in Information Technology Management from the University of Maryland University College. I have numerous technical certifications, including the Certified Information Systems Security Professional (CISSP), Microsoft Certified Professional (MCP), Network+, and Certified CyFIR Forensics and Incident Response Examiner.
- 4) I have over twenty-five (25) years of experience performing computer forensics and other digital systems analysis.
- 5) I have over eighteen (18) years of experience as an instructor of computer forensics and incident response. This experience includes thirteen (13) years of experience teaching students on the Guidance Software (now OpenText) EnCase Investigator and EnCase Enterprise software.
- 6) I have testified as an expert witness in state and federal courts and before the United States Congress.
- 7) I regularly lead engagements involving digital forensics for law firms, corporations, and government agencies and am experienced with the digital acquisition of evidence under the under the Federal Rules of Evidence.

- 8) I reviewed the Administrator manual for the Hart Verity system for the version of software that was purchased by the State of Michigan under contract number #071B7700128.
- 9) I reviewed the State of Michigan contract number #071B7700128, which is specific to the State of Michigan acquisition, deployment and operation of the Hart voting systems from March 1, 2017 to February 28, 2027 and was in effect during the November 3, 2020 general election.
- 10) I reviewed the Voting System Examination of Hart InterCivic Verity Voting 2.4 report dated May 16, 2020 the was conducted by Brian Mechler on behalf of the State of Texas.
- 11) The information from the reviews of these documents coupled with my experience allow me to make the following findings:

- a) **Verity Devices Contain Internal Storage in Addition to USB VDrive Storage:** The Hart administrative manual details that the devices contain and internal storage on a CFast drive as well as storage in the form of VDrive USB drives. This storage configuration is confirmed by the Texas report dated May 16, 2020.
- b) **CFast Cards Contain Election Data:** The Hart manuals detail that operational logs, cast vote records (CVRs) and other election related materials are stored on the CFast card. Hart estimates that the CFast storage will fill up after 22 months of elections given typical election schedules.
- c) **CFast Cards Also Contain the Firmware for the Device:** The Hart administrative manuals and the State of Michigan Contract specify that the firmware for the Verity devices are stored on the CFast card.
- d) **CFast Cards Also Contain the Firmware for the Device:** The Hart administrative manuals and the State of Michigan Contract specify that the firmware for the Verity

devices are stored on the CFast card in addition to the voting data contained in paragraph 11.c. of this affidavit.

e) **Hart Manuals do Not Proscribe Producing a Forensic Image of CFast Card:** A

review of the Hart administrative manuals and the State of Michigan Contract reveals that neither document specifies that a forensic image or other form of data preservation be performed by personnel on the CFast card prior to updating the firmware of the Device.

f) **Updating Firmware Provides Full Device Level Accesses to the Device:** In my

experience administrative level permissions and access is required to perform firmware upgrades on Devices. This level of access would permit both read and write access to any storage connected to the Device.

g) **Any Update of the Device Firmware Would Change the CFast Card:** Given that the

firmware for the Device is on the same Storage device that contains voting data, any update to the firmware would result in the overwriting of data on the CFast card.

12) I have had the opportunity to examine a forensic image of an election system that was taken prior to a vendor update and a forensic image of that same system after the vendor update. Based on this examination it was clear that the update over wrote, and thus destroyed, the election data, system logs and program files that were contained on the system prior to the vendor update. Depending on the level of backups and archiving of the original system by the clerk, the act of ‘updating’ the voting software could have deleted items that are necessary to be preserved under federal law.

13) Updating election systems and subsequent certification of those systems is an inherent government function. The abdication of this function to vendors is illegal under the Federal Acquisition Regulation. Government officials must be able to adequately provide oversight to

vendors supporting the updating and certification of those systems to comply with the appropriate jurisdictional requirements and regulations. In order to perform these oversight functions the government official must have the same levels of administrative access as the vendors, have access to detailed information concerning the full scope/impacts of the vendor activities and be able to independently validate that those activities did not violate the law. I have discovered in the course of my analysis that the vendors of election software typically do not allow the counties that are using their software to have the level of access to the voting systems that would permit independent validation of the systems prior to certification. Simply put, there currently is no mechanism for county clerks to independently validate the installation of firmware, system configurations, or other program installations without relying solely on the vendor provided data or data provided by a company closely associated with the vendor as the basis for certification.

14) On 11 October 2021 I had the opportunity to attend the Logic and Accuracy meeting held in the Adams Township Hall located in County of Hillsdale, State of Michigan. Following the conclusion of the Logic and Accuracy meeting I observed a tablet from a Hart Intercivic tabulator that was stored under lock and key in the clerk's office. The tablet was removed from the secure storage location and I observed that all seals contained on the device were intact. I further observed that the device was returned to the secure storage location and locked back up. It is my expert opinion that the action of removing the tablet from the Hart Intercivic tabulator and securing it in a more secure storage location would not have modified or destroyed any election data contained on the device, rather it would have provided an additional layer of protection for the device against unauthorized access or modification.

15) It is clear from the configuration and operation of the Devices as defined in the manufacturer's administrative manuals, the results of the Texas report, the State of Michigan contract data and my experience that updating the firmware on the Hart CFast card would overwrite the data on that CFast card. Without preservation of the CFast card prior to the firmware upgrade there is an extremely high probability that the election data stored on the CFast card would be overwritten or destroyed.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 23rd DAY OF
FEBRUARY 2022.

A handwritten signature in black ink, appearing to read "Ben Cotton", is written over a horizontal line.

Benjamin R. Cotton

AFFIDAVIT OF BENJAMIN R. COTTON 11 JULY 2022

I, Ben Cotton, being duly sworn, hereby depose and state as follows:

- 1) I am over the age of 18, and I understand and believe in the obligations of an oath. I make this affidavit of my own free will and based on first-hand information and my own personal observations.
- 2) I am the founder of CyFIR, LLC (CyFIR).
- 3) I have a master's degree in Information Technology Management from the University of Maryland University College. I have numerous technical certifications, including the Certified Information Systems Security Professional (CISSP), Microsoft Certified Professional (MCP), Network+, and Certified CyFIR Forensics and Incident Response Examiner.
- 4) I have over twenty-five (25) years of experience performing computer forensics and other digital systems analysis.
- 5) I have over eighteen (18) years of experience as an instructor of computer forensics and incident response. This experience includes thirteen (13) years of experience teaching students on the Guidance Software (now OpenText) EnCase Investigator and EnCase Enterprise software.
- 6) I have testified as an expert witness in state and federal courts and before the United States Congress.
- 7) I regularly lead engagements involving digital forensics for law firms, corporations, and government agencies and am experienced with the digital acquisition of evidence under the under the Federal Rules of Evidence.
- 8) I reviewed the Administrator manual for the Hart Verity system for the version of software that was purchased by the State of Michigan under contract number #071B7700128.

- 9) I reviewed the State of Michigan contract number #071B7700128, which is specific to the State of Michigan acquisition, deployment and operation of the Hart voting systems from March 1, 2017 to February 28, 2027 and was in effect during the November 3, 2020 general election.
- 10) I reviewed the Voting System Examination of Hart InterCivic Verity Voting 2.4 report dated May 16, 2020 the was conducted by Brian Mechler on behalf of the State of Texas.
- 11) The analysis and review of the Hart InterCivic administrative and user manuals state the following:
- a) State Michigan contract number #071B7700128 documents the inclusion of the State of MI Qualified Voter Files (QVF) loaded onto the tabulators on page 59 and are illustrated in the diagram on page 60.
 - b) This download of QVF occurs 4-5 weeks prior to election via the Verity Drive USB stick (V-Drive). This data is loaded onto the tabulator prior to the Public Accuracy Test and not modified by the clerk prior to election day.
 - c) The Verity drive is provided by the County to the township clerk.
 - d) The Hart InterCivic tabulator includes broadband technology and automatic transmission process. (Page 61)
 - e) The ballot images are stored on the tabulator in PNG format. (page 77)
 - f) The time stamp of the ballot insertion into the tabulator is removed per paragraph 1.1.A.24 of Hart contract.
 - g) Ballot information is recorded in 3 physically separate locations: internal memory, the paper ballot itself and on the V-drive.
- 12) The Adams Township tabulator was confiscated by MI State Police and remains in their custody. Since maintenance was not performed prior to the seizure, the ballot information from the 2018 thru March 2021 elections should remain on the device.

- 13) I have had the opportunity, with the permission of Adams Township, Michigan officials, to examine the contents of the Electronic Poll Book (EPB) USB drive from the November 2020 General Election.
- 14) I have reviewed the letter from Jonathan Brater, Director of Elections, dated 15 October 2021 to Stephanie Scott.
- 15) I have reviewed a series of emails between Stephanie Scott and Abe Dane dated 23 February 2021 through 24 February 2021.
- 16) I have reviewed the Memorandum dated 12 February 2021 named 2021.02.12 Final Release of Security Memo Nov 2020.pdf. This memorandum is unsigned but is written on Michigan Bureau of Elections letterhead.
- 17) I have had the opportunity to review the reports that are generated and printed by the Secretary of State following the submission of precinct results for a given election. These reports are referenced in the Jonathan Brater document dated 15 October 2021.
- 18) The administrative and operator manuals for the Hart InterCivic voting system clearly state that the Qualified Voter Record is stored on the voting machines and poll books..
- 19) The epb.accdb file on the EPB USB is a password-protected data base that contains the election definition data as well as qualified voter data. At the point that these files are utilized in the course of the election, the data contained in these files becomes unique to that machine and election. For example, when a qualified voter casts a vote the exact date and time that the vote is cast is added to the voter's record. At this point, the data on the devices and the EPB USB becomes original evidence for the voting process.
- 20) Under the Federal Rules of Evidence Rule 902 paragraph 14, data copied from an electronic device, storage medium or file is admissible if authenticated by a process of digital

identification and certified by a qualified person. This presumes that all data contained on the device is copied and reproduced. I saw no evidence that there is any such certification attesting to the completeness of the copied data associated with the conversion of the electronic EPB USB to the printed format that is produced by the Secretary of State. Without this certification, the original evidence must be preserved. In this case that would require that the systems involved in the election and the removable media used in the election be preserved in their digital state following the closure of the polls. There are forensic preservation processes that could have preserved the data, but there are no current processes or procedures approved by the Secretary of State to perform these operations.

21) The EPB USB is original evidence. The basic principle governing the preservation of electronic data and ensuring that digital evidence is admissible in court is that original evidence is the best evidence. Preserving a digital device in an original state ensures that the evidence is reliable, dates and times are factual, and that the data has not been altered. Failure to preserve digital evidence in a forensically sound manner can result in charges of spoliation and the inadmissibility of that evidence in court. Based on my review of the Hart InterCivic manuals and the Secretary of State's instructions to the municipality election officials, I do not see any method or procedure to forensically preserve the voting systems or the digital media used in a Michigan election.

22) The EPB USB contains data that is unique to that specific EPB USB and to the equipment that the USB is plugged into. The following items are not recorded anywhere else in the night-end reporting:

- a. Same Day Voting Data. The quantity of same-day in-person registrations is not summarized on night-end reports.

- b. Same Day Voting Data. The voter identification/ information is not recorded in the printed total votes cast nor is this information delineated in the end-of-night voter list.
- c. Same Day votes. These votes are not separated out on the night-end ballot summary report.
- d. The reports produced at the closing of the polls will reconcile the voting numbers, but there is no method to separate out the same-day registers without the original EPB USB.

23) I have analyzed reports produced by the Secretary of State for the preservation of voting data and materials under the Federal Statute and have determined that those reports do not capture and preserve all the data contained on the EPB USB. The following data elements for and Electronic Pollbook and other voting equipment used in the election are not part of these reports:

- a) Computer Name that the Vote was Conducted On
- b) The Domain of the Computer
- c) Manufacturer of the Computer
- d) The Model of the Computer
- e) Processor Name
- f) Total Virtual Memory Size
- g) Free Virtual Memory
- h) Free Physical Memory
- i) Internet Connection Status
- j) Internet Connection Type
- k) Cable Internet Speed
- l) Cable Internet MAC Address

- m) Wifi Internet Speed
- n) Wifi Internet Mac Address
- o) Windows Operating System Version
- p) AntiVirus Program and Status
- q) Firewall Type and Status
- r) Bit Locker Disk Encryption Status
- s) Bitlocker Hard Disk Status
- t) Bitlocker Removeable Drive Status
- u) .Net Version
- v) Dymo Lable Version.

Once again, these data elements are not part of the reports that are produced for preservation by the Secretary of State, but would be data that should be preserved under the Federal statutes.

Should an audit of the election or should the voting records be produced in support of a legal action, the above components would be critical to prove compliance with election law, validate voting system configurations and the demonstrate the fairness of the election. Failure to forensically preserve the EPB USB would have effectively deleted and wiped these elements of information, as they are not present or preserved on any other component of the voting system.

24) The following data fields for voter information from election day are not part of the night end reports:

- a) VOTERID
- b) BALLOTTYPE
- c) PRECINCT
- d) CREATE DATE – Recorded date of election.
- e) ADDRESS_ID

- f) LICENSE_NUMBER
- g) IDENTIFICATION_STATUS_ID
- h) DISTINCT_POLITICAL_AREA_ID
- i) CODE
- j) PARTYID

25) I had the opportunity to review FOIA documents produced by the Secretary of State's office to Scott Aughney. These documents included the official vote totals for Adams Township. Analysis of these official totals revealed some significant deviations from the data contained on the voting media at the local Township level.

- a) The Electronic Poll Book USB data for Adams Township recorded 1,362 voters in night end reporting. This includes the same-day registered voters.
- b) The Hillsdale County Canvassing Board confirms the quantity of 1362 votes in Adams Twp
- c) The State records indicate 1332 votes recorded in Adams Township. This is short 30 votes from the end-of-day totals in the Adams Township data. These numbers do not include the fourteen (14) same-day registration voters.
- d) A comparison of names between the two data sources illustrates seventy-nine (79) unique names on the Electronic Poll Book data for Adams township that are not listed on the State's official records.
- e) Conversely, there are sixty-four (64) names unique to the State's records that are not represented on the Adams Township Electronic Poll Book records.
- f) The combination of these report discrepancies documents an 11.5% difference in votes between township and state.

Without the data contained on the EPB USB data there is no manner by which these discrepancies could be investigated and reconciled. The EPB USB data is essential to any audit or reconciliation.

I have had the opportunity to review two reports created by Scott Aughney. The first report titled “BALLOTS CAST HILLSDALE COUNTY ADAMS TOWNSHIP ELECTION DATE 2020-11-03” was printed on 1/13/2022. The second report titled “BALLOTS CAST HILLSDALE COUNTY ADAMS TOWNSHIP ELECTION DATE 2020-11-03” was produced on 1/13/2022 as well. Both reports were produced in an Adobe Acrobat .pdf format document. Highlighting was applied to the “BALLOTS CAST HILLSDALE COUNTY ADAMS TOWNSHIP ELECTION DATE 2020-11-03” document on 1/17/2022. This was done to highlight voters, who according to the report, voted in the November 3, 2020 election but were not registered until after that date. In some cases these voters data of registration reflects registering to vote 7 months after the election. Figure one is a screen capture of this report. Voter identification data has been blocked to preserve privacy. The original document is available for review.

Report Prepared by:
Scott Aughney
Jackson, Michigan
seacof7@gmail.com

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BALLOTS CAST

HILLSDALE COUNTY

ADAMS TOWNSHIP

ELECTION DATE 2020-11-03

SORT BY

VOTER IDENTIFICATION NUMBER,

LAST NAME, FIRST NAME

Print Date: 1/13/2022

Total Ballots cast: 1332

| VOTER IDENTIFICATION NUMBER | LAST NAME | FIRST NAME | REGISTRATION DATE | ELECTION DATE | IS ABSENTEE | IS PERMANENT ABSENTEE VOTER | YEAR OF BIRTH | GENDER |
|-----------------------------|-----------|------------|-------------------|---------------------|-------------|-----------------------------|---------------|--------|
| | | | 2020-12-29 | 2020-11-03 00:00:00 | Y | Y | 1964 | F |
| | | | 2020-10-21 | 2020-11-03 00:00:00 | Y | Y | 1959 | M |
| | | | 2020-12-15 | 2020-11-03 00:00:00 | Y | Y | 1956 | F |
| | | | 1997-12-05 | 2020-11-03 00:00:00 | Y | N | 1961 | M |
| | | | 1997-12-12 | 2020-11-03 00:00:00 | Y | N | 1959 | F |
| | | | 1997-12-29 | 2020-11-03 00:00:00 | Y | Y | 1974 | M |
| | | | 2021-06-29 | 2020-11-03 00:00:00 | N | N | 1959 | F |
| | | | 2021-06-16 | 2020-11-03 00:00:00 | N | N | 1955 | M |
| | | | 1998-04-10 | 2020-11-03 00:00:00 | N | N | 1946 | F |
| | | | 1998-04-10 | 2020-11-03 00:00:00 | N | N | 1950 | F |

Figure 1 - Voter Registration After the Election

It is evident that the election date column reflects the date of the November 2020 general election and it is also apparent that on this one snippet of the report four (4) individuals registered well after the election date. A search was conducted on the QVR from the

EPB.accdb file and none of these individuals were shown to have been registered before the election. A review of the total information contained in this report indicates that thirteen (13) individuals are recorded as successfully voting in the November 2020 general election that were not registered to vote until well after the election.

26) I have had the opportunity to examine multiple voting systems from multiple software vendors. It is clear from my experience that there is a blatant lack of cyber security protection within the election systems. In the case of Adams Township I have had a limited opportunity to examine the complete voting system, but the items that I have been able to examine confirmed that there are shared passwords utilized by the personnel supporting the election process. Specifically the primary data base that is utilized on the EPB USB is a Microsoft Access database named epb.accdb. This file is password protected, which is sound security practices, but Microsoft Access only support a single password for multiple users. Each person using this data base would have had to have possession of this single password. This is known as a shared password. Sharing passwords is a violation of one of the basic tenants of sound cyber security practices.

27) It is clear from my examination of the materials, the Secretary of State's election reports and the digital EPB USB data that had Ms. Scott followed the directive from the Secretary of State's to delete the EPB USB data, none of these discrepancies could have been detected or substantiated.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 14th DAY OF July
2022.

//Original Signed//

Benjamin R. Cotton

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

WILLIAM BAILEY

Plaintiff

Case No. 20-9238-CZ

v.

ANTRIM COUNTY

HON. KEVIN A. ELSSENHEIMER

Defendant,

SECRETARY OF STATE JOCELYN
BENSON

Intervenor-Defendant,

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DEPERNO LAW OFFICE, PLLC
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AFFIDAVIT OF BENJAMIN R. COTTON 8 APRIL 2021

I, Ben Cotton, being duly sworn, hereby depose and state as follows:

1) I am over the age of 18, and I understand and believe in the obligations of an oath. I make this affidavit of my own free will and based on first-hand information and my own personal observations.

2) I am the founder of CyFIR, LLC (CyFIR).

3) I have a master's degree in Information Technology Management from the University of Maryland University College. I have numerous technical certifications, including the Certified Information Systems Security Professional (CISSP), Microsoft Certified Professional (MCP), Network+, and Certified CyFIR Forensics and Incident Response Examiner.

4) I have over twenty five (25) years of experience performing computer forensics and other digital systems analysis.

5) I have over eighteen (18) years of experience as an instructor of computer forensics and incident response. This experience includes thirteen (13) years of experience teaching students on the Guidance Software (now OpenText) EnCase Investigator and EnCase Enterprise software.

6) I have testified as an expert witness in state and federal courts and before the United States Congress.

7) I regularly lead engagements involving digital forensics for law firms, corporations, and government agencies.

8) In connection with this legal action I have had the opportunity to examine the following devices:

a) Antrim County Election Management Server Image. This image was acquired on 4 December 2020 by a firm named Sullivan and Strickler.

- b) Thirty eight (38) forensic images of the compact flash cards used in Antrim County during the November 2020 elections that were imaged on 4 December 2020 by a firm named Sullivan and Strickler.
 - c) One (1) SID-15v-Z37-A1R, commonly known as the Image Cast X (ICX), that was used in the November 2020 elections
 - d) Two (2) Thumbdrives that were configured for a precinct using the ES&S DS400 tabulator that were used during the November 2020 election.
 - e) One ES&S server that was used in the November 2020 election.
- 9) **Internet Communications with the Dominion ICX.** I examined the forensic image of a Dominion ICX system utilized in the November 2020 election and discovered evidence of internet communications to a number of public and private IP addresses. Of specific concern was the presence of the IP address 120.125.201.101 in the unallocated space of the 10th partition of the device. This IP address resolves back to the Ministry of Education Computer Center, 12F, No 106, Sec.2,Hoping E. Rd.,Taipei Taiwan 106. This IP address is contextually in close proximity to data that would indicate that it was part of the socket configuration and stream of an TCP/IP communication session. Located at physical sector 958273, cluster 106264, sector offset 256, file offset 54407424 of the storage drive, the unallocated nature of the artifact precludes the exact definition of the date and time that this data was created. Also located in close proximity to the Ministry of Education IP address is the IP address 62.146.7.79. This IP address resolves to a cloud provider in Germany.

Figure 1-IP Addresses Located in Unallocated Space

10) **ESS DS400 Communications.** A careful examination of the ESS DS400 devices and thumb drives was conducted. This examination proved that each DS400 had a Verizon cellular wireless communications card installed and that the card was active on powerup, which meant that there is the ability to connect to the public internet on these devices as well. Both of the DS400 devices were configured to transmit election results to IP address 10.48.51.1. This is a private network, which means that it would only be accessible by the remote DS400 systems through leveraging the public internet and establishing a link to a communications gateway using a public IP or via a virtual private network (VPN). It is important to understand that this

communication can only occur if the cellular modems have access to the public internet. I did not have the entire communications infrastructure for the private network and given this lack of device production associated with the DS200, I can not say which other devices may have connected to this private network nor the full extent of the communications of nor the remote accesses to the DS400 devices.

11) **Out of Date Security Updates and Virus Definitions.** An analysis of operating system, and antivirus settings on the servers and computers provided to me was conducted. It was immediately apparent that these systems were extremely vulnerable to unauthorized remote access and manipulation. For example, none of the operating systems had been patched nor the antivirus definition files updated for years. The Antrim EMS was last updated in 2016. The other systems were in a similar state. This lack of security updating has left these systems in an extremely vulnerable state to remote manipulation and hacking. Since 2016 more than ninety seven (97) critical updates have been issued for the Windows 10 operating system to prevent unauthorized access and hacking. The fact that these systems are in such a state of vulnerability, coupled with the obvious public and private internet access, calls the integrity of the voting systems into question. The Halderman report dated March 26, 2021 relating to this matter validates this finding. It also validates that the system is in a state such that an unauthorized user can easily bypass the passwords for the system and database to achieve unfettered access to the voting system in a matter of minutes. These manipulations and password bypass methodologies can be performed remotely if the unauthorized user gains access to the system through the private network or the public internet.


12) **Incomplete Compliance with the Subpoena for Digital Discovery.** Antrim County has apparently failed to produce all of the voting equipment for digital preservation and analysis. I

examined the purchase documents produced by Antrim County with respect to the purchase of the Dominion Voting system and note that the following system components listed on the purchase documents were not produced:

- (a) ImageCast Listener Express Server
- (b) ImageCast Express Firewall
- (c) EMS Express Managed Switch
- (d) ICP Wireless Modems (17)
- (e) Image Cast Communications Manager Server
- (f) ImageCast Listener Express RAS (remote access server) System
- (g) ImageCast USB Modems (5)

Without these system components it will be impossible to determine the extent of public and private communications, the extent to which remote access to the voting system components is possible and to determine if or when unauthorized access occurred.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 8th DAY OF April 2021.


Benjamin R. Cotton

AFFIDAVIT OF BENJAMIN R. COTTON 8 JUNE 2021

I, Ben Cotton, being duly sworn, hereby depose and state as follows:

- 1) I am over the age of 18, and I understand and believe in the obligations of an oath. I make this affidavit of my own free will and based on first-hand information and my own personal observations.
- 2) I am currently the Vice President for Incident Response for eSentire and am the founder of CyFIR, LLC (CyFIR).
- 3) I have a master's degree in Information Technology Management from the University of Maryland University College. I have numerous technical certifications, including the Certified Information Systems Security Professional (CISSP), Microsoft Certified Professional (MCP), Network+, and Certified CyFIR Forensics and Incident Response Examiner.
- 4) I have over twenty-five (25) years of experience performing computer forensics and other digital systems analysis.
- 5) I have over eighteen (18) years of experience as an instructor of computer forensics and incident response. This experience includes thirteen (13) years of experience teaching students on the Guidance Software (now OpenText) EnCase Investigator and EnCase Enterprise software.
- 6) I have testified as an expert witness in state and federal courts and before the United States Congress.
- 7) I regularly lead engagements involving digital forensics for law firms, corporations, and government agencies and am experienced with the digital acquisition of evidence under the under the Federal Rules of Evidence.

8) I had the opportunity to observe Pro V&V personnel acquire the hard drives of an ES&S voting system on 12 October 2021 preparatory to Pro V&V performing an audit on that system. Pro V&V is one of two vendors approved by the U.S. Election Assistance Commission (EAC) and were following EAC approved processes and procedures. In the course of this observation the following deficiencies were noted:

- a) **A Digital Hash of Original Hard Drives were not Created During the Process:** Chain of custody and evidence preservation is mandated by the Federal Rules of Evidence and as a matter of course in best practices in any digital audit or examination. Creation of a digital hash value of the original evidence/device ensures that there are no changes to the evidence as part of the examination or subsequent handling. Without this principle of digital forensics, any evidence that did not possess this digital hash would not be accepted as evidence in legal proceedings.
- b) **Failure to Protect the Original Hard Drives from Modification:** One of the basic principles evidence is that original evidence must not be modified as part of any imaging or preservation process. It is a well documented that simply plugging a hard drive into a computer or other device can cause modifications on the device that was plugged in. Pro V&V personnel did not use a forensically approved device to protect the original voting system hard drives from modification during the imaging process. The device utilized to copy the original hard drive was a SABRENT USB SATA 2.5”&3.5” Dual Bay Hard Drive Docking Station model EC-HD2B. This device is a dual bay docking station that, per the OEM documentation, allows for data writing to both bays simultaneously. There is no protection provided to the original hard drive and thus can provide no assurance that changes were not made to the original hard drive.




Figure 1-Back Cover SABRENT Packaging

- c) **Failure to Produce a Forensically Sound Image of the Original Hard Drives:** As a matter of practice examiners and auditors will connect original hard drives and devices to a forensic write block device and utilize forensic software to create a bit for bit forensic image file of the original digital device. This forensic image is validated utilizing either a Md5 or SHA256 hash to ensure that no changes were made during the acquisition process or occurred in subsequent handling of the evidence. If even one bit of data is changed, the hash value for the image will change. During the acquisition process utilized by Pro

V&V there was no forensically sound image produced from the original hard drive. Pro V&V utilized the SABRENT EC-HD2B to simply copy content from the original hard drive in bay 1 to a copy drive in bay 2. There were no forensic integrity checks of the transferred data nor was there a forensic comparison of the original hard drive and the copy of the drive to ensure that they were exact forensic replicas. The packaging of the SABRENT EC-HD2B implicitly states that both reads and writes are permitted simultaneously to both bays, thus eliminating any claim of forensic integrity by the auditors. As a matter of practice, any product of this device should not be used for forensic audit or investigation due to the lack of forensic integrity within the process.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 25th DAY OF January 2022.


Benjamin R. Cotton

ATTACHMENT 6

Qualifications and Reports of Jim Penrose

Title: Necessity of Source Code Review for Dominion Voting Systems EMS and Tabulators

Analyst: James Thomas Penrose, IV

Executive Summary

The Dominion Voting Systems Patent US8,876.002B2 dated Nov 4, 2014 details how Dominion voting machines support pre-election Logic and Accuracy testing (Pre-LAT) system.

This patent outlines the technology concepts and design of Dominion with respect to maximizing automation in the election configuration, ballot generation, processing, and testing process. The outcome is to save the maximum amount of time through automation with features and functionality that make it unnecessary to have humans in the loop of running elections with various configurations that impact the ballot configuration, vote casting, tabulation process, processing of ballot images, and final tallied vote totals.

The specific incident in Antrim county is related to the features and the functionality outlined in this patent; if any of the automated configuration and testing functionality implemented by Dominion were to be abused in a systematic fashion, modification of election outcomes would be trivial for an attacker. Patents do not specify the precise implementation of the features or functionality and the only way to determine the precise functionality implemented is to review the source code of the operational systems using this patented technology.

Details

Here is an excerpt from the patent that speaks extensively about the use of networked functionality to allow for testing at scale in larger jurisdictions:

Additionally, the network communication device 28 enables the Voting machines to have polls opened in pre-LAT mode remotely over the network. Pre-LAT polls mode is a standard mode of operation for a voting device for conducting Pre-election Logic and Accuracy tests. Further, the communication device enables the voting machines 11 to be provided with a vote simulation script over the network. A vote simulation script is a set of commands that can simulate Voting patterns on the machine even to the level of providing pre canned scanned ballot images or PDF images of ballots with machine generated marks for testing the vote interpretation engine on the tabulator. The communication device 28 also

enables the voting machines 11 to be remotely instructed to run pre-LAT activities such as interpreting vote simulation Scripts and images, performing image calibration procedures, Verifying all system components for readiness and proper function, self printer test etc. Finally, results of all Pre-LAT tests can be communicated back to the EMS through the communications device 28.

Further, the network communication device 28 allows the Voting machines 11 to have pre-LAT polls opened remotely over the network, have pre-LAT polls closed remotely over the network and can communicate pre-LAT results back over the network. Additionally, the pre-LAT polls can be closed manually and can communicate pre-LAT results back over the network.

Thus, the Voting machines 11 can be programmed with an election ballot from over the network, have pre-LAT polls opened remotely over the network and then disable all network ports thru the tabulator firmware and software. Further, the Voting machines 11 can be programmed with an election ballot from over the network, have pre-LAT polls opened remotely over the network, have pre-LAT polls closed manually and then disable all network ports.

Use of a Network to Prepare Voting Machines

Typically the warehouse process cycle consists of the following functions (see FIG.3): Storage and maintenance 100; Test 101; Repair 102; Machine Preparation 103; Pre-LAT 104; Distribution 105; Acceptance back after election 106; and Escrow storage 107.

The Dominion Voting System's patent states that their machines have network connectivity that can be used to open the polls for pre-LAT activities. Being able to remotely open the polls using networked devices raises a number of questions related to the network security.

- What authentication controls the level of access to the voting machines using the remote access?
- What safeguards are in place to protect the mode of operation of the voting machines; for instance, what prevents a technician from placing the machines in the Pre-LAT mode during the time of an election, and how are such mode changes logged for security review?

The patent also indicates that a vote simulation script is used to produce votes and enable counting of votes for pre-LAT purposes. The vote simulation script includes additional features such as the ability to generate “pre-canned” ballots to scan.

- This script is configurable to generate various election results for testing purposes
- The results from the pre-LAT activities are reported back to the EMS for logging and validation of a successful test

It is unclear from the patent if all parts of networked voting machine infrastructure are properly logged when they are operating in Pre-LAT mode. Given the far-reaching interaction of the pre-LAT scripts across all of the voting machine infrastructure it is imperative to review the original source code of the pre-LAT scripts used by Dominion, their sub-contractors (eg ElectionSource) and the county staff. A review of the pre-LAT script source code would illuminate all of the ways that the networked voting machine infrastructure is manipulated to test. Moreover, to truly understand the impact and methods of the pre-LAT script, the source code for the tabulators, EMS, and other listener servers would be required to make an assessment.

In Antrim County, there was no evidence of pre-LAT test results on the EMS. The use of automated scripts designed to generate votes comes with inherent dangers, not the least of which is the fact that the script could fall into the hands of a malicious actor that wants to use those techniques for fraud.

The versatile pre-LAT set of tools used by Dominion to test the networked voting system is pivotal to understanding whether what happened in Antrim county is attributable to a script that is of the same parentage as pre-LAT scripts, or if the error was purely human in nature.

In order to determine if a pre-LAT script was used in Antrim County, it is critical that the source code be reviewed for the script(s) itself and the appropriate investigative steps be taken to determine if the scripts run to change the vote counting in Antrim are of the same parentage.

The source code for all elections systems is required to be retained by the Michigan Secretary of State in a third-party escrow account. The Michigan Election Code states the following:

168.797c Computer program; disposition and use of source code.

Sec. 797c. A person or company providing a computer program that examines, counts, tabulates, and prints results of the votes cast by a voter on an electronic voting system shall place in an escrow account a copy of the source code of the program and any subsequent revisions or modifications of the source code. The secretary of state or an authorized agent of the secretary of state shall agree to use the information contained in the source code solely for the purpose of analyzing and testing the software and shall not disclose proprietary information to any other person or agency without the prior written consent of the vendor.

Here are the relevant definitions of the terms above:

168.794 Definitions used in MCL 168.794 to 168.799a.

Sec. 794. As used in sections 794 to 799a:

(a) "Audit trail" means a record of the votes cast by each voter that can be printed, recorded, or visually reviewed after the polls are closed. The record shall not allow for the identification of the voter.

(b) "Ballot" means a card, ballot label, paper ballot, envelope, or any medium through which votes are recorded.

(c) "Ballot label" means the display or material containing the names of offices and candidates or the questions to be voted on.

(d) "Counting center" means 1 or more locations selected by the board of election commissioners of the city, county, township, village, or school district at which ballots are counted by means of electronic tabulating equipment or vote totals are electronically received from electronic tabulating equipment and electronically compiled.

(e) "Electronic tabulating equipment" means an apparatus that electronically examines and counts votes recorded on ballots and tabulates the results.

(f) "Electronic voting system" means a system in which votes are recorded and counted by electronic tabulating equipment.

(g) "Escrow account" means a third party approved by the secretary of state for the purpose of taking custody of all source codes, including all revisions or modifications of source codes.

(h) "Source code" means the assembly language or high level language used to program the electronic voting system.

(i) "Voting device" means an apparatus that contains the ballot label and allows the voter to record his or her vote.

(j) "Voting station" means an enclosure provided to ensure ballot secrecy during the voting of the ballot.

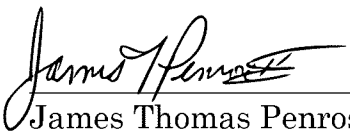
(k) "Memory device" means a method or device used to store electronic data.

The benefit of analyzing source code from the third-party escrow account is the fact that all original source code and changes to the source code must be stored with the third-party to ensure that changes that impact any election voting, tabulation, reporting, and testing is memorialized for authorized investigations. The Michigan Election Code (law) provides for this transparency to ensure the integrity of the election system.

Source code is required to perform this evaluation from the following systems and technical tools:

- All scripts (source) used for pre-LAT activities
- All source code associated with all the varieties of tabulators, EMS, poll books, and other networked servers

Under the penalties of perjury, I declare that I have read the foregoing report and that the fact stated in it are true.


James Thomas Penrose, IV
Date: 5/15/2021

May 15, 2021

MICHIGAN NOTARY ACKNOWLEDGEMENT

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 15th day of May, 2021 by James Thomas Penrose, IV.

Notary Public Signature: 

Notary Printed Name: Ann M. Howard
Acting in the County of: Oakland
My Commission Expires: 2/24/2023



US008876002B2

(12) **United States Patent**
Arnao et al.

(10) **Patent No.:** **US 8,876,002 B2**
(45) **Date of Patent:** **Nov. 4, 2014**

(54) **SYSTEMS FOR CONFIGURING VOTING MACHINES, DOCKING DEVICE FOR VOTING MACHINES, WAREHOUSE SUPPORT AND ASSET TRACKING OF VOTING MACHINES**

(75) Inventors: **Federico Arnao**, Oakland, CA (US);
Eric Coomer, Oakland, CA (US); **Larry Korb**, Oakland, CA (US); **Josh Maletz**, Oakland, CA (US)

(73) Assignee: **Dominion Voting Systems, Inc.**, Denver, CO (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **13/092,604**

(22) Filed: **Apr. 22, 2011**

(65) **Prior Publication Data**

US 2012/0048930 A1 Mar. 1, 2012

Related U.S. Application Data

(63) Continuation of application No. PCT/US2009/062069, filed on Oct. 26, 2009.

(60) Provisional application No. 61/193,062, filed on Oct. 24, 2008.

(51) **Int. Cl.**
G07C 13/00 (2006.01)

(52) **U.S. Cl.**
CPC **G07C 13/00** (2013.01)
USPC **235/386; 235/51; 235/54 F**

(58) **Field of Classification Search**
USPC 235/51, 52, 54 E, 54 F, 56, 57, 386, 454, 235/462.01, 487, 492

See application file for complete search history.

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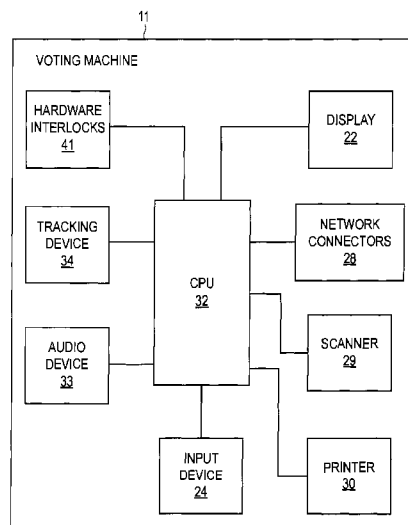
Primary Examiner — Paultep Savusdiphol

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(57) **ABSTRACT**

A system and device facilitate the storage and tracking of warehoused voting machines. A system includes a host computer, a plurality of voting machines that are connected via a network to the host computer, each voting machine having one or both of a wireless communication device and a data port that is coupled to the host computer. The system also includes an election and voting machine preparation portion included in the host computer to manage and/or control the connected voting machines. The election and voting machine preparation portion is configured to manage the status of the connected voting machines, is configured to instruct the voting machines to run self tests, is configured to receive results of the self tests back from the connected voting machines, and is configured to prepare/program the connected voting machines with an election ballot.

17 Claims, 8 Drawing Sheets



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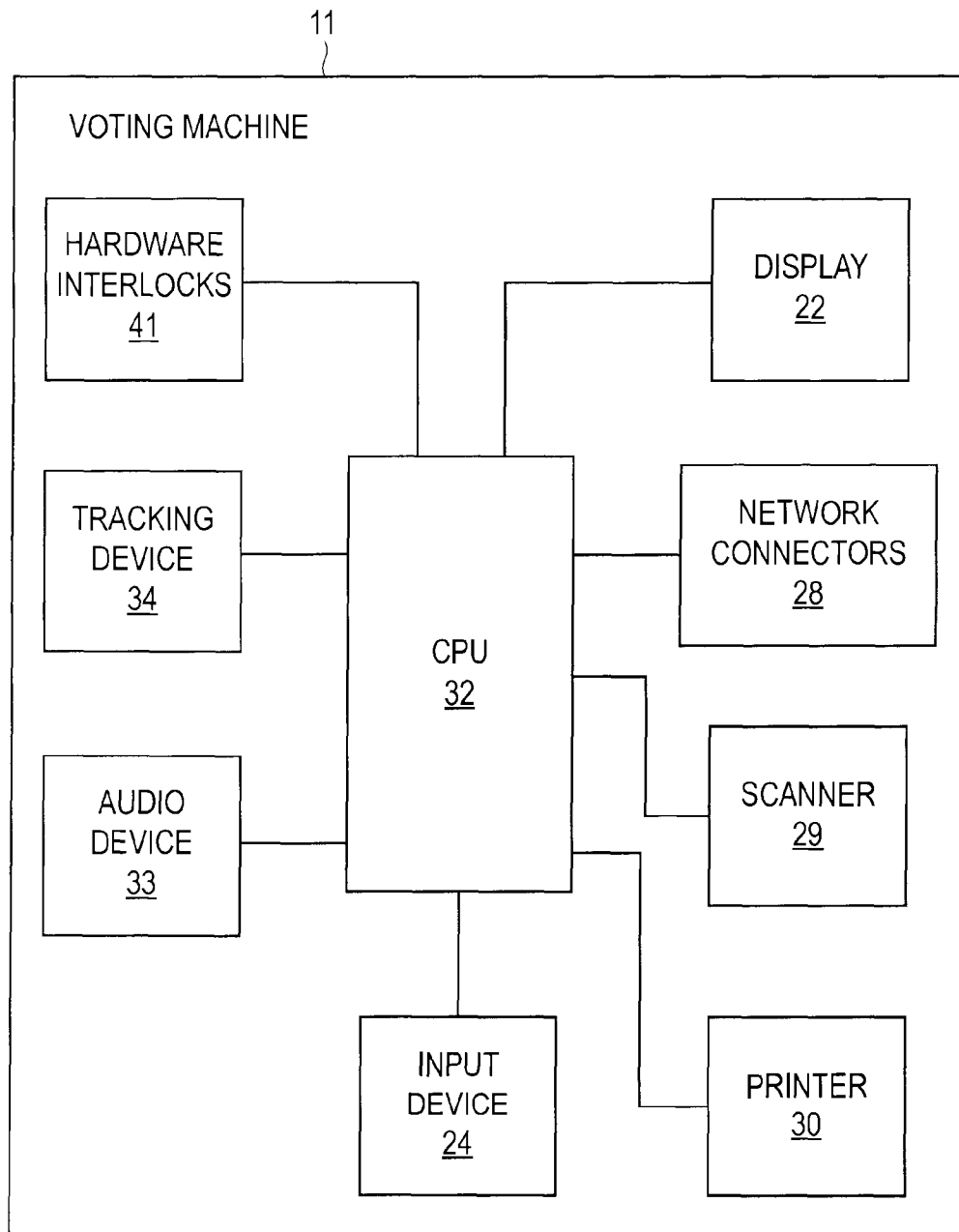


FIG. 1

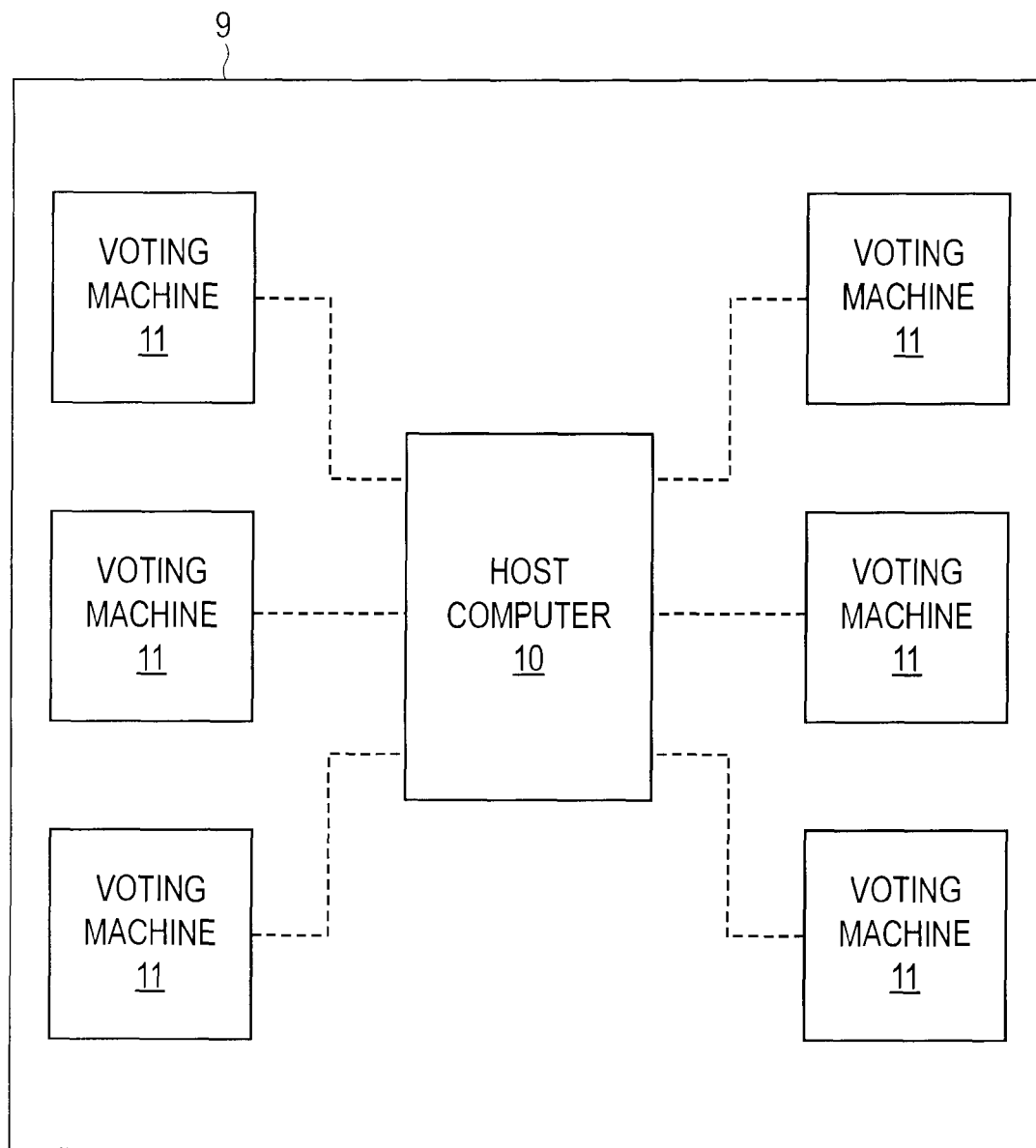


FIG. 2

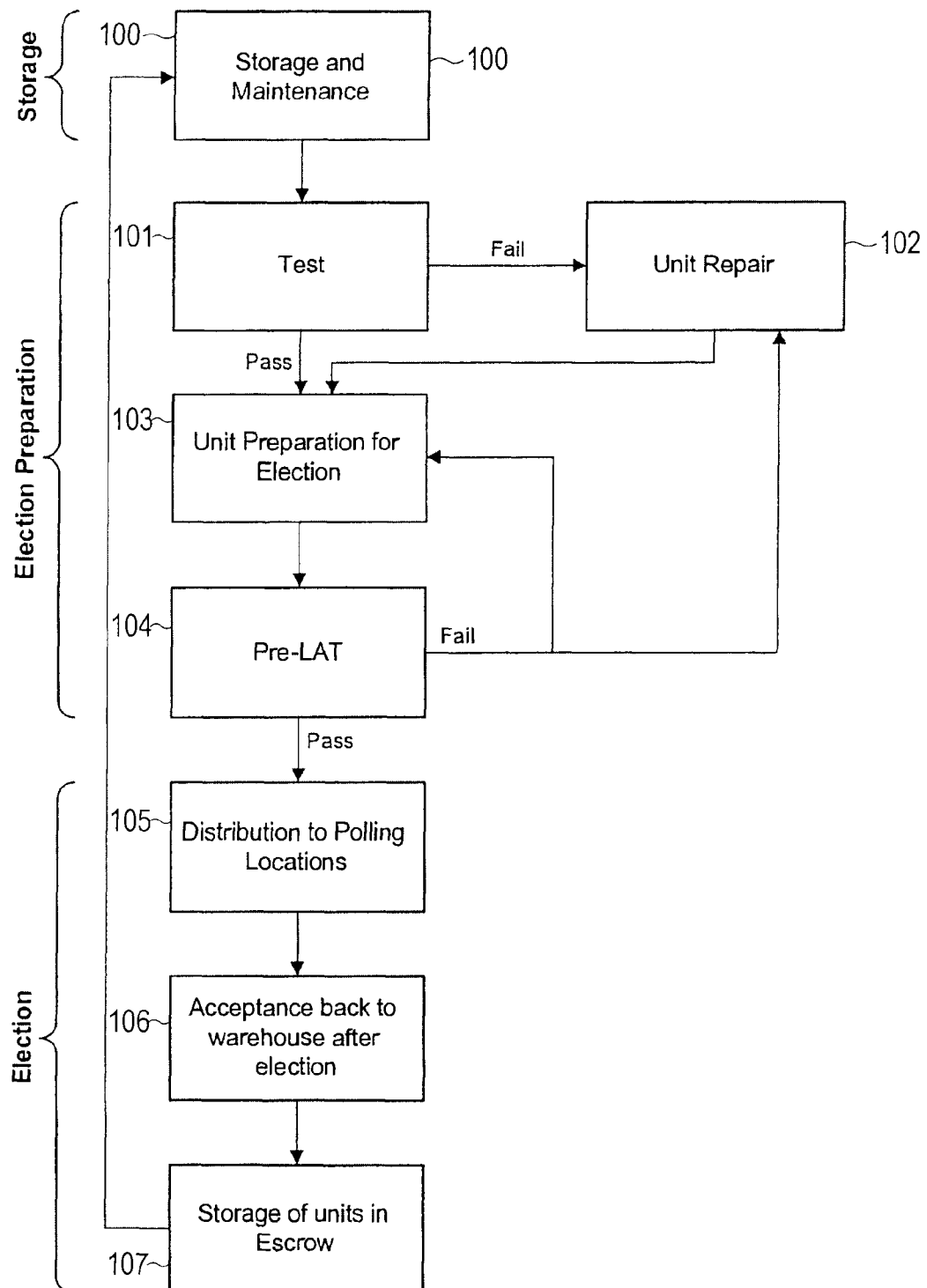


FIG. 3

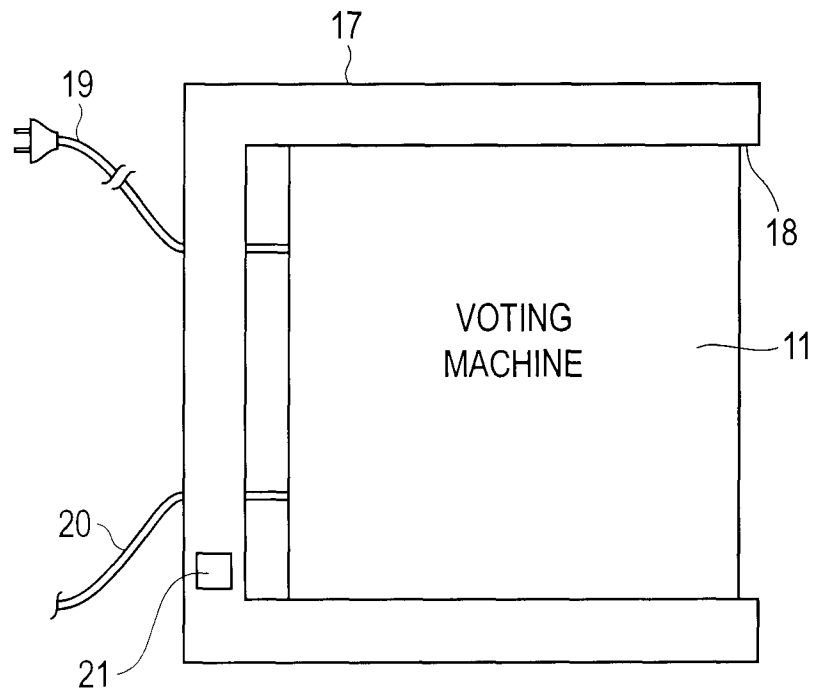


FIG. 4

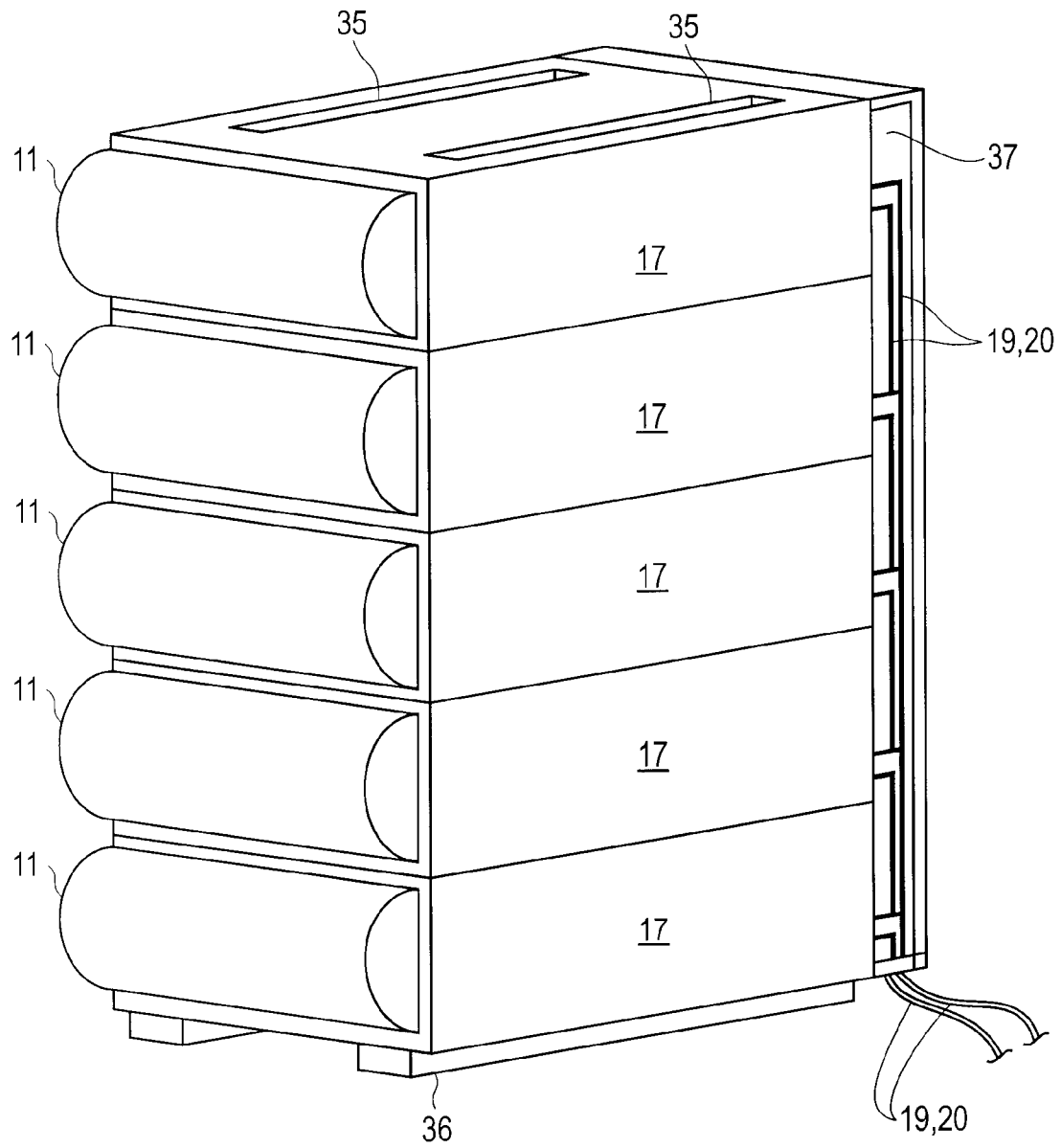


FIG. 5

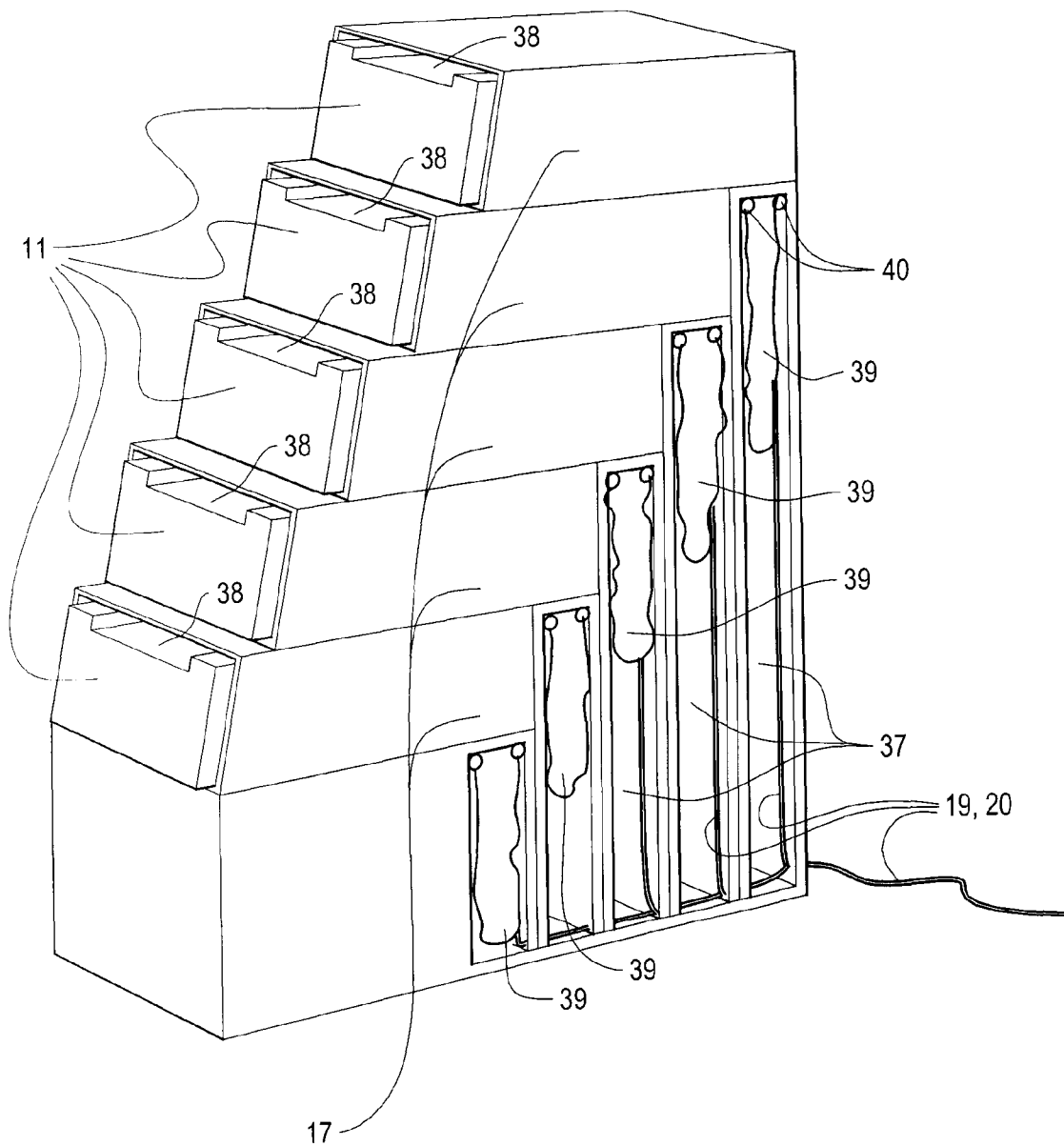


FIG. 6

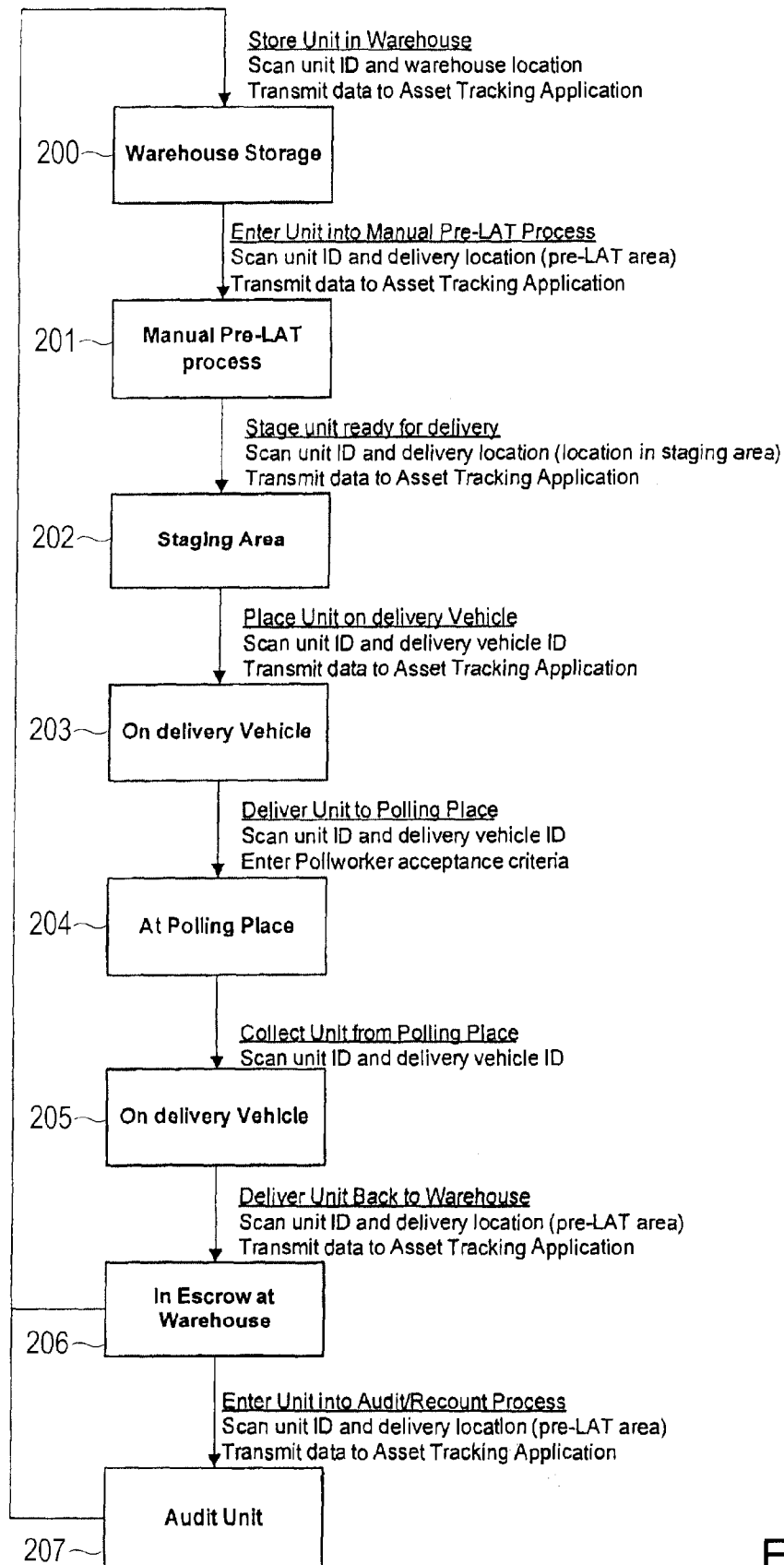


FIG. 7

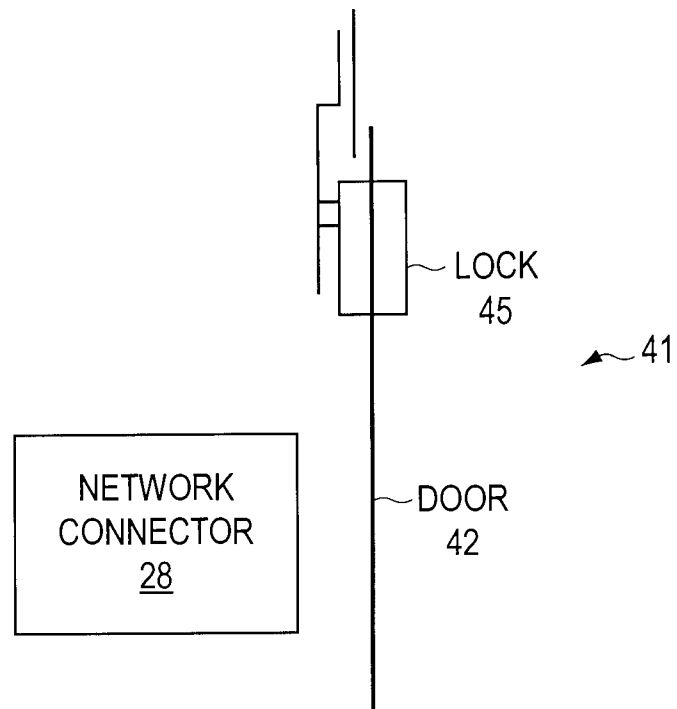


FIG. 8

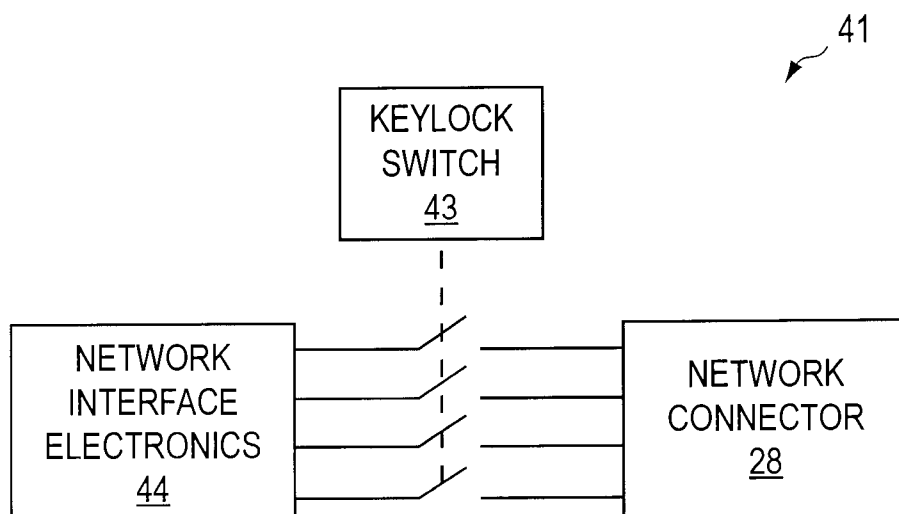


FIG. 9

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SYSTEMS FOR CONFIGURING VOTING MACHINES, DOCKING DEVICE FOR VOTING MACHINES, WAREHOUSE SUPPORT AND ASSET TRACKING OF VOTING MACHINES

This application is a continuation of International Application No. PCT/US2009/062069, filed Oct. 26, 2009, which claims the benefit of U.S. Provisional Application No. 61/193,062, filed Oct. 24, 2008, each of which are incorporated herein by reference in their entirety.

BACKGROUND

The warehousing processes associated with an election are some of the most problematic and time consuming in the entire election process, especially for larger jurisdictions. The complexity of these processes increases exponentially with the size of the jurisdiction.

Electronic voting systems consist of several disparate systems including the Election Management System (EMS), Ballot Tabulators (digital-optical scan voting machines, direct-record-electronic (DRE) voting machines, etc), as well as other ancillary systems including electronic poll-books, accumulation and consolidation devices, and wireless transmission systems for results. Managing these assets can be a significant burden to jurisdictions. In addition, current voting systems rely on a disconnected process for programming the voting machines to transfer the ballot definition data from the EMS to the voting machines. This is historically accomplished by writing the ballot definition data to a removable memory element from the EMS-flash drive usb drives, secure-digital flash drives, PCMCIA flash drives etc. This disconnected process introduces several failure points in the process, and significantly increases the overall effort required of jurisdictions to run an election.

Further, due to the periodic nature of elections, voting machines are necessarily stored for periods up to years in between elections. Therefore, it is desirable to produce apparatus for and methods of adequately, safely and efficiently storing voting machines in between elections.

Furthermore, in large jurisdictions having several voting machines, it is desirable to provide a means for tracking the voting machines as they are used in an election.

SUMMARY

In view of the above issues, a number of improvements are presented.

The system for configuring voting machines described herein has the following benefits. First, the system significantly reduces the effort required to test the functioning of the voting machine by automating the programming and testing of the machines. Second, the system significantly reduces the effort required to prepare and conduct pre-election Logic and Accuracy Tests (pre-LAT) on the voting machines, by automating as much of the process as possible in the warehouse. Third, this system allows warehouse workers to identify and locate voting machines that have faults. Fourth, this system allows warehouse workers to identify and locate voting machines that failed to prepare correctly. Fifth, this system allows warehouse workers to identify and locate voting machines that failed pre-LAT. And sixth, this system ensures voting machine integrity by ensuring that network functionality is not available after pre-LAT has been completed.

Some improvements allow for the safe stacking and storage of voting machines in a warehouse, allow voting

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machines to be provided with power to operate and charge batteries while being stored in the warehouse, allow voting machines to be connected to a network while being stored in the warehouse, and allow the location of individual voting machines to be tracked while being stored in the warehouse.

Another improvement relates to a storage and docking station designed for each type of voting machine and allows voting machines to be stacked and stored safely such that the voting machines are protected from damage. The storage and docking station also is capable of providing power to the machines for battery charging and network connectivity, if supported, for connection to a warehouse management application. The docking station also provides security authentication, which will allow the voting machine to activate various interface ports and support various modes of operation.

The protective docking device can accept a voting machine such that the protective docking device provides physical protection for the voting machine while being stored. Additionally, the protective docking device is capable of being stacked on other protective docking devices such that no damage occurs to the voting machines while being stored. Additionally, the protective docking device can be stacked in position either with or without a voting machine attached therein. Another feature of this improvement is that the protective docking device can provide power and communication connections (including network connectivity) to the voting machine. The protective docking device can also provide loop-back connections on I/O ports to support external loop back tests.

Further, the docking device can have the necessary authentication devices in them for successful communication with the voting machines.

Furthermore, it is within the scope of the improvement that the voting machines can contain location tracking mechanisms such as unique barcodes and RFID tags.

Additionally, the plurality of protective docking devices can communicate location information of the voting machine to the asset tracking system.

Another improvement provides an asset tracking system that allows jurisdictions to accurately manage and account for their voting machine assets by allowing jurisdictions to monitor the locations of their voting machine assets both in the warehouse and in transit for an election. For example, the voting machine assets can be scanned when they are staged for shipment, scanned when they are loaded onto a truck or other vehicle, scanned when they are delivered to polling places, scanned when they are picked up from polling places and scanned when they are delivered back to the warehouse. The asset tracking system will then be able to track where the voting machine assets are in that lifecycle.

In the asset tracking system, each voting machine can have its own unique serial number identifier, which can be, for example, encoded in a bar code on the outside of the machine. Alternatively, the unique serial number identifier can be encoded in an RFID tag in the machine. Further, the RFID tag in the machine can be an RFID tag that is "read only."

Some improvements can further include asset tracking peripheral devices that are capable of reading the serial number identifiers of the plurality of voting machines via bar codes on the outside of the voting machines. In the case where the unique serial number identifiers are encoded in an RFID tag in the voting machines, the asset tracking peripheral devices are capable of reading the serial numbers of a plurality of voting machines via the RFID tags in the voting machines. These peripheral devices can consist of portable

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hand held devices containing supporting applications or fixed location devices directly connected to the asset tracking application.

One improvement also includes asset tracking applications that are capable of managing and tracking assets utilizing the serial number data collected from a plurality of voting machines that have unique serial number identifiers using a plurality of asset tracking peripheral devices. Further, the asset tracking peripheral devices are capable of communicating the serial number data to the asset tracking application.

Another improvement includes a tracking and preparation system for networked voting machines including a host computer, a plurality of voting machines connected via a network to the host computer, each voting machine having one or both of a wireless communication device and a data port for coupling to the host computer, and an election and voting machine preparation portion included in the host computer that is configured to manage and/or control the connected voting machines.

The election and voting machine preparation portion can be configured to manage the status of the connected voting machines, can be configured to instruct the voting machines to run self tests, can be configured to receive results of the self tests back from the connected voting machines, and can be configured to prepare/program the connected voting machines with an election ballot.

The self tests run by the voting machines can correspond to pre-LAT tests.

The election and voting machine preparation portion can be configured to open pre-LAT polls remotely over the network.

The election and voting machine preparation portion can also be configured to run simulation scripts on the voting machines over the network.

The election and voting machine preparation portion can further be configured to disable all network ports of the voting machines after the voting machines have been configured for an election.

Each voting machine can contain a location tracking mechanism. The location tracking mechanism can be a barcode and/or an RFID tag, for example.

Another improvement relates to a protective docking device for a voting machine. The protective docking device includes a voting machine accepting portion configured to accept and store a voting machine, a power connection portion to provide power to the voting machine stored in the voting machine accepting portion, a receiving portion on a top surface of the protective docking device that is configured to receive another protective docking device stacked thereon, a security authentication portion configured to manage interface ports and modes of operation of the voting machines, and a data connection port to provide a data connection to the voting machine stored in the voting machine accepting portion.

The protective docking device can include a plurality of docking stations, each docking station being configured to receive a voting machine.

The protective docking device can include a groove on a top surface of each of the docking stations.

The docking stations can be stacked in a tiered manner.

The protective docking device can include a bag on a back surface of each voting machine within each docking station to collect ballots that have been scanned by the voting machines.

Another improvement relates to a voting machine having an input portion, a network communication device, and a location tracking mechanism.

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The voting machine can further include hardware interlocks that disable the network communication device to prevent the voting machine from being accessed via the network communication devices during an election.

BRIEF DESCRIPTION OF THE DRAWINGS

The foregoing and further objects, features and advantages of the invention will become apparent from the following descriptions of exemplary embodiments with reference to the accompanying drawings, in which like numerals are used to represent like elements and wherein:

FIG. 1 is a diagram illustrating some of the components of a voting machine;

FIG. 2 is a diagram illustrating an example of warehouse networking system;

FIG. 3 is a diagram illustrating an example of a warehouse process cycle;

FIG. 4 is a diagram illustrating an example of a voting machine in a protective docking station;

FIG. 5 is a diagram illustrating an example of a protective docking station in a stacked configuration;

FIG. 6 is a diagram illustrating an example of a protective docking station in a stacked tiered configuration;

FIG. 7 is a flowchart illustrating an example of a process of asset tracking of voting machines;

FIG. 8 is a diagram illustrating an example of a hardware interlock; and

FIG. 9 is a diagram illustrating another example of a hardware interlock.

DETAILED DESCRIPTION OF EMBODIMENTS

FIG. 1 illustrates some of the components that can be included in each voting machine 11. The voting machine 11 can include a CPU 32 that controls operation of the voting machine 11 including the functions described herein, a tracking device 34, an audio device 33, an input device 24, an optical scanner 29, a printer 30, network connectors 28 and a visual display unit 22. The network communication device (network connector 28) can be, but is not limited to: ethernet; optical; and wireless communication devices. Voting machine 11 is not limited to these specific components as any number of other components known to one of ordinary skill in the art for inclusion on voting machines 11 could be incorporated therein.

Additionally, the voting machine 11 can completely disable the network communication device 28 using hardware interlocks 41. The hardware interlocks 41 prevent the voting machine from being accessed via the network communication devices 28 during an election, for example. Further, the voting machine can run self tests such as, but not limited to: destructive memory tests; non-destructive memory tests; tests of I/O ports; I/O communication tests; detection of connected peripheral devices; tests of attached peripheral devices; detection of attached Removable Memory Elements (RME); tests of RMEs; and tests of power supplies and batteries (described below).

There are a variety of methods that can be employed to hardware interlock the secure RME element. A first implementation is to mount the RME port behind a door 42 that can be locked by a lock 45 and controlled by key access (see, for example, FIG. 8). In addition, a sensor (not shown) can be added to detect whether the door 42 is open or not. If the door 42 is open, an electrical interrupt can be activated to disconnect all power and signal lines connected to the RME port.

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FIG. 9 illustrates another embodiment of a hardware interlock 41 where a connection between network interface electronics 44 and network connector 28 is disrupted by a keylock switch 43.

To facilitate the preparation of voting machines 11 prior to an election, the voting machines 11 can be remotely instructed to run the self tests mentioned above from over the network and can communicate the results of the tests back over the network. That is, in the warehouse, for example, a plurality of voting machines 11 can be coupled to a host computer over a network using the network connectors 28. The host computer 10 can then control and/or monitor the plural voting machines 11.

The network communication device 28 in each voting machine 11 enables the voting machine 11 to be configured and tested remotely. Examples of how voting machines 11 can be configured can include, programming the voting machines 11 with an election ballot over the network, performing validation of a loaded election ballot, and communicating results of that validation back over the network.

Additionally, the network communication device 28 enables the voting machines to have polls opened in pre-LAT mode remotely over the network. Pre-LAT polls mode is a standard mode of operation for a voting device for conducting Pre election Logic and Accuracy tests. Further, the communication device enables the voting machines 11 to be provided with a vote simulation script over the network. A vote simulation script is a set of commands that can simulate voting patterns on the machine even to the level of providing pre-canned scanned ballot images or PDF images of ballots with machine generated marks for testing the vote interpretation engine on the tabulator. The communication device 28 also enables the voting machines 11 to be remotely instructed to run pre-LAT activities such as interpreting vote simulation scripts and images, performing image calibration procedures, verifying all system components for readiness and proper function, self printer test etc. Finally, results of all Pre-LAT tests can be communicated back to the EMS through the communications device 28.

Further, the network communication device 28 allows the voting machines 11 to have pre-LAT polls opened remotely over the network, have pre-LAT polls closed remotely over the network and can communicate pre-LAT results back over the network. Additionally, the pre-LAT polls can be closed manually and can communicate pre-LAT results back over the network.

Thus, the voting machines 11 can be programmed with an election ballot from over the network, have pre-LAT polls opened remotely over the network and then disable all network ports thru the tabulator firmware and software. Further, the voting machines 11 can be programmed with an election ballot from over the network, have pre-LAT polls opened remotely over the network, have pre-LAT polls closed manually and then disable all network ports.

Use of a Network to Prepare Voting Machines

Typically the warehouse process cycle consists of the following functions (see FIG. 3): Storage and maintenance 100; Test 101; Repair 102; Machine Preparation 103; Pre-LAT 104; Distribution 105; Acceptance back after election 106; and Escrow storage 107.

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The functions listed above, and illustrated in FIG. 3, represent a major logistical effort in large jurisdictions. For example, a jurisdiction has to store its voting machines 11 in a benign environment and keep them charged. Prior to an election, the jurisdiction must test every voting machine 11 to ensure it is operational and repair those that are not. Further, the jurisdiction must then prepare each individual voting machine 11 with the ballot styles for the precinct to which the voting machine 11 is assigned. The preparation and machine function must then be validated against that expected in pre-LAT. The voting machines 11 that fail the "pre-LAT" process must either be re-prepared or repaired, depending on the issue. The voting machines 11 must then be distributed to the correct locations in a secure manner, where they are used in the election. After the day of election, the voting machines 11 then must be collected and returned to the warehouse and accounted for, where they are stored in escrow (securely) for auditing purposes. The voting machines 11 are finally returned to their normal storage modes after auditing or after it is determined that auditing is not needed.

For a jurisdiction with just a few voting machines 11, this process is not a major issue. However, for a large jurisdiction, such as a jurisdiction with 5,000 or more voting machines 11, this presents a major logistical problem. Anything that can be done to automate this process and thus reduce the logistical burden on the jurisdictions will be extremely useful. Some of the improvements discussed herein achieve this goal. To solve this problem, the voting machines 11 are networked together to a central management system within the warehouse. Additionally, one improvement includes a software application that assists in the management and implementation of the process.

In order to address this logistical problem, all the voting machines 11 are networked together in the warehouse, either with physical network connections or via wireless technology, in their storage positions. Additionally, the voting machines 11 are supplied with power and operate in a special storage mode of operation when in storage. A warehouse management application is used that is capable of sending commands to and receiving data from, the individual voting machines 11, groups of voting machines 11, lists of voting machines or the entire group of voting machines 11 that are stored in the warehouse.

Additionally, the warehouse management application is capable of sending a command instructing voting machines 11 to respond by identifying their location in the warehouse and their current status. The networked voting machines 11 then respond by providing the appropriate data. The voting machines 11 are able to report their location by where they are networked and the status information that includes amongst other information, the firmware version, battery level, current mode of operation, whether the voting machines 11 have results cartridges present and the current configuration of the voting machines 11. This feature allows the warehouse management application to verify the location of the voting machines 11 and receive information regarding the status of each voting machine 11.

Further, the warehouse management application is capable of sending a command instructing the voting machines 11 to run a series of diagnostic tests. The purpose of these tests is to ensure that the hardware is operating correctly. The tests include, but are not limited to the following tests listed below.

Internal Memory
Tests

Destructive RAM test

This tests the RAM by writing data to memory address and reading it back to verify that it has written correctly. It is called destructive because any data residing

| | | |
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| | | in the memory is lost. |
| | Non-Destructive RAM tests | This tests the RAM by writing data to memory addresses that are not currently in use and reading it back to verify that it has written correctly. |
| | Destructive storage memory tests | This tests the storage memory (such as CF, hard disk etc.) by writing data to memory address and reading it back to verify that it has written correctly. It is called destructive because any data residing in the memory is lost. |
| | Non-Destructive storage memory tests | This tests the storage memory (such as CF, hard disk etc.) by writing data to memory addresses that are not currently in use and reading it back to verify that it has written correctly. |
| Removable Memory Element (RME) Tests | Destructive RME tests | This tests the Removable Memory Element (RME) (results cartridge) by writing data to memory addresses and reading it back to verify that it has written correctly. It is called destructive because any data residing in the memory is lost. |
| | Non-Destructive RMW tests | This tests the Removable Memory Element (RME) (results cartridge) by writing data to memory addresses that are not currently in use and reading it back to verify that it has written correctly. |
| Serial Port Tests | Internal tests | These tests test the serial ports by performing internal chip set and internal loop back tests, by transmitting and receiving data in the various modes supported by the chipset. |
| | Loop-back tests | This tests the serial ports by performing an external loop back tests, by transmitting and receiving data over the port. The serial ports must have a connector that connects the Tx and Rx lines. |
| | Authentication Tests | This test authenticates any devices currently attached the serial ports of the voting machine. |
| USB Port Tests | Internal tests | This tests the USB ports by performing internal chip set and internal loop back test, by transmitting and receiving data in the various modes supported by the chipset. |
| | Loop-back tests | This tests the USB ports by performing an external loop back tests, by transmitting and receiving data over the port. The USB ports must have a connector that interfaces the Tx and Rx lines. |
| | Authentication Tests | This test authenticates any devices currently attached the serial ports of the voting machine. |
| Ethernet Tests | Internal tests | This tests the ethernet port by performing internal chip set and internal loop back tests, by transmitting and receiving data in the various modes supported by the chipset. |
| | Loop-back tests | This tests the ethernet port by performing an external loop back test, by transmitting and receiving data over Ethernet connection with the warehouse application. |
| Wi-Fi Tests | Internal tests | This tests the Wi-Fi connection by performing internal chip set and internal loop back tests, by transmitting and receiving data in the various modes supported by the chipset. |
| | Loop-back tests | This tests the Wi-Fi connection by performing an external loop back test, by transmitting and receiving data over Wi-Fi connection with the warehouse application. |
| | Authentication Tests | This test authenticates the data encryption and certificates used in the Wi-Fi connection. |
| Other Port Tests | Internal tests | This tests the other ports by performing internal chip set and internal loop back tests, by transmitting and receiving data in the various modes supported by the chipset. |
| | Loop-back tests | This tests the other ports by performing an external loop back tests, by transmitting and receiving data over the port. The ports must |

| | |
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| | have a connector that connects the Tx and Rx lines. |
| Authentication Tests | This test authenticates any devices currently attached the other ports on the voting machine. |
| Processor Tests | This tests the operation of the processor. |
| Security Tests | These are a suite of tests that test the security features of the voting machine. |
| Display communication tests | This tests the connections to the displays and the touch screen membrane. |
| Firmware authentication tests | This authenticates the version of the firmware by calculating a HASH value of the firmware image using a seed passed to it by the warehouse application. |
| Audit/event logging tests | These tests test the audit and event logging facilities by simulating events and then checking that the events have been written to the logs. |
| Printer tests | This tests the operation of the printer and or VVPAT connected to the voting machine. |
| Battery Charging tests | This tests the battery charging circuits and the state of the battery. |
| Audio sub-system tests | This tests the correct operation of the audio sub-system. |
| ADA device interface tests | These test the interfaces provided for the use of ADA devices, for example the audio control unit. |

After the tests have been run, the voting machines **11** report back the results of the tests identified above to the warehouse management application. The warehouse management application is then able to identify which voting machines **11** have problems via these tests. This allows the voting machines **11** to be tested remotely without human intervention, thereby reducing the time required to prepare the voting machines for an election.

Further, the warehouse management application is capable of setting system parameters in the voting machines **11**, such as setting the date and time as well as being capable of loading election definitions into the machines across the network. Once the election definitions are received, the voting machines **11** authenticate and verify the election definition and copy it to all necessary memory devices including any internal storage devices, and redundant removable memory elements, verifying that it has loaded correctly. The voting machines **11** then report their status back to the warehouse management application. The warehouse management application tracks and manages which voting machines **11** have been prepared successfully and which have had election load issues and thus may require further attention. FIG. 2 illustrates an example of the warehouse management system in a warehouse **9** including host computer **10**, and voting machines **11** that are, in this embodiment, connected to the host computer **10** via a wireless network. The host computer **10** includes RAM, ROM one or more CPUs and various interfaces. The warehouse management application is stored on and runs on the host computer **10**.

This allows the voting machines **11** to be prepared for an election with the election definition automatically without human intervention.

The warehouse management application also is capable of loading simulation scripts to the voting machines **11**. The voting machines **11** authenticate and verify the simulations scripts and report the status of the load back to the warehouse management application. The warehouse management application is capable of instructing voting machines **11** to open polls in pre-LAT and to run the vote simulation scripts. The voting machines **11** then report the status to the warehouse management application.

The warehouse management application can also instruct the voting machines **11** to open polls in pre-LAT mode, and to accept manual feeding of a deck of test ballots. Once the ballots have been fed into the voting machine **11**, a sequence can be initiated on the voting machine **11** to reconnect with the warehouse management application to transmit the results of the test deck for verification and validation.

These pre-LAT based processes using either a vote simulation script, or a set of test ballots allows the vast majority of pre-LAT to be run automatically without human intervention. Some pre-LAT tests may have to be done manually, such as verifying that: the user interface works correctly; that the scanner mechanism is operating correctly; that test ballots are read correctly; that the audio voting works correctly; and that the printer prints correctly. However, the tests capable of being conducted remotely represent a large reduction in the effort required to prepare the voting machines **11**.

The warehouse management application is capable of instructing voting machines **11** to close pre-LAT polls and to tally the pre-LAT data. The voting machines **11** then report the pre-LAT tally data back to the warehouse management application. The warehouse management application then compares the pre-LAT data with what was expected to automatically verify that pre-LAT was successfully passed. These measures allow pre-LAT to be conducted accurately and with minimum effort.

The warehouse management application also is capable of instructing the voting machines **11** to open polls in official election mode and the voting machines **11** then report this back to the warehouse management application.

Thus, the entire voting machine preparation and test process can be automated and the required effort to test and prepare the voting machines can be considerably reduced.

The warehouse management application also is capable of instructing the voting machines **11** to send their audit and event logs and is being capable of searching for certain types of events. The voting machines **11** can also send back their election tally data (ballot image records) if polls have been closed.

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One improvement relates to election and machine preparation applications running on a host computer system connected by a network to a plurality of voting machines 11 that each includes a network communication device via that network (see FIG. 2). One function of the election and machine preparation applications is to manage the status of the connected voting machines 11. Additional functions of the election and machine preparation applications are to instruct the voting machines 11 to run self tests (listed below), to receive the results of those self tests back from the voting machines 11, and to display and archive the results. Any errors or issues identified can be communicated back to the user of the system thru these reports and communicated to the warehouse logistics management in order for the machines to be serviced.

Another function of the election and machine preparation applications is to prepare/program those voting machines 11 with an election ballot over the network. In addition, the election and machine preparation applications are capable of receiving verification that the ballot has loaded correctly.

Further, another function of the election and machine preparation applications is to instruct the voting machines that have an election ballot loaded but have not had any polls opened to open pre-LAT polls. The election and machine preparation applications can then receive verification back that pre-LAT polls were opened successfully.

The election and machine preparation applications are also able to provide a vote simulation script to the voting machines 11 that have pre-LAT polls open. The election and machine preparation applications can then receive verification that the simulation script was successfully loaded.

The election and machine preparation applications can also suspend operation after pre-LAT polls have been opened so that a set of test ballots can be manually fed into the system. Once the ballot has been fed, the pre-LAT polls can be manually closed and the results of the test ballots communicated back to the preparation system for verification.

The election and machine preparation applications also can provide those machines 11 that have pre-LAT polls open with instructions to close pre-LAT polls, and the election and machine preparation applications can receive verification that the ballots have been validated, and that pre-LAT polls have been closed successfully.

The election and machine preparation applications can further provide data on the operational health, pre-LAT data and polls status of the voting machines as well as data on the location in the warehouse of those voting machines

Voting Machine Docking and Storage Station

A storage and docking station is designed specifically for each type of voting machine 11. This allows the voting machines 11 to be stored safely and protected from damage. Further, the storage and docking station allows the voting machines 11 to be stacked. The storage and docking station also is capable of providing power to the machines for battery charging and network connectivity, if supported, for connection to a warehouse management application. The docking station can also provide connection to support various I/O port loop back tests. The docking station also is capable of providing security authentication, which allows the voting machine to activate various interface ports and support various modes of operation.

FIG. 4 illustrates an exemplary embodiment of the storage and docking station 17. As seen in FIG. 4, the storage and docking station 17 includes a cavity 18 into which the voting machine 11 can be placed. FIG. 4 also illustrates some of the plugs and interfaces provided in the storage and docking station 17 for connection with the voting machine 11. As seen in FIG. 4, these connections can include, for example, a

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power connection 19 and a data line 20. In some examples, the storage and docking station 17 may comprise a channel 21 provided near a back portion of the docking station 17 to provide a conduit for the cables such as power connection 19 and a data line 20 connected to the voting machine 11.

FIG. 5 illustrates how the storage and docking station 17 can be stacked on top of another storage and docking station 17. As seen in FIG. 5, in one embodiment, each docking station 17 can be placed directly on top of the other. Grooves 35 are provided on a top surface of each docking station 17 to facilitate stacking. The grooves 35 are configured to receive a corresponding projecting portion 36 on the bottom surface of another docking station 17. Additionally, a channel 37 is provided near a back portion of each docking station 17 to provide a conduit for the cables such as a power connections 19 and a data lines 20 connected to each voting machine 11.

FIG. 6 illustrates another embodiment of the stacked docking stations 17. In this embodiment, the docking stations 17 are stacked in a tiered manner. Additionally, in this embodiment, the docking stations 17 are configured to allow ballots 1 to be fed into ballot feed trays 38 of the optical ballot scanner 29 in each voting machine 11 while the voting machines 11 are stacked. Therefore, the voting machines 11 do not need to be un-stacked to feed ballots during pre-LAT.

Similar to FIG. 4, in the embodiment of FIG. 5, a channel 37 is provided near a back portion of each docking station 17 to provide a conduit for the cables such as a power connection 19 and a data line 20 connected to each voting machine 11.

Further, a bag 39 is provided on a back surface of each voting machine 11 to collect ballots that have been scanned. The bags 39 can be disposed on runners 40 so that the bags 39 can slide out to facilitate the removal of the ballots from the voting machines 11.

Asset Tracking of Voting Machines

Each individual voting machine 11 can be configured with machine-readable identifiers on/in them such as bar codes or RFID devices. These are generally referred to as a tracking device 34 shown in FIG. 1. These machine-readable identifiers can contain information such as, for example, the machine type and serial number. These identifiers can also be used to track the location and 'state' of the voting machines 11 within the election lifecycle.

The machine-readable identifiers are capable of being scanned by devices such as barcode scanners and RFID scanners so that the information can be retrieved and used by the tracking and warehouse applications. RFID is preferable as it allows automatic scanning of the devices without the need for manual interaction by a user.

When a voting machine 11 is stored in the warehouse, the voting machine 11 is scanned for its identifier information and its location is recorded. If the machine-readable identifier is contained in barcode, then the user will have to scan that bar code with a bar code reader. If the identifier is contained in an RFID tag, then this can be scanned automatically either by a hand held device or by a scanning device located in the storage area. The location of the voting machine 11 can be inputted in a number of ways. For example, the location of the voting machine 11 could be entered manually by the user, scanned in via a bar code identifying the location, or scanned in via an RFID tag at the location. If the voting machine 11 has an RFID tag, and the RFID scanners are located in warehouse storage area, the location of the voting machine 11 can be calculated automatically via comparing the relative strength of the RFID signals or by some other comparative technique. This identification and location information can be automatically passed to the warehouse management and asset tracking systems, preferably via a wireless network. These applica-

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tions mark the voting machines as being in a warehouse storage location and record that particular location. Hence the location of a particular voting machine 11 is known and verified.

When a voting machine 11 is removed from storage, a similar process occurs. The machine-readable identifier is scanned. Additionally, the reason for the voting machine 11 being moved can be entered into the system, preferably via a button press on a hand held device (which can include multiple selections from which to choose). Therefore, if the voting machine 11 has an RFID tag, the fact that it has been moved from the storage location may be detected automatically. Again, this information can be passed to the asset tracking system, so that its location is still known.

If the voting machine 11 is taken to a different location, such as a pre-LAT or audit area (for example to complete the manual aspects of pre-LAT prior to staging for deployment), then the voting machine 11 can be scanned and information such as the voting machines' 11 presence in that different location and that part of the process can be recorded and passed to the asset tracking and warehouse management applications.

If the jurisdiction uses a staging area prior to distribution of the voting machines 11, then when the voting machines 11 are placed in that area, the fact that the voting machines 11 are there and the particular location in that area can be recorded using similar means as described above with respect to the storage location at the warehouse.

Additionally, vehicles that are used for delivery of the voting machines 11 can also have machine-readable identifiers. Again, these machine-readable identifiers could be stored via barcodes or RFID tags. As voting machines 11 are deployed onto vehicles for delivery, they can be scanned and the vehicle identifier scanned. If the vehicle does not have a barcode or RFID tag, then the identifier could be entered manually. This information can then be relayed back to the asset management application, so that the presence of the voting machines 11 on a particular vehicle can be tracked.

In addition, each polling place also can have a machine-readable identifier. These machine-readable identifier could be stored, for example, as barcode or MD tags at the polling place; as codes or barcodes on the delivery sheet; as codes or barcodes in a booklet; or be stored in the hand held device used of scanning for manual selection. If the polling place identifier is contained in a barcode or RFID tag, this can be scanned by the handheld device. If the machine-readable identifier is a code, it can be manually entered in the handheld device. Further, if the machine-readable identifier is stored in the application in the handheld device, then it can be manually selected by the user. When a voting machine 11 is delivered, its ID can be scanned by the handheld device as is the polling place ID. This information is stored in the hand held device. If the process includes an acceptance by someone at the polling place, this can also be recorded in the hand held device (depending on the technology in the hand held device, this could be a signature, a thumb print, an acceptance code or just a button press). If an attempt is made to transport the voting machine 11 to an incorrect location, the handheld device can identify this and warn the user.

When the vehicle returns to the warehouse, the data collected can then be downloaded to the asset tracking application. Hence, the asset tracking application will know what voting machines 11 have been delivered and where the voting machines 11 are located. The asset tracking application also can identify if voting machines 11 have been incorrectly delivered.

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When voting machines 11 are picked up from polling locations, the voting machines 11 can be scanned by the hand held device to show they have been collected. Similarly, when the voting machines 11 are placed back into storage or an escrow location, they can be scanned so that the location and this information can be relayed to the asset tracking system.

By using this process and information, the asset tracking system can accurately track the location and state of the voting machines 11. Therefore, if a voting machine 11 is mislaid, its path can be investigated to aid finding the voting machine 11. In the warehouse, if a voting machine 11 needs to be retrieved (for example, if it requires repair or is going to be audited) then the asset tracking system can identify its location for easy retrieval.

In addition, results cartridges can also have machine-readable identifiers, which can be in the form of barcodes or RFID tags, so that the results cartridges can be tracked in a similar manner as described above. The results cartridges can be scanned when inserted into a machine (which can be a voting machine or another machine) and that information can be relayed back to the warehouse management system so that a specific results cartridge can be associated with a specific voting machine 11. This step is not necessary if there is a networked warehouse management system in use as this can be done automatically via the warehouse management system.

If results cartridges are collected separately from the voting machines 11 at the end of the election, then as they are delivered to the tally center, they can be scanned in and tracked. Thus, a record can be kept of which cartridges have been delivered and the time of delivery.

FIG. 7 is a flowchart illustrating one example of how the asset tracking process can function. In step 200 the machine-readable identifier of the voting machine 11 is scanned and the location of the voting machine 11 is recorded and transmitted to the asset tracking application. In step 201 the machine-readable identifier of the voting machine 11 is scanned and the delivery location at the pre-LAT area is recorded and transmitted to the asset tracking application. In step 202 the voting machine 11 is ready for delivery and the machine-readable identifier of the voting machine 11 is scanned and the location of the staging area of the voting machine 11 is recorded and transmitted to the asset tracking application. In step 203 the voting machine 11 is placed on a delivery vehicle after scanning the machine-readable identifier of the voting machine 11 and the vehicle ID. This information is then transmitted to the asset tracking application. In step 204 the voting machine 11 is positioned at the polling place after scanning the machine-readable identifier of the voting machine 11 and the delivery vehicle ID. Additionally, when arriving at the polling place the poll worker acceptance criteria is entered. In step 205 the voting machine 11 is placed back on the delivery vehicle after having the machine-readable identifier of the voting machine 11 and the delivery vehicle ID scanned. Once again, this information is then transmitted to the asset tracking application. In step 206 the voting machine 11 is returned back to the warehouse where it is put in escrow. The machine-readable identifier of the voting machine 11 is scanned upon arriving back at the warehouse as well as the delivery location (pre-LAT area). This information is then transmitted to the asset tracking application. Finally, in Step 207 the voting machine 11 enters the audit/recount process. The machine-readable identifier of the voting machine 11 and the delivery location are scanned and the data is transmitted to the asset tracking application. Upon the completion of step 207 the cycle returns back to warehouse storage step 200.

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The foregoing description is considered as illustrative only of the principles of the improvements discussed above. The inventions described herein are not limited to specific examples provided herein.

What is claimed is:

1. A tracking and preparation system for networked voting machines comprising:

a host computer;

a plurality of voting machines connected via a network to the host computer, each voting machine comprising:

a processor;

a user interface coupled with the processor and configured to receive cast votes;

a network communication device coupled with the processor, the network communication device comprising a wireless communication device and a data port for coupling the voting machine to the host computer; and

a hardware interlock coupled with the network communication device and configured to disable the network communication device to prevent the voting machine from being accessed via the network during an election period, wherein disabling the network communication device comprises activating an electrical interrupt to prevent network communication with the voting machine while maintaining a physical network connection; and

an election and voting machine preparation portion included in the host computer that is configured to distribute programming information to each of the connected voting machines prior to receiving the cast votes at the polling location.

2. The system according to claim 1, wherein the election and voting machine preparation portion is configured to manage the status of the connected voting machines, is configured to instruct the voting machines to run self tests, is configured to receive results of the self tests back from the connected voting machines, and is configured to prepare/program the connected voting machines with an election ballot.

3. The system according to claim 2, wherein the self tests run by the voting machines correspond to pre-LAT tests.

4. The system according to claim 2, wherein the election and voting machine preparation portion is configured to open pre-LAT polls remotely over the network.

5. The system according to claim 2, wherein the election and voting machine preparation portion is configured to run simulation scripts on the voting machines over the network.

6. The system according to claim 2, wherein the election and voting machine preparation portion is configured to dis-

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able all network ports of the voting machines after the voting machines have been configured for an election.

7. The system according to claim 2, wherein each voting machine contains a location tracking mechanism.

8. The system according to claim 7, wherein the location tracking mechanism is a barcode.

9. The system according to claim 7, wherein the location tracking mechanism is an RFID tag.

10. The system of claim 1, wherein the election and voting machine preparation portion included in the host computer is further configured to upload vote information from the plurality of voting machines after receiving the cast votes at the polling location.

11. The system of claim 1, wherein the election and voting machine preparation portion is configured to prepare or configure individual voting machines with election-specific information.

12. The system of claim 1, wherein the election and voting machine preparation portion is configured to manage all pre-election preparation for the plurality of voting machines prior to deploying the voting machines to a polling location.

13. A voting machine comprising:

a processor;

an input portion coupled with the processor and configured to receive ballots to be scanned;

a network communication device coupled with the processor and configured to receive programming information from at least one external device;

a hardware interlock coupled with the network communication device and configured to disable the network communication device to prevent the voting machine from being accessed via the network during an election period, wherein disabling the network communication device comprises activating an electrical interrupt to prevent network communication with the voting machine while maintaining a physical network connection; and

a user interface coupled with the processor and configured to receive cast votes from a voter.

14. The voting machine of claim 13, wherein the voting machine receives all pre-election preparation programming information via the network communication device prior to deployment to a polling location.

15. The system according to claim 13, wherein the voting machine contains a location tracking mechanism.

16. The voting machine according to claim 15, wherein the location tracking mechanism is a barcode.

17. The voting machine according to claim 15, wherein the location tracking mechanism is an RFID tag.

* * * * *

Analyst: James Thomas Penrose, IV
Date: 2 May 2021

Executive Summary

ElectionSource technicians responsible for the creation and deployment of project files have supreme power in creating configurations that can be used to modify the votes in the EMS and the output of the tabulator paper tapes. Upon review of the Lenberg report dated May 2nd, 2021, ElectionSource technicians create project files for their clients and as a result can access, control, and modify any election they support.

ElectionSource configured and deployed Antrim County's project files that resulted in the modification of the votes during the general election. The Lenberg report indicates that vote modification in Antrim County was consistent with technical manipulation of the project file. This project file was generated and deployed by ElectionSource for the November 3rd, 2020 general election.

In order to research and investigate the Antrim County vote modification it is necessary to perform a full forensic examination and testing of all equipment utilized during the election. Michigan clerks take an oath to faithfully discharge the duties of a clerk including to hold fair and accurate elections. ElectionSource has issued a threat to Michigan clerks interested in conducting independent forensic examinations and testing of election equipment. See Exhibit A.

ElectionSource has the responsibility to review the log files on the Dominion Voting Systems, Election Management System (EMS), the log files are typically viewed by trained technicians with the appropriate experience to properly interpret the software prompts/warnings. During the preparation for the general election their were prompts/warnings ignored by ElectionSource.

ElectionSource failed to utilize version control. Version control is defined as the task of keeping a software system consisting of many versions and configurations well organized. Failure to utilize version control can lead to incorrect vote tally during an election. The lack of policy, procedures, and technical implementation on the part of ElectionSource led to a situation where an inaccurate tally could occur.

An ElectionSource whistleblower has also publicly spoke out about his concerns of fraud over technicians having access to a broad array of ballots from across the State of Michigan via ElectionSource thumb drives. The evidence of what occurred in Antrim County along with the statements of an ElectionSource whistleblower illustrate the multiple avenues for fraud.

Details

ElectionSource Threats Related to Forensics Analysis

ElectionSource sent a letter dated January 4th, 2021 stating that any independent forensic analysis of election equipment would require the Michigan Secretary of State's approval. This letter included a threat of legal action against any Michigan clerk that sought independent investigation related to their equipment in order to uphold their oath of office pertaining to elections.

Weak and Hardcoded Passcodes

ElectionSource performed a number of functions on behalf of Antrim County in order to prepare for and conduct the November 3, 2020 general election. When examining the historic steps taken by the ElectionSource configuring the Antrim County EMS one of the actions taken was to set the default technician passcode for the entirety of Antrim County to a weak passcode. The weak passcode was "123456" set by ElectionSource as found in the configuration files used for the election. Moreover, the UserLog file on the EMS also indicated that the election password to open and close the polls was set to "1234678" for more than 19 months prior to the election at which time it was updated to a similarly weak and guessable passcode "11032020", the date of the general election. These passcodes work to give access to the tabulators to open/close, reopen, and rezero the tabulators.

A malicious actor seeking to commit fraud would need to know these passcodes to gain access to the tabulators and enable their operations. ElectionSource provisioned passcodes that were easily guessable and simple trial and error would reveal the correct passcodes with a tractable number of attempts, even done manually by hand by an attacker.

Table 1 below shows all the instances of the ElectionSource technicians making changes to the EMS and setting the default password for opening and closing the polls across the entirety of Antrim County precincts.

Table 1 - UserInfo Log - Default Password Set Log Lines -- Empty Columns Hidden

| Id | userRelatedInfo | executedCommand | __classid | operationTimestamp | logLevel |
|--------------------------------------|-----------------|---|-----------|-------------------------|--------------|
| 25BFF74B-6529-4D24-8875-016DE7DC8448 | Admin | Instance with name 'Project Settings' of type 'Project Parameters' modified: defaultPasswordValue changed from '50831972' to '12345678'; tabulatorSameHMACKey=True; cardPartitionSize changed from 'Size 256' to 'Size 512'; | LD01 | 2019-01-08 09:43:13.707 | TraceMessage |
| FDD149A7-99A6-4F43-8176-64A7DC45517A | Admin | Instance with name 'Project Settings' of type 'Project Parameters' modified: defaultPasswordValue changed from '50831972' to '12345678'; tabulatorSameHMACKey=True; cardPartitionSize changed from 'Size 256' to 'Size 512'; createSplitsManually=True; serviceUrl = ""; leadCardConsolidationLevel changed from 'Ballot Type' to 'Precinct Portion'; | LD01 | 2019-01-08 09:43:13.707 | TraceMessage |

| | | | | | |
|--------------------------------------|-------|---|------|-------------------------|--------------|
| 654BC2E6-1FoC-4272-9260-CE67D466568B | Admin | Instance with name 'Project Settings' of type 'Project Parameters' modified: defaultPasswordValue changed from '50831972' to '12345678'; tabulatorSameHMACKey=True; cardPartitionSize changed from 'Size 256' to 'Size 512'; createSplitsManually=True; serviceUrl = "; | LD01 | 2019-01-08 09:43:13.707 | TraceMessage |
| 3B15E033-B474-4BEC-B614-E239660B18EF | Admin | Instance with name 'Project Settings' of type 'Project Parameters' modified: defaultPasswordValue changed from '12345678' to '11032020'; | LD01 | 2020-08-03 12:41:51.990 | TraceMessage |

On January 8, 2019 the default passcode to open/close the polls was set by ElectionSource to be “12345678”. This default passcode remained the same until August 3, 2020 when it was changed to “11032020” which was the passcode used during the Antrim County general election in November of 2020.

ElectionSource also hardcoded into the election project files for Antrim County the passcode of “123456” as the “technician passcode.” The technician passcode allows for the polls to be re-opened and the tabulators to be re-zeroed. This weak passcode was set by ElectionSource.

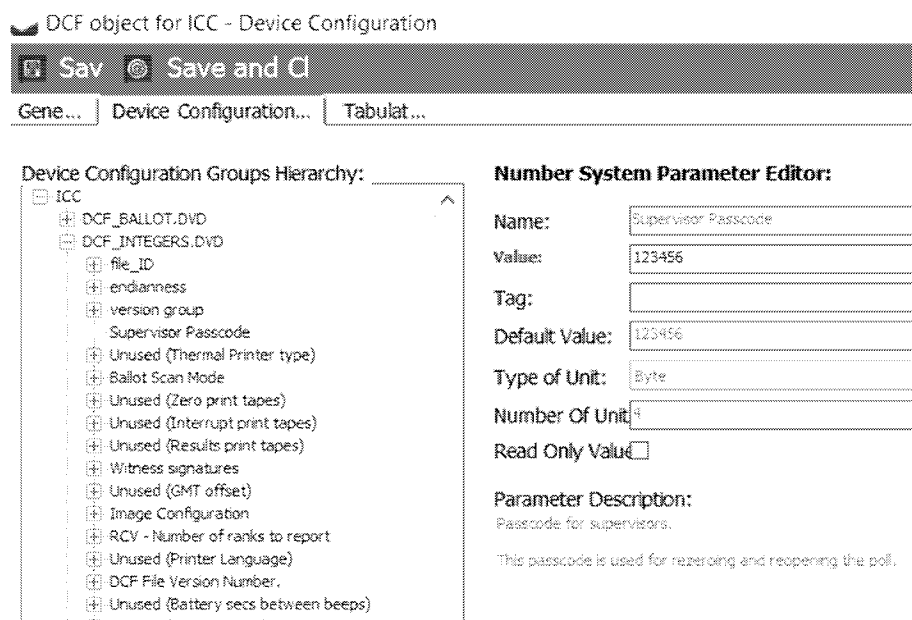


Figure 1 - Default Passcode

Version Control, Configuration Management, and Development Practices

See Figures 3 and 4, ElectionSource set the “DCF File Version Number” associated with the Antrim County election to the same value, “50401,” regardless of the updates that were being deployed to the Antrim County Election Project Files and ballot definitions. There was no distinction made between the ICX, ICP, and ICC configurations that were deployed. This lack of version control resulted in

ElectionSource's failure to track that incompatible election configurations and ballot definitions were being deployed in Antrim County on election day.

DCF object for ICP - No Transmission - Device Configuration

Sav Save and Cl

Gene... Device Configuration... Tabulat...

Device Configuration Groups Hierarchy:

- ICP
 - DCF_BALLOT.DVD
 - DCF_INTEGERS.DVD
 - file_ID
 - endianness
 - version group
 - Technicians Passcode
 - Thermal Printer Type
 - Ballot Scan Mode
 - num copies - Zero print tape
 - num copies - Interrupt print tape
 - num copies - Results print tape
 - Witness signatures
 - GMT offset
 - Image Configuration
 - RCV - Number of ranks to report
 - Printer Language
 - DCF File Version Number
 - Battery - Number of seconds between beeps
 - Battery - Level at which to start beeping

Number System Parameter Editor:

Name: DCF File Version Number

Value: 50401

Tag: DCF File Version Number

Default Value: 0

Type of Unit: Byte

Number Of Units: 1

Read Only Value: ☒

Parameter Description:

Figure 2 – September 29, 2020 - ICP Version Control Value 50401 (Same for all Tabulators Types)

DCF object for ICP - No Transmission - Device Configuration

Sav Save and Cl

Gene... Device Configuration... Tabulat...

Device Configuration Groups Hierarchy:

- ICP
 - DCF_BALLOT.DVD
 - DCF_INTEGERS.DVD
 - file_ID
 - endianness
 - version group
 - Technicians Passcode
 - Thermal Printer Type
 - Ballot Scan Mode
 - num copies - Zero print tape
 - num copies - Interrupt print tape
 - num copies - Results print tape
 - Witness signatures
 - GMT offset
 - Image Configuration
 - RCV - Number of ranks to report
 - Printer Language
 - DCF File Version Number
 - Battery - Number of seconds between beeps
 - Battery - Level at which to start beeping

Number System Parameter Editor:

Name: DCF File Version Number

Value: 50401

Tag: DCF File Version Number

Default Value: 0

Type of Unit: Byte

Number Of Units: 1

Read Only Value: ☒

Parameter Description:

Figure 3 – October 23, 2020 - ICP Version Control Value 50401 (Same as ICP)

Figure 2 shows the original election/ballot configuration provisioned by ElectionSource on September 29th, 2020 for use in Antrim County for their ICPs. Figure 3 shows the final, corrected revision from October 23, 2020, of the election/ballot configuration for use in Antrim County ICPs. There is no evidence of

a versioning process either technical or manual applied by ElectionSource to ensure that the proper version of the configuration would be deployed throughout the entirety of Antrim County. ElectionSource's failure to employ version control led to vote manipulation during the November 3rd, 2020 election.

Error Handling and Remediation

ElectionSource made substantive modifications to the election and ballot definitions that triggered the EMS to provide a number of "prompt" notifications that were acknowledged by the ElectionSource technician performing the updates. The technician failed or elected not to take action on the notification messages and request a wholesale redeployment of all compact flash cards for all precincts that would be required to proceed with a fully updated election package. Table 2 below shows the notification messages that were generated from the EMS when the technician updated the configuration. The specific message directed to the technician states, "All previously created and deployed election files will be unusable." The technician is then presented with an option to click OK or Cancel based on whether or not they wish to proceed. The last record of this prompt in the log was on October 5, 2020 when the technician selected, "OK" acknowledging that new election files, provisioned on compact flash cards, would need to be deployed as the previously deployed versions will be unusable. ElectionSource failed to address the aforementioned prompts resulting in a modified vote tally.

| Id | userRelatedInfo | executedCommand | __classid | operationTimestamp | logLevel |
|--------------------------------------|-----------------|---|-----------|-------------------------|------------|
| 69196343-CC58-41C8-B770-6D25DEA61482 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-23 13:20:55.740 | UserAction |
| 7E017D17-224D-41FF-940D-060AF3740015 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-10-05 14:10:09.850 | UserAction |

Table 2 – UserInfo Log File – Empty Columns Hidden
See complete table in Exhibit B

The final update to the election files prior to the general election was performed by ElectionSource on October 22nd, however, to truly complete the deployment of all

the new election files to all precincts, completely new compact flash cards would need to be provisioned containing the new election files. From October 24th to November 2nd there were no entries in the UserInfo log file, indicating that there were no attempts made by either ElectionSource to complete this compact flash card update process during the crucial weeks ahead of the general election.

The Lenberg report indicates that manipulation of the project files can circumvent the canvassing process. ElectionSource technicians responsible for the creation and deployment of project files have supreme power in creating configurations that can be used to modify the votes in the EMS and the output of the tabulator paper tapes. ElectionSource technicians create project files for their clients and as a result can access, control, and modify any election they support.

ElectionSource configured and deployed Antrim County's project files that resulted in the modification of the votes during the general election. The Lenberg report indicates that vote modification in Antrim County was consistent with technical manipulation of the project file.

ElectionSource Whistleblower Video

A self-proclaimed ElectionSource employee made a video that was released shortly after the general election in 2020 stating that he believed the biggest risk to elections came from the use of thumb drives to transfer the ballot designs for all the various localities around the State of Michigan supported by ElectionSource. The whistleblower said that it is very easy for an attacker to get a copy of any ballot from the thumb drive and make copies of the ballot of the correct paper stock and then proceed to stuff the ballot box with their own home made ballots based on the ballot designs that ElectionSource has their technicians keep on their thumb drives as part of their routine procedures for handling such sensitive election data.

The full video transcript is attached Exhibit C.

Under the penalties of perjury, I declare that I have read the foregoing report and that the fact stated in it are true.



James Thomas Penrose, IV
Date: 5/3/2021

Exhibit A – Election Source Equipment License Agreements



January 4, 2021

RE: Equipment License Agreements

Dear Clerks,

This letter is in response to an inquiry regarding a potential “forensic audit” of the Dominion system currently licensed to you. Any transfer of equipment or software to a third party would be in direct violation of the State of Michigan software license terms and conditions, which govern the use of the voting system and software in your jurisdiction. More specifically, the license terms state, “Licensor grants Licensee a non-exclusive, **non-transferrable** license to use the Software” (emphasis added). Further, the license terms state that the licensee may NOT “Transfer or copy onto any other storage device or hardware or otherwise copy the Software in whole or in part except for purposes of system backup.”

Any transfer of any component of the voting system to a third party would be a violation of the agreement and Election Source, the State or Dominion may take immediate legal action for such breach of contract.

Both Election Source and Dominion are open to a review of the voting system by an EAC accredited testing laboratory, as previously done during the EAC and State of Michigan certification processes. Any such review must be coordinated with the Michigan Secretary of State.

ElectionSource – 4615 Danvers DR SE – Grand Rapids, MI 49512 – P 888-742-8037 – F 616-464-0926 – www.electionsource.com

Exhibit B – UserInfo Log

Containing Prompt Messages Regarding Previous Election Files Being Unusable

| Id | userRelatedInfo | executedCommand | __classid | operationTimestamp | logLevel |
|--------------------------------------|-----------------|--|-----------|-------------------------|------------|
| 7E222529-6072-437A-BB80-E150D64D83C4 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-18 13:00:04.820 | UserAction |
| EC28AE11-9D75-4F01-972C-833160F8984C | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-18 13:12:31.543 | UserAction |

| | | | | | |
|--------------------------------------|-------|---|------|-------------------------|------------|
| FF93A344-C5EA-4A1E-8ABB-A1C6350DA80C | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-18 14:08:43.700 | UserAction |
| 918CF1BD-F2DF-4C48-A537-FAFCAE2F40CE | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-23 10:30:08.620 | UserAction |

| | | | | | |
|--------------------------------------|-------|---|------|-------------------------|------------|
| CD6C888C-B9F6-4B61-BAF4-11E95274538E | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-21 08:48:54.560 | UserAction |
| 90CCE52F-E6B3-4EF3-A480-30B13E11C1FB | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'Cancel'</p> | LD01 | 2020-09-21 09:11:57.397 | UserAction |

| | | | | | |
|--------------------------------------|-------|---|------|-------------------------|------------|
| D7443ADD-BCC8-45E6-BoEF-278813BEF952 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-21 09:12:12.750 | UserAction |
| 2B43456A-C566-49AA-B7ED-53DEEF43D2B4 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-21 09:27:30.520 | UserAction |

| | | | | | |
|--------------------------------------|-------|---|------|-------------------------|------------|
| 918CF1BD-F2DF-4C48-A537-FAFCAE2F40CE | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-23 10:30:08.620 | UserAction |
| A6069645-C72A-42AE-B6D1-9E586E8AB38B | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-23 13:16:00.213 | UserAction |

| | | | | | |
|--------------------------------------|-------|---|------|-------------------------|------------|
| 69196343-CC58-41C8-B770-6D25DEA61482 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-09-23 13:20:55.740 | UserAction |
| 7E017D17-224D-41FF-940D-060AF3740015 | Admin | <p>Prompt information: 'Election Files will be created based on the following parameters. Press Continue to continue the process.</p> <p>All previously created and deployed election files will be unusable.</p> <p>General project information: Number of Districts: 61 Number of Precincts (including split Precincts): 62 Number of Choices: 364 Number of Contests: 141 Number of Offices: 48 Number of Political Parties: 8 Number of Counting Groups: 2</p> <p>Number of Tabulators: 42 Number of Polling Places: 22</p> <p>Ballot generation options: Lead Card Consolidation Level: Precinct Portion Consolidate Tail Cards: False Force District Splits: False Separate Voting Box Per Party Affiliation: False Ballot Content Creator: Default Ballot Content Creator</p> <p>; User answered with: 'OK'</p> | LD01 | 2020-10-05 14:10:09.850 | UserAction |

Exhibit C – ElectionSource Whistleblower

Well, I'm probably gonna get fired over this, but it's something that's been weighing on my mind and something that I feel needs to be said, so I'm going to say it and. I'm just asking that people be respectful of my family. I just had a new baby and I'm just trying to be as open and honest as I possibly can be with where I see potential problems with how our state handled mail in voting. The machine issues that are being looked at by Rudy Giuliani, I think they're barking up the wrong tree there. There is they're going to go through that and they're going to find that the machine code is is pretty solid, in my opinion. Could things have been manipulated? Possibly. Possibly. But the reality of the situation is we've been through many elections in the past and in fact, even a democratic political action group came through in twenty sixteen. They were angry about Donald Trump winning that election. And they came to our our customers and they said, hey, we want we want to do a total recount of the entire state. So we want all of your ballot images. We want to compare them to the to the results that came out of the machines when it came to find out that the the ballot images and the machines were pretty much dead on. There's just there's just no financial incentive for a company like Dominion or a company like an election source to be involved with that that type of widespread fraud. I mean, you're risking your entire company to do that. So that's just that's just not happening, in my opinion. And if it is, it would be a huge surprise to me. It should be looked into for sure, because there's always bad actors. There could be bad actors at a company. But as far as I can tell, that that crowd is barking up the wrong tree. But there is. Unfortunately, because of the way that we did mass mail out voting, there is a potential for. A. A huge vulnerability in the election system and that vulnerability is this right here. All of the ballots that come out of the machines when they are made are digital PDF files. They are unsecured, they there is no chain of custody when it comes to them, and what I mean by that is when they are created on the on the county's software, the more software they are sent out to the printer, they are sent out to our company as as a as a company that needs to create tests for the machines. It's just a logical fact that we need that ballot in order to create those tests. So. You know, back before we did mass mail in voting, nobody thought twice about shipping those digital ballots to the appropriate sources. Nobody really felt like there needed to be a secure chain of command because, you know, what are you going to do with the digital ballot? You know, every precinct gets an allotment of ballots on Election Day and people come in and they vote in person. And there's a certain amount of registered absentee voters and it's minuscule. But the problem is the way we very sloppily handled mass mail out voting, we just kind of sent them around. And there wasn't a whole lot of accurate tracking as to where those ballots were going and who was receiving them and who is sending them back in. And there was some tracking. But just with the the sheer amount of ballots, there wasn't there wasn't there wasn't a good chain of custody for the physical ballots either, so. Because of that, I mean, this flash drive here, I wrote tests for the state of Michigan, so this flash drive here had all of the ballots for Wayne County on it. And I'm here in my bedroom right now. This is. All the ballots for Wayne County were on this, they're not on it anymore, you know, I've deleted them since, but. They were on that last drive before the election and weeks before the election, so, you know, if some. You know, if I can have them in my bedroom, right? You know, nobody nobody blinked

an eye about me having these digital files. So who else had them, right? If nobody cared that I had in my bedroom all the ballots for Wayne County. You know, I know for a fact that when those ballots gets into the printer, they get put on a Google Drive. You know, everybody thinks, you know, Google and Dropbox and Amazon are secure platforms, but in reality, any high level person at those companies has backdoor clearance to those drives. So. You know, all it takes is a scan of those drives and somebody at Google can have all the ballots for Wayne County. I mean, there's just there just is no chain of custody. And I'm not here saying that laws were broken. I'm not here saying that election source is nefarious. Not you're saying that dominion is even nefarious. But what I am saying is there is no chain of custody for digital ballots. So if some outside actor wanted to come in. With a nefarious goal of printing a hundred thousand ballots before election night, it's certainly possible. All they would have needed was this I had it in my bedroom. That's all they would have needed. And you can go. To any printer. You know, probably not a commercial one, because they'd probably be like, you know, why are you printing official ballots with us? You know, who are you? But if you had your own printer, you could I could print it on an inkjet printer at home. You know, I could have taken one of these ballots from this flash drive. And I could have printed 10000 of them. And on a laser printer. At my office. And if I had, you know, printed them there eight and a half by eleven, so it's very common, I could print them as long as I print them on cardstock. You know, there's a there's a there's a ballot stock thickness paper that you need. But I you know, that's about it, that's about the only you know, and I am pretty sure that a machine would read regular weighted paper, you know, don't quote me on that, but I'm pretty sure that they would. They probably read cardstock paper, too. But there's a specific ballot stock that next thickness. And I don't know if it's just regular card stock or not or if there is actually a specific ballot stock thickness. But yeah, it's the machine is agnostic as long as those timing marks which are on the PDF are correct. You know, about that's printed by the official printer versus a ballot is printed at home by a person that has. You know, the ballots ahead of time, because we need the ballots ahead of time, because we need to write tests, you know, it's just something that we need to do. You know, and I'm not in infectious actor. I didn't pass these ballots off to anybody, and I'm sure nobody at election source did and I'm sure nobody at Dominion did. But you know, who's to say somebody at the county knew about them or, you know, maybe not necessarily somebody at the county office, but somebody knew, you know, somebody knew that that these ballots were being stored somewhere and they took them or they or somebody at Google took them off of the Google Drive. I mean, there's plenty of avenues to get these ballots in digital form. And print them off. So I'm. That if there was election fraud. I'm not saying that there was. But if there was. That's probably where it would have been done. And because of our irresponsible. Mail in voting system where we just mass mailed it out, there's plenty of cover for a 100000 ballots coming in at midnight. You know who is going to say who's going to say, oh? You know. That's 100000 ballots, they all came in for Joe Biden. It doesn't matter because nobody there's no chain of custody. Nobody nobody knows what to expect, you know. You know, with any other election, if one hundred thousand ballots came in at midnight. You know, it would be obvious from. But nobody considers that fraud now because maybe there was one hundred thousand ballots that just were stored somewhere and nobody thought to open them up. Nobody knows, and all the

ballots are anonymous, so you'll never know. You'll never know. That's that's the story of this election, is you will never. Be guaranteed because of them, because of the mail system, you will never be guaranteed to know. For sure. The legitimate president. Or any of the downvotes, for that matter. This was a cluster fuck. This was a cluster and people are being disenfranchized. And what I'm here to tell you is that it's totally possible to bring a hundred thousand ballots, totally possible, I had this weeks before the election, plenty of time. You know, if you're a nefarious actor and you want to print a half thousand ballots and put them in boxes just in case. As long as you have this file that I had personally. You can do that. So. Is there avenues for election fraud? Yeah, absolutely. Or is it from the machines? I don't think so possible. Is there a nefarious actors at election source? No, I don't think so. Is there a serious actors at Dominion? I don't really know people at Dominion. I know people election source. They're very honest people. So please, for the love of God, leave us alone. I'm just trying to. I am just trying to tell you what's on my mind, that there is an avenue for possible fraud here. And I just had a new baby, so please, please be merciful to me, leave me alone. Please be merciful to the people at election source and leave them alone. They're good people and the people at Dominion, I'm sure most of them are just good people, you know. Is there a corruption at the top? I don't know anybody at the minute. I don't know the company at all, really. I don't know. We're a contractor for them. But, you know, we've run. Like I said, we run elections in the past for Dominion and they've come out completely scot free. OK. And the issue that happened in Antrim County, I mean, you got you have to leave that clerk alone. She's. You know, what happened there is completely, completely innocent and, you know, they had a late comer to the election, somebody that somebody that didn't get put on the ballot. Right. So they had Cotting for this ballot without that person on it. And they had a card with the coding for the person that. That was supposed to be on the ballot, so they were supposed to run the coding with the extra candidate, instead they ran the coding with the with the with the previous without the candidate in it. And that screwed everything up when they realized it on election night, they reran everything with the proper coding and everything was fine. It was no, it's not some sort of mass conspiracy from Dominion to switch votes. But is there an avenue for election fraud? Absolutely. This there's no chain of custody on ballots, it's a big deal. That's a big freaking deal. And if election officials don't take that seriously. Then they are screwing the public. Out of an accurate election. I wanted to say by.

Exhibit D – CV James Thomas Penrose, IV

James Thomas Penrose, IV
2550 S. Clark St.
Arlington, VA, 22202
cv@jimpenrose.org

Education

George Washington University, Washington, DC, USA
M.S. in Computer Science

2004

Drexel University, Philadelphia, PA, USA
B.S. Magna Cum Laude in Computer Science
Minor in History and Political Science

2001

Experience

Tenacity Cyber, LLC, Maryland, USA
Owner

April 2021-Present

Cybersecurity consulting and advisory services.

BlueVoyant, LLC, College Park, MD, USA
Senior Advisor

April 2021-Present

Providing expert advice on cyber security products, operations, and business to BlueVoyant senior leadership and customers.

BlueVoyant, LLC, College Park, MD, USA
Chief Operating Officer

2019-April 2021

Responsible for all operational aspects of BlueVoyant's business focused on day-to-day cybersecurity delivery and execution. Primary driver responsible for innovating the Cyber Risk Management Services (CRx) offering. Thought leader to engage with prospects, customers, press and industry analysts articulating BlueVoyant's value proposition, offerings, technology, and tradecraft. Cybersecurity expert with deep technical skills devoted to leading a tremendously talented workforce and inspiring overachievement through tenacious pursuit of success. Spearheaded the growth process by building product, engineering, sales, and marketing capabilities to take the CRx offering from concept to full operations with marquee reference customers over an 18-month period. Supported fundraising during the Covid-19 crisis to retain workforce and continued company operations with no degradation in service throughout the pandemic.

Redacted, Inc, Elkridge, MD, USA

2015-2019

Executive Vice-President, Head of Product, Head of Services

Served multiple leadership roles in various business units. Created a Managed Security Services (MSS) business from the business case, technology stack selection, Security

Operations Center (SOC) stand-up to initial customer acquisition and onboarding. Senior advisor to clients on all aspects of cyber risk; providing risk assessment, threat analysis, and strategic counsel to C-level executives across the financial, energy, and manufacturing sector. Offering innovative tactics to pursue and deter hostile cyber attackers targeting client businesses before a risk becomes a crisis. Created new 3rd party risk data product offerings and brought the new products to market leading to the creation of a new substantial stream of revenue.

Darktrace, Washington, DC, USA

Executive Vice-President of Cyber Intelligence

2014-2015

Responsible for overall cyber threat intelligence activities of Darktrace in support of customers globally. Served as the primary assessor of cyber threats detected by Darktrace across all clients. Featured in public speaking engagements on behalf of Darktrace as a subject matter expert and thought leader on cyber operations. Performed media interviews with both television and print reporters on cyber issues.

National Security Agency (NSA), Fort George G. Meade, MD, USA

Sub-Panel Member, National Security Agency Advisory Board

2014-2017

Participates in the National Security Agency's Emerging Technologies Panel creating insight and recommendations for the Director of NSA.

Chief – Operational Discovery Center

2013-2014

Built and led a large organization with multiple project teams, both civilian and contractor, and managed a multi-million dollar budget to achieve top priority of enabling discovery in signals intelligence (SIGINT).

Technical Director for Counterterrorism (CT) – SIGINT Directorate 2010-2013

Ensured technical competence in the execution of global CT operations. Drove the creation of new SIGINT capabilities in support of the CT mission. Led engagements with foreign partners in order to build CT capacity with our allies.

Central Intelligence Agency, Langley, VA, USA

2009-2010

Senior NSA Representative – Technical Targeting Department, Counterterrorist Center

Coordinated joint NSA/CIA operational activities in support of Counterterrorism

National Security Agency, Fort George G. Meade, MD, USA

2008

Global Network Exploitation and Vulnerability Analyst – Remote Operations Center, Tailored Access Operations

Provided analytic support to drive computer network operations against high priority targets.

**Global Network Exploitation and Vulnerability Analyst,
NSA Commercial Solutions Center**

2007-2008

Employed and integrated industry best practices and products into NSA analytic practices.

Mission Manager – NSA/CSS Threat Operations Center

2005-2007

Led intelligence production and military planning integration activities for a variety of missions focusing on computer network defense, exploitation, and attack.

Watch Operations Officer – Computer Network Operations Fusion Center 2005

Provided rotational 24-hour support as the focal point for intelligence queries from operational military elements conducting computer network operations.

Technical Director – CNO Division, Office of Information Operations 2004-2005

Led technical SIGINT exploitation activities of foreign CNO actors in support of military and intelligence community requirements.

**Global Network Exploitation and Vulnerability Analyst,
- Office of SIGINT Support to Information Operations 2001-2004**

Performed software development, integration, and testing of SIGINT capabilities to support CNO analysis. Created and integrated new capabilities into the SIGINT system for use by production analysts.

Unix System Administrator – Directorate of Technology 1999-2000

Performed a myriad of Unix system administration activities including full automation of Y2K upgrades for globally deployed, remotely administered systems.

Intrusion Detection Analyst – Information Systems Security Organization 1997-1998

Analyzed intrusion detection logs from various sources, evaluated threats, created incident reports, and made recommendations to remediate vulnerabilities.

Awards

- Presidential Rank Award (Awarded Post Govt Service) 2016
- Director of National Intelligence Medal (Awarded Post Govt Service) 2015
- Elevated to Defense Intelligence Senior Level (DISL) from GS-14 2008
- National Intelligence Meritorious Unit Citation 2001, 2007, 2008
- Joint Meritorious Unit Award 2003, 2007
- Exceptional Performance Bonus 2009, 2010, 2011, 2012
- Spot promotion from GS-12 to GS-13 for Special Achievement 2005
- 13 Special Achievement Awards 1998-2008

Professional Development

- NSA Director's Leadership Program 2013
- Joint Duty Assignment at Central Intelligence Agency 2009-2010
- NSA Senior Technical Development Program 2010
- Graduate Certificate in Computer Security and Information Assurance
George Washington University 2003

Research Experience

- Undergraduate Research Assistant, Drexel University,
Software Engineering Research Group

2000-2001

Fraternal Organizations

- Knights of Columbus

Analyst: James Thomas Penrose, IV
 Report Title: Preliminary Assessment of Wireless Communications Technology for Michigan Voting Systems

Executive Summary

Two versions of Michigan voting systems both Dominion and ESS have been found to have utilized wireless technology. The Dominion Voting Systems proposal for Antrim County shows a quote for wireless transmission capabilities, see Figure 1. Dominion representatives also confirmed issues with wireless transmission of vote totals and even went as far as disabling the saving of ballot images without explicit authorization.

The ESS Model DS200 was found to have an internal wireless card, that has a private network address that was designed to communicate with an ES&S Primary Host Server. These devices and servers are ostensibly designed to operate on a virtual private network (VPN) that does not allow routing to the Internet. While each of the devices do have private network Internet Protocol (IP) addresses, testing revealed that the SIM card used for the DS200 could be utilized in a generic device 4G wireless device and allow for access to the same access point name (APN). There is substantial risk to the ES&S APN connected machines from malicious actors that have access to any SIM card with pre-programmed access to the APN.

The manufacturer of the wireless 4G card used in the ES&S DS200 is a company named Telit. Telit is an internet of things company that has recently taken major investment from a Chinese investment fund that has ties to the Chinese Communist Party according to UK media reporting.

Antrim County Proposal for Wireless Results Transmission

PROPOSAL

DOMINION
VOTING

ANTRIM

Total Registered Voters:
10,916

Date: April 17, 2017

Basic System Components (Shared Funded, Years 1-5)

| DESCRIPTION | QTY | UNIT PRICE | STATE FUNDED | NET PRICE | EXTENSION |
|---|-----|------------|--------------|-----------|-----------|
| Precinct Hardware (Shared Cost, State-Local) | | | | | |
| JCP Tabulator w/ Ballot Box | 17 | \$8,756 | \$4,537.96 | \$107.34 | \$18,276 |
| IC3-SM50-A Accessible Ballot Marking Device (includes touchscreen control and printer) | 55 | \$3,595 | \$2,678.43 | \$635.51 | \$10,165 |

Sub-Total:

\$28,443

Election Management System Software (Shared Cost, State-Local)

| | | | | | |
|----------------------|---|----------|-------------|------------|---------|
| Accumulator Only B25 | 1 | \$10,563 | \$18,208.81 | \$3,396.99 | \$3,396 |
| Sub-Total: | | | | | \$3,396 |

Total Initial Purchase Price (Shared Cost, State-Local)

\$31,839

Discounts

Trade-in discount (units must be brought to a central location for pickup): Included
System Discount - Price Match (\$28,799)

Sub-Total:

(\$28,799)

Total Initial Purchase Price (Shared Cost, State-Local)

\$3

Open System Extended Service and Maintenance for Years 6-10

| | | | | | |
|---|----|---------|--|----------|----------|
| Extended Service and Maintenance | | | | | |
| JCP Tabulator w/ Ballot Box Annual Fee | 17 | \$375 | | \$6,375 | |
| IC3 Accessible Ballot Marking Device Annual Fee | 55 | \$240 | | \$13,200 | |
| Accumulator Only B25 Annual Fee | 1 | \$2,500 | | \$2,500 | |
| (Warranty Service and Preventive Maintenance to be completed at local jurisdiction) | | | | | |
| Sub-Total: | | | | | \$21,775 |

Years 6-10 Open System Annual Fees:

\$21,775

Authorizing Signature: File

Date

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1 of 2

Optional Hardware and Software Components

| DESCRIPTION | QTY | UNIT PRICE | EXTENSION |
|---|-----|------------|-----------|
| Precinct Hardware | | | |
| JCP Tabulator w/ Ballot Box | 1 | \$5,390 | \$5,390 |
| JCP Tabulator (space w/o ballot box) | 0 | \$4,305 | \$0 |
| (Discount if purchased with this order) | 1 | (\$57) | (\$57) |
| Station Management System Hardware | | | |
| IBM Express Server - Desktop | 1 | \$1,790 | \$1,790 |
| Computer Flash Memory/Writer | 1 | \$60 | \$60 |
| Flash Drive Programmer with USB Adapter | 1 | \$50 | \$50 |
| JCP Activation Card Programmer | 1 | \$26 | \$26 |
| Sub-Total: | | | \$1,926 |

Results Transmission (State - Wireless)

| | | | |
|---|----|----------|----------|
| ImageCast Listener Express Server - Desktop | 1 | \$2,200 | \$2,200 |
| ImageCast Listener Express Protocol | 1 | \$466 | \$466 |
| IBM Express Managed Switch | 1 | \$250 | \$250 |
| JCP External Wireless Module | 17 | \$205 | \$3,485 |
| ImageCast Communications Manager Software | 1 | \$10,600 | \$10,600 |
| Sub-Total: | | | \$15,001 |

Results Transmission (Analog)

| | | | |
|---|---|---------|---------|
| ImageCast Listener Express B25 System | 1 | \$2,155 | \$2,155 |
| ImageCast Listener USB Module (licensing) | 5 | \$225 | \$1,125 |
| Sub-Total: | | | \$3,280 |

Results Transmission (VPN/PTP)

| | | | |
|---|---|------|------|
| Computer Flash Memory/Writer (per municipality) | 1 | \$60 | \$60 |
|---|---|------|------|

Note: Results Transfer Manager software is included for municipalities that wish to use VPN/PTP method for transmitting results from memory cards to the county.

Optional Hardware and Software Components Annual Maintenance

| | | | |
|---|---|---------|---------|
| Extended Service and Maintenance | | | |
| ImageCast Communications Manager Annual Fee | 1 | \$1,200 | \$1,200 |

Authorizing Signature: File

Date

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2 of 2

Figure 1

Dominion Voting Systems ICX

In Michigan, the Dominion Voting Systems ICX is used to allow for touchscreen voting for disabled voters. During the forensics examination of an ICX machine there were two IP addresses discovered in unallocated space on the hard drive of the Linux operating system. The existence of these IPs in unallocated space implies the ICX had previous communication with one or both of the IPs.

The first IP address was: 120.125.201.101. This IP address is registered to Ministry of Education Computer Center located in Taipei, Taiwan.

The second IP address was: 62.146.7.95. This IP address is registered to EDV-BV GmbH QSC Subkunde located in Nuremberg, Germany.

The ICX machine itself appears to be manufactured in Taiwan and shipped to the United States via airfreight using China Airlines. See the photos of the shipping box in Figure 2.



Figure 2

The ICX machine may also utilize an external wireless for communications modem with the central listener server for Dominion Democracy Suite. See the previously listed proposal from Dominion to Antrim County. The manual for the ICX also shows an Ethernet port for wired connectivity, see Figure 3.

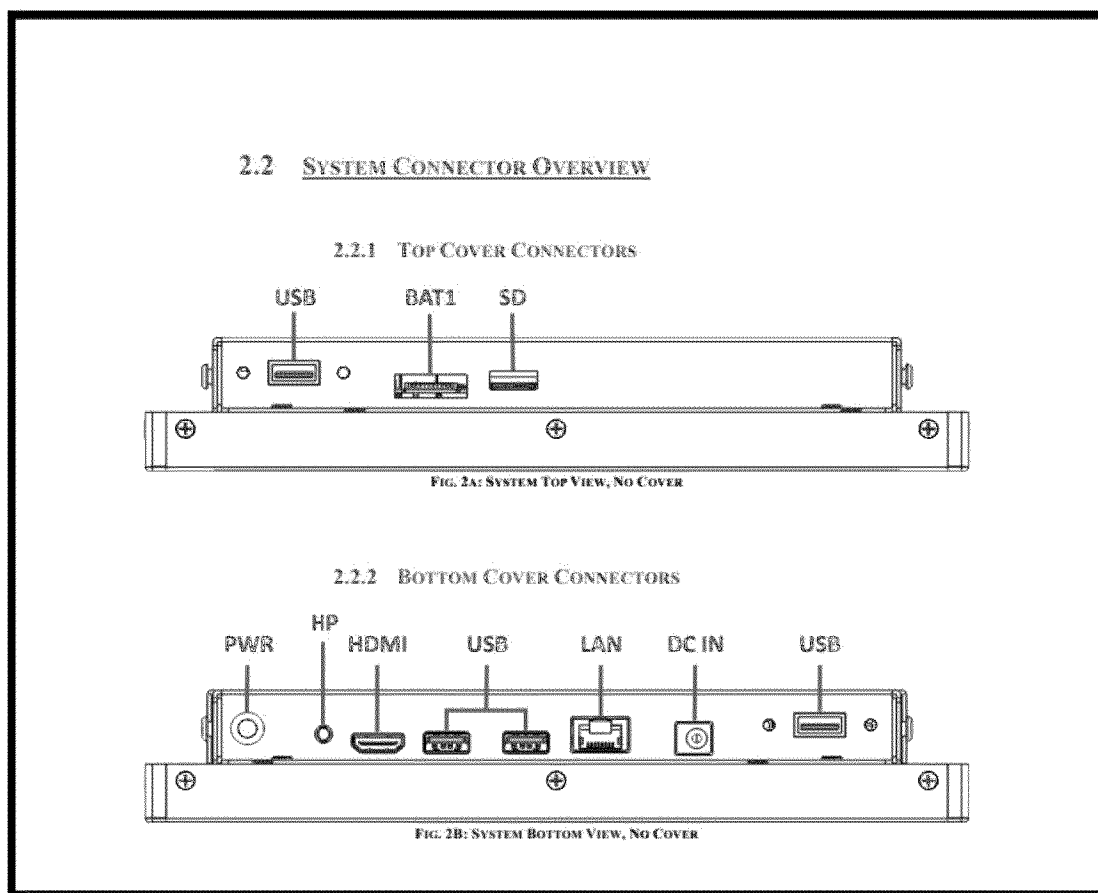


Figure 3

Dominion Summary Email to Michigan Counties

Dominion sent a summary email dated August 25, 2020 (Figure 4) after the primaries describing how the process of running the election went. Notably in this summary email from Cheryl Homes of Dominion Voting Systems she describes the following issues related to the transmission of vote totals via modems. In addition, Dominion turned off image saving without any authorization from the Secretary of State noted in the communication.

“Modem transmission this election were (sic) terrible in some areas! Failures and timing out due to the weaker 3G signal and cellular network issues meant that some of your precincts weren’t able to transmit but instead brought the cards in to tally. We turned off image saving which will improve the transmission by a few seconds. We are testing the maximum time out setting for receipt of the transmission on the servers to

see if that will improve the success rate. We will also be doing some testing in the county to see if there are any ways to improve the process."

From: Cheryl Holmes <cheryl.holmes@dominionvoting.com>
Sent: Tuesday, August 25, 2020 9:23 AM

Bailey v Antrim County
No. 20-9238-CZ

MDOS_0000980

Cc: Tim Baumbach <tim.baumbach@dominionvoting.com>; David Stahl <david.stahl@dominionvoting.com>; Cheryl Holmes <cheryl.holmes@dominionvoting.com>
Subject: Michigan Post Election Follow up & Pre-Election Prep

Hello Everyone,

Congratulations on the success of your election and surviving the Primaries! I hope that you are well, safe and catching up on all the things that got set aside in the rush of absentee applications, mailings, inspector recruiting, training and election readiness.

This election we saw a higher than usual report of ballots jamming at the tabulator. This was partially due to the very long ballot, greater number of folds in the ballots at the AVCB. The rain on election day made it worse as the humidity made the ballot tear more easily. Dominion is actively working with our engineers to determine the cause of the jamming and a resolution to improve performance. To reduce the ballot exposure to moisture, we recommend that you keep your ballots in the protective shrink-wrap until needed and only remove the pads or stacks that you need.

Modem transmission this election were terrible in some areas! Failures and timing out due to the weaker 3G signal and cellular network issues meant that some of your precincts weren't able to transmit but instead brought the cards in to tally. We turned off image saving which will improve the transmission by a few seconds. We are testing the maximum time out setting for receipt of the transmission on the servers to see if that will improve the success rate. We will also be doing some testing in the county to see if there are any ways to improve the process.

Figure 4

ESS DS200 Machine

The DS200 machine was found to have a wireless 4G modem installed internally within the enclosure of the machine. The printed tapes that summarize the activity during the election show that the 4G modem was used to send the results to a central listener server via secure file transfer. The Telit LE910-SV1 in Figure 5 was found within the ES&S enclosure.

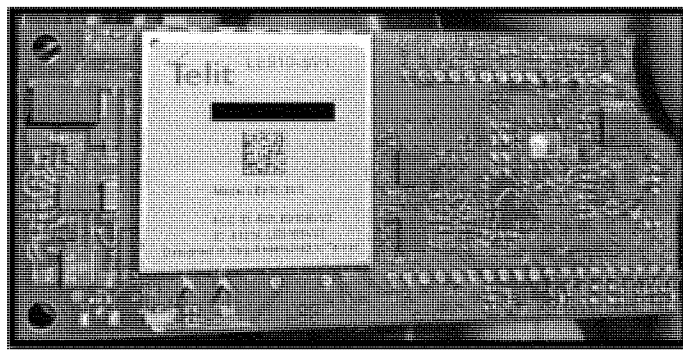


Figure 5

The printed summary tape from the ES&S machines also indicate that the submission of the vote totals occurred using the wireless 4G modem, see Figure 6.

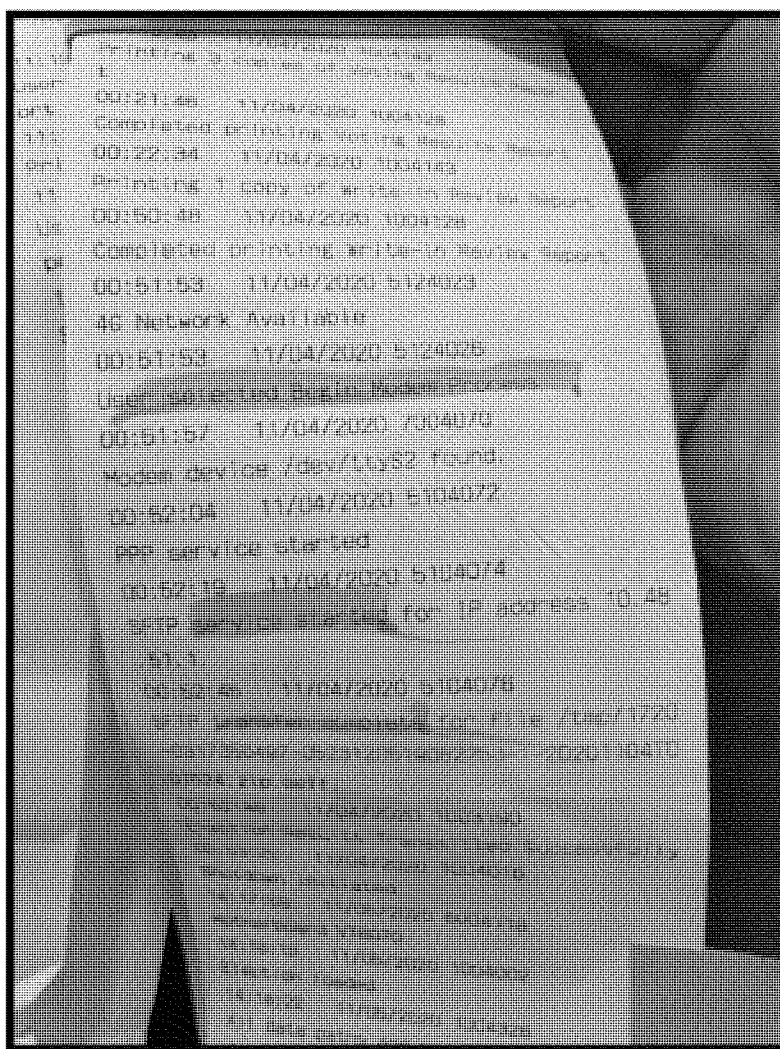



Figure 6

The Telit LE910-SV1 card installed in the ES&S device was utilizing a commercial Verizon SIM card with an APN configuration specific to the ES&S DS200 provisioning. Testing revealed that the same SIM card could be utilized in a separate wireless hotspot device and the device could then join the same APN as the ES&S voting machines. An unauthorized user could gain access to this APN by an extra SIM card pre-provisioned for this APN, or by removing a SIM from an operational device and using it in another device.

Telit LE910-SV1 Hardware Summary

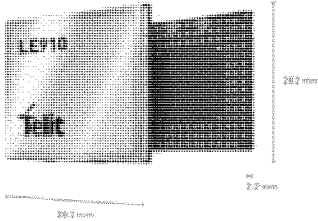
According to the hardware summary specifications datasheet from Telit, the LE910-SV1 comes standard with "Internet friendly integrated TCP/IP and UDP/IP stacks, as well as HTTP, SMTP,

FTP, SSL.” (Figure 7) These features are very useful to application programmers, but are also ripe for abuse by unauthorized users of the APN devoted to the ES&S machines.



LE910 Cat.1 Series

LTE Cat.1 up to 100Mbps



Product Description

The LE910 series of Cat.1 modules are optimized for LTE low category networks and are available in single mode and TD/2G fallback options. In addition to VoLTE support, the LE910Cat.1 series are swappable with other modules in the xE910 family.

Key Benefits

- Easy to integrate with peripherals and actuators using USB 2.0 HS, UART and user definable GPIOs
- Ideal platform for IoT applications and mobile data and computing devices with ultra-compact design and extended operating temperature range
- Internet friendly with integrated TCP/IP and UDP/IP stacks, as well as HTTP, SMTP, FTP, SSL
- Simple drop-in migration and technology design reuse path to 2G and 3G with any xE910 module
- Over-the-Air firmware updates

Family Concept

These LTE low category variants are members of Telit's flagship xE910 module family delivering 4G radio access technology in the 28.2 x 28.2 x 2.2 mm family form factor. The Telit xE910 Unified Form Factor Family is comprised of 2G, 3G, and 4G, 3GPP and 3GPP2 products sharing a common form factor as well as electrical and programming interfaces which allows developers to implement a "design once, use anywhere" strategy.

IoT Connectivity Ready

This product is capable of supporting the extensive suite of Value Added Services from IoT Connectivity including Module Management and others which make the management of IoT deployments under mobile networks effective, enhancing profitability and reliability. It is also Portal-ready which means that the AT commands library in this module includes a set of high-level commands designed exclusively for quick and hassle-free on-boarding of the device to the portal and to back-end systems and servers. Telit Portal-ready modules powered by deviceWISE make application-level data flows and controls simple to program, maintain and improve.

Variants

Different series of variants are available to fulfill the requirements of North America (AT&T, T-Mobile, Verizon, Rogers), Europe, Japanese and European market. Multiband configurations, covering different sets of 4G bands as well as MNO certifications, are available.

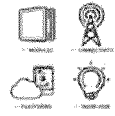
AVAILABLE FOR

EMEA
North America
LATAM/Asia/Pacific
Japan
Israel
Central America

Combine your Cat 1 module with

High precision GNSS modules
www.telit.com

Complete, Ready to Use Access to the Internet of Things



**ENABLING END-TO-END
IOT SOLUTIONS**

Figure 7

Background on Telit

Telit is a publicly traded company Internet of Things (IoT) and Machine to Machine (M2M) company headquartered in London, UK with an operations unit in Trieste, Italy. In late 2017, Run Liang Tai Management in Hong Kong built a 14 percent stake in Telit. Mr. Yuxiang Yang sits on the board of directors for Telit (see Figure 8) and is CEO of Run Liang Tai Management Limited.

talent4boards.com/telit-communications-welcomes-yuxiang-yang-to-its-board-as-non-executive-director/

Telit Communications welcomes Yuxiang Yang to its Board as Non-Executive Director

June 25, 2020 by Talent4Boards Feed Up

– UK, London – **Telit Communications PLC** (LON: TCM), a global enabler of the Internet of Things, announced the appointment of **Yuxiang Yang** to its Board as a Non-Executive Director effective immediately.

“On behalf of the Board, I am delighted to welcome Yuxiang Yang as a Director of Telit. We have got to know him well in recent years and are confident that his considerable knowledge of the sector, as well as some of our key markets, will add substantial value to the Board’s activities and to the Company as a whole,” said Board Chairman, Simon Duffy.

Following this appointment, the Board comprises six non-executive and two executive directors.

About Yuxiang Yang

Mr. Yang brings considerable experience from a career in investment and financial markets and is founder and CEO of China Fusion Capital, a Chinese investment management group. As part of this, Mr. Yang is the CEO of Run Liang Tai Management Limited, a significant shareholder of Telit, holding approximately 15.1 per cent of the Company's shares. Mr. Yang is also CEO of Yidian Zixun a leading news aggregation platform. Prior to founding China Fusion Capital, Mr. Yang served as Chairman and CEO of Ping'an Securities (a China-focused investment bank) amongst other roles and is currently also a board member of Sunsea AIoT Technology Co. Ltd.

Figure 8

A media report from August 15, 2020 from the UK online publication *Financial Mail on Sunday* indicated that there were concerns raised about Chinese influence of the Telit firm within the UK government. Here is an excerpt from the news story located here: <https://www.thisismoney.co.uk/money/markets/article-8630685/Chinese-close-UK-internet-things-pioneer.html>

...The maneuvering by powerful investors comes after secretive Chinese multi-millionaire banker Yuxiang Yang joined Telit's board earlier this summer.

His appointment may raise concern in Westminster that a Chinese businessman with ties to his country's Communist government could be seeking to gain influence over the business.

Yang runs China Fusion Capital, the parent company of Run Liang Tai Management, a mysterious investment fund that has built a 15 per cent stake in Telit to become its largest shareholder.

Sources said some of the firms that have invested in Run Liang are giant Chinese companies, such as coal mining group Wintime Energy and Jiangsu Shuangliang, a manufacturer of air conditioners and boilers.

Run Liang also owns a stake in Sunsea Telecommunications, a Shenzhen-listed 'internet of things' provider that recently raised around \$200million (£1.5million) by issuing shares to Zhjzgroup, a state-backed tourism firm. Yang also sits on the board of Sunsea. Speculation has been mounting that Run Liang is hoping to engineer a merger of some or all of Telit with China-based Sunsea.

Run Liang's move on Telit, which is listed on AIM, follows a period in which several other London-listed businesses have been bought by China-linked firms.

Imagination Technologies was bought by Canyon Bridge – a private equity fund bankrolled by Beijing – in 2017 for £550million. Concerns rose in the spring when Canyon Bridge tried to place four directors from China Reform Holdings on to Imagination's board.

Conservative MPs Tom Tugendhat, who now leads the China Research Group, and David Davis warned that Imagination's intellectual property could be shifted to China.

When asked about Telit, Bob Seely, chairman of the Foreign Affairs Select Committee, said: 'We do need a thorough review of investment security and we need an oversight board for purchases by high-risk vendors or from higher risk states.' Telit, which is due to unveil figures next week, declined to comment.

ATTACHMENT 7

Secretary of State's Discovery Responses

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 13TH JUDICIAL CIRCUIT
ANTRIM COUNTY

WILLIAM BAILEY,

Plaintiff,

v

ANTRIM COUNTY,

Defendant,

SECRETARY OF STATE JOCELYN
BENSON,

Intervenor-Defendant.

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**INTERVENOR-DEFENDANT SECRETARY OF STATE JOCELYN
BENSON'S RESPONSES TO PLAINTIFF'S AMENDED
INTERROGATORIES AND REQUEST TO PRODUCE DOCUMENTS**

NOW COMES Intervenor-Defendant Secretary of State Jocelyn Benson, and
in response to Plaintiff's Amended Interrogatories and Request to Produce
Documents, states as follows:

GENERAL OBJECTIONS

Pursuant to the Court's rulings, Intervening Defendant Benson has interpreted and construed the below requests to be limited to matters pertaining to the election in Antrim County, and have answered accordingly.

INTERROGATORIES

1. Explain why the failure to update one or more precinct [sic] Antrim County precinct tabulators prior the election on November 3, 2020 caused precincts to report erroneous results.

ANSWER: The answer to this interrogatory is explained in depth by the expert report submitted by Professor Halderman and produced to Plaintiff on March 26, 2021, which expert report is incorporated herein.

2. Explain in detail the physical or mechanical process, including precise dates and times, on how Antrim County reported result to the Secretary of State on November 3, 2020 through November 22, 2020.

ANSWER: In order to upload unofficial results to the Bureau of Elections, County Clerks use the County Election Night Reporting system (CENR). After the local clerks have completed counting the ballots in their jurisdiction, they provide the results to their County Clerk. A staff member from the Cuntty Clerk's office logs into the program and hand-keys the unofficial results the county obtains from the local clerks into CENR. The unofficial results are uploaded to the Bureau of Elections' website. The precise dates and times when Antrim County logged into the system

are found on the enclosed emails. See Bates Numbered Documents 0009062 to 0009085 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

3. Provide the incoming and outgoing IP addresses and MAC addresses used by the State of Michigan to communicate election information with Antrim County during 2020, including the precise dates and times those IP addresses and MAC addresses were in use.

ANSWER: Defendant Benson objects to producing IP addresses and MAC addresses because doing so presents a security risk by exposing the users and computers associated with these addresses to possible tampering or unauthorized access. In further answer, Defendant is interpreting this request and the phrase "communicate elections information" as seeking the IP and MAC addresses for computers used by Bureau of Elections employees that received the unofficial election night results submitted by Antrim County. Defendant will provide the IP and MAC addresses upon the entry of a protective order.

4. Provide a listing of all setting [sic] that were programmed (including default settings) and the values in the pre-October 23, 2020 and post-October 23, 2020 ballot specifications for Antrim County for the 2020 elections.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same,

keep or maintain the requested information. Upon information and belief, this information is in the possession of Antrim County.

5. Provide the x, y, width, height parameters of each mark/hot zone for each ballot entry used pre-October 23, 2020 and post-October 23, 2020 for Antrim County for the 2020 elections.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the requested information.

6. Provide a breakdown of the tabulator machines that had the October 23, 2020 update, and those that did not for Antrim County for the 2020 elections.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the requested information. Upon information and belief, this information is in the possession of Antrim County. In further answer, Defendant affirmatively states that Professor Halderman's report also provides this information, which upon information and belief, was obtained from Antrim County.

7. For adjudicated ballots for Antrim County for the 2020 elections, provide the name of the person who adjudicated them and when. Explain whether they were adjudicated through the machines or manually.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same,

keep or maintain the requested information. In further answer, any ballots that were adjudicated must have been adjudicated by hand, since—upon information and belief—Antrim County does not have the adjudication software. Upon information and belief, the information sought in this interrogatory may be obtained from Antrim County.

8. Identify all installed computer software, modules, or implants used by any county or precinct in Antrim County during the 2020 elections.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the requested information. Upon information and belief, this information may be obtained from Antrim County.

9. Specify when each installation was performed on each election device for Antrim County for the 2020 elections.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the requested information. Upon information and belief, this information may be obtained from Antrim County.

10. Specify exactly how errors were adjudicated for Antrim County for the 2020 elections for users of each the DVS election system components: ImageCast Precinct, ImageCast X, and ImageCast Central. If there were variations across jurisdictions, specify what the variations were and the reason for these variations.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the requested information. Upon information and belief, this information may be obtained from Antrim County.

11. Provide the “mail date” and “received date” for all mail-in ballots and absentee ballots for the November 3, 2020 general election in Antrim County.

ANSWER: The information contained in the enclosed spreadsheet is obtained from the respective city or township clerk in Antrim County, who is responsible for sending and receiving absentee ballots. See Bates Numbered Documents 0009086 to 0009193 of Part 2 of Defendant Benson’s third production (the link sent by Lisa Albro).

12. Provide the address for all ballots put in collection boxes in Antrim County, paying particular attention to identify the location of each collection box and the particular ballots in each.

ANSWER: The addresses for absent voter ballots submitted by voters via drop box is not collected at the state or local level. In an effort to be responsive, and in supplementation to Plaintiff’s First Request for Interrogatories and Requests to Produce, Request to Produce #8, enclosed is a list of drop box locations in Antrim County, as provided by local clerks in that County. Neither Defendant Benson, the Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, independently collect or verify this information. See Bates Numbered

Documents 0009194-0009195 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

13. Provide the names of all people or organizations who had access to the Qualified Voter File prior from [sic] July 1, 2020 through present.

ANSWER: Defendant Benson answers this interrogatory only as to those organizations who have access to Antrim County records in the Qualified Voter File. The only organizations that were or are able to access the Qualified Voter File for Antrim County voters are Bureau of Elections staff; certain programmers who work for the Department of Technology, Management & Budget; Antrim County Clerk's Office staff; and staff of Antrim County City and Township Clerks' offices (as applicable). To the extent this interrogatory seeks a list of people from these organizations, the Defendant objects as it presents security concerns to release the names of individuals who are authorized to access the Qualified Voter File, because that information may be used to attack and attempt to gain unauthorized access to the Qualified Voter File.

14. Provide the ballot format specifications for Antrim County for the 2020 elections including a detailed specification sufficient to write a program to read a ballot definition and produce an independent textual dump of the specification.

ANSWER: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the specific, detailed information requested. Upon

information and belief, this information may be obtained from Antrim County.

15. Provide the functional specifications of how the tabulator computes and reports results, which tables are accessed and what computations are made for Antrim County for the 2020 elections.

ANSWER: Upon information and belief, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the information described in this request. Further responding, Defendant is unable to answer more fully, as it is unclear what this interrogatory is seeking. While the Bureau of Elections possesses general information on how tabulators compute the results, this interrogatory appears to seek specificity that could only be provided by the manufacturer.

16. Provide the functional specifications of any table that feeds aggregation tables for the purpose of reporting and how those computations are made for Antrim County for the 2020 elections.

ANSWER: Upon information and belief, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the information described in this request. Further responding, Defendant is unable to answer more fully, as it is unclear what this interrogatory is seeking. While the Bureau of Elections possesses general information on how tabulators compute the

results, this interrogatory appears to seek specificity that could only be provided by the manufacturer.

17. Provide a listing of all stored procedures and their functional specification, when are they used and for what purpose for Antrim County for the 2020 elections.

ANSWER: Upon information and belief, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, keep or maintain the information described in this request. Further responding, Defendant is unable to answer more fully, as it is unclear what this interrogatory is seeking. While the Bureau of Elections possesses general information on how tabulators compute the results, this interrogatory appears to seek specificity that could only be provided by the manufacturer.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Produce all correspondences, communications, and documents relied upon in answering or that support any of the above Interrogatories.

RESPONSE: To the extent there are any, responsive documents are produced with the corresponding interrogatory.

2. Produce a copy of Dominion voting system source code held in trust by the State of Michigan.

RESPONSE: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess the requested information. Under MCL 168.797c and

168.794(g)-(h), Dominion Voting Systems' source code is held in escrow by a third party. Upon information and belief, the source code is held in escrow by NCC Group, Inc., 1731 Technology Drive, Suite 880, San Jose, CA 95110.

3. Produce a copy of all manuals for the Dominion voting system in use in the State of Michigan.

RESPONSE: The manuals for Dominion Voting Systems tabulators and software will be produced upon entry of a protective order.

4. Produce a copy of all data received regarding Antrim County on November 3, 2020 through November 7, 2020 including tracking information to verify the source and destination of such data.

RESPONSE: Defendant Benson interprets this request as seeking information related to the unofficial election results uploaded into the County Election Night Reporting System (CENR). In addition to the records provided in response to Interrogatory No. 2 and Request to Produce No. 1, responsive records are enclosed. See Bates Numbered Documents 0006902 to 0006904 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

5. Produce the Qualified Voter File used on November 3, 2020 related to Antrim County.

RESPONSE: This information is contained in the enclosed spreadsheet. The information provided is from November 3, 2020, through

November 4, 2020, in order to capture all events that occurred on November 3. In order to protect the privacy and security of non-party citizens, personally identifiable information such as full date of birth and driver's license numbers have been removed. See, e.g, MCL 168.509gg(1)(c), (d). See Bates Numbered Documents 0006905 to 0007340 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

6. Produce the list of names removed from the Qualified Voter File in March 2001 related to Antrim County.

RESPONSE: Defendant Benson interprets this request as seeking the list of voters whose voter registrations were cancelled in March 2021 rather than March 2001, as the records from 2001 would be irrelevant to this litigation. Records responsive to this request are enclosed. Personally identifiable information such as full date of birth and driver's license numbers have been removed. See, e.g, MCL 168.509gg(1)(c), (d). See Bates Numbered Documents 0007341 to 0007347 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

7. Produce all correspondences, communications and documents to support your claim that the Secretary of State has conducted more than 250 audits related to the 2020 general election.

RESPONSE: Defendant Benson objects to this request as it mischaracterizes the statements and press releases issued by the

Department of State. The Department of State did not conduct – and never said it conducted – 250 audits. Instead, as stated, more than 250 audits were conducted across the state by either County Clerks or the Bureau of Elections. Defendant further objects that this request is vague, overbroad, and unduly burdensome. Subject to and without waiving these objections, records responsive to this request are enclosed. See Bates Numbered Documents 0005202 to 0005095 of Part 1 of Defendant Benson’s third production (the link sent by Dustin Senneker), and Bates Numbered Documents 0007348 to 0007436 of Part 2 of Defendant Benson’s third production (the link sent by Lisa Albro).

8. Produce all correspondences, communications, and documents to support your claim that more than 18,000 ballots were randomly selected for audit in 1,300 jurisdictions after November 3, 2020.

RESPONSE: See Answer to Request to Produce #7.

9. Produce any correspondences, communications and documents between the Secretary of State’s executive office, administrative office, bureau of elections office, and/or Jocelyn Benson and The Chan Zuckerberg Initiative (or any employee, officer, or director) regarding the 2020 election.

RESPONSE: After conducting an electronic search, no responsive records have been identified.

10. Produce any correspondences, communications, and documents between the Secretary of State’s executive office, administrative office, bureau of elections office,

and/or Jocelyn Benson and the Center for Technology and Civic Life (or any employee, officer or director) regarding the 2020 election.

RESPONSE: Records responsive to this request are enclosed. See Bates Numbered Documents 0005096-0005212 of Part 1 of Defendant Benson's third production (the link sent by Dustin Senneker).

11. Produce an audit of the software installations for all devices used for election or connected to these devices via network connections (e.g. Ethernet, Wi-Fi, cell-based modem) for Antrim County for the 2020 elections. Information should be consistent with BelArc Advisor Tool.

RESPONSE: Defendant Benson objects to this request as it is vague and unclear as to what information or records the request seeks. Upon information and belief, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess the requested information or records.

12. Produce device-specific event logs for Antrim County for the 2020 elections for all installed software on each device, when each installation was performed, and the source of the software installed (e.g. disk, flash drive, download).

RESPONSE: Upon information and belief, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess the requested information or records.

13. Produce an audit log supporting all adjudication activities for Antrim County for 2020 elections, whether they were performed manually or with computer assistance.

RESPONSE: Neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess or maintain records responsive to this request.

14. Produce all correspondences, communications and documents related to November 3, 2020 election in Antrim County.

RESPONSE: Defendant Benson interprets this request as seeking records of communications between the Secretary of State's Executive Office, the Bureau of Elections, and Antrim County related to the November 3, 2020 general election. Defendant Benson has already produced similar records in response to Plaintiff's First Interrogatories and Requests for Production, Request to Produce #9, on February 8, 2021. Nevertheless, records responsive to this request are enclosed. See Bates Numbered Documents 0005213-0006901 of Part 1 of Defendant Benson's third production (the link sent by Dustin Senneker).

15. Produce the names, titles and contact information for all people who had access to make changes at Election Source regarding the November 3, 2020 election in Michigan.

RESPONSE: Defendant Benson objects to this request as it is an interrogatory disguised as a request to produce. In further answer,

neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess or maintain records responsive to this request.

16. Produce the names, titles, and contact information for all people were authorized by the Michigan Secretary of State to print ballots for the November 3, 2020 election in Michigan.

RESPONSE: Defendant Benson objects to this request as it is an interrogatory disguised as a request to produce. In further answer, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess or maintain records responsive to this request. Defendant affirmatively states that the Department of State and/or the Bureau of Elections is not responsible for printing ballots in the State of Michigan.

17. Produce the names, titles and contact information for all people were actually printing ballots for Michigan for the November 3, 2020 election in Michigan.

RESPONSE: Defendant Benson objects to this request as it is an interrogatory disguised as a request to produce. In further answer, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess or maintain records responsive to this request. Defendant affirmatively states that the Department of State and/or the Bureau of Elections is not responsible for printing ballots in the State of Michigan.

18. Produce all purchase orders for all ballot printing for Michigan for the November 3, 2020 election in Michigan.

RESPONSE: Defendant Benson objects to producing purchase orders “for all ballot printing for Michigan” as it does not comply with this Court’s April 12, 2021 instruction that discovery be limited to elections in Antrim County. Subject to and without waiving this objection, records responsive to this request have not been identified at this time, because ballot printing is not done by the Department of State and/or the Bureau of Elections.

19. Produce all mailing records for all ballot mailed to Antrim County for the November 2, 2020 election in Michigan.

RESPONSE: Defendant Benson interprets this request as seeking information from the November 3, 2020 general election as there were no elections held on November 2, 2020. Further answering, records responsive to this request have not been identified at this time, because the mailing of ballots is not done by the Department of State and/or the Bureau of Elections, but rather by city and township clerks in Antrim County.

20. Produce all transactional records and logs that record date and time changes to media storage specific to Antrim County.

RESPONSE: Defendant Benson objects to this request as vague and ambiguous and Defendant is unable to identify what records are being

requested. Upon information and belief, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess or maintain records responsive to this request.

21. Produce the names, titles and contact information for all people who created the election configuration initially for the November 3, 2020 election in Michigan, and the names, titles and contact information for anyone who had access to or modified election files November 3, 2020 election in Michigan, and who these people worked for.

RESPONSE: Defendant Benson objects to this request as it is an interrogatory disguised as a request to produce. Defendant further objects to this request as vague and assumes that it seeks information related to the election management software. Upon information and belief, responsive records may be able to be obtained from Antrim County.

22. Produce the names, titles and contact information for all people working the election in Antrim County from September 1, 2020 through November 20, 2020.

RESPONSE: Defendant Benson objects to this request as it is an interrogatory disguised as a request to produce. In further answer, neither Defendant Benson, the Michigan Department of State, the Bureau of Elections nor any employee, officer, or agent of the same, possess or maintain records responsive to this request.

23. Produce all correspondences, communications and documents exchanged with or used by J. Alex Halderman and all draft reports prepared by J. Alex Halderman related to his report dated March 26, 2021.

RESPONSE: Defendant Benson objects to this request because it is vague as it does not identify the other parties to the requested communications or correspondence. Subject to and without waiving this objection, records responsive to this request are enclosed. See Bates Numbered Documents 0007437 to 0008986 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

24. Please produce copies of any documents or other evidence that you believe support your defense that the results of the Antrim County on November 3, 2020 were "human error."

RESPONSE: Defendant Benson objects to the request as vague and overbroad. Without waiving the objection, Defendant Benson refers to the report of J. Alex Halderman, which has already been produced and details the factual basis for human error in reporting the unofficial results, and the documents upon which he relied to reach his conclusions. Defendant Benson does not keep or maintain other documents, but may rely on other official records, such as the testimony of Antrim County Clerk Sheryl Guy.

25. Please produce copies of any documents or other evidence that you believe support your defense that the results of the election in Antrim county on November 3, 2020 were "not the result of material fraud or error."

RESPONSE: See Answer to Request to Produce #24.

26. Produce all correspondences, communications and documents regarding any tabulators that stopped functioning during the November 3, 2020 election in Michigan including log files.

RESPONSE: Defendant Benson objects to producing records for “any tabulators that stopped functioning during the November 3, 2020 election in Michigan,” as the request does not comply with the Court’s April 12, 2021 instruction that discovery be limited to elections in Antrim County. Subject to and without waiving this objection, Defendant Benson states that no responsive documents have been identified, as the Bureau of Elections is not aware of reports of tabulators that stopped functioning in Antrim County on the November 3, 2020 general election.

27. Produce the names, titles and contact information for each witness that you believe may possess discoverable information that you may use in support of any of your claims or defenses and include a short summary of the substance you believe each witness to possess.

RESPONSE: Defendant Benson objects to this request as it is an interrogatory disguised as a request to produce, and Defendant Benson does not keep or maintain any documents matching the description in this request

28. Produce all communication, correspondence or summary of any conversations occurring from October 1, 2020 to the present day between your experts and any

person employed by a government body in the State of Michigan or holding public office in the State of Michigan, including but not limited to Gretchen Whitmer, Jocelyn Benson or Dana Nessel.

RESPONSE: Records responsive to this request are enclosed. See Bates Numbered Documents 0008987 to 0009032 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).

29. Produce the resume and curriculum vitae for all of your expert witnesses and produce their experience with election administration and also their experience with elections technology (e.g. voting machines, tabulators, etc.).

RESPONSE: Records responsive to this request are enclosed. See Bates Numbered Documents 0009033 to 0009061 of Part 2 of Defendant Benson's third production (the link sent by Lisa Albro).



Jonathan Brater, Director of Elections
Michigan Department of State

Sworn to and subscribed before me, a
Notary Public, this 14th day of May, 2021.



Notary Public

LIVINESTON County, Michigan

Acting in Ingham County, Michigan

My commission expires: 11-5-2026

**As to objections and documents
produced only:**

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Heather S. Meingast

Heather S. Meingast (P55439)

Erik A. Grill (P64713)

Attorneys for Intervenor-Defendant Benson

PO Box 30736

Lansing, Michigan 48909

517.335.7659

meingasth@michigan.gov

grille@michigan.gov

Dated: May 14, 2021

ATTACHMENT 8

Complaint for Declaratory Judgment,
filed March 10, 2023

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE
STATE OF MICHIGAN,

File No.

Plaintiff,

Hon.

vs.

STEFANIE LAMBERT JUNTILA,

Defendant.

PEOPLE OF THE STATE OF MICHIGAN
SPECIAL PROSECUTOR
By: D.J. HILSON (P57726)
Hall of Justice, Fifth Floor
990 Terrace Street
Muskegon, MI 49442
(231) 724-6435
HilsonDa@co.muskegon.mi.us

COMPLAINT FOR DECLARATORY JUDGMENT

There is no other pending or resolved civil action arising out of the
transaction or occurrence alleged in the complaint.

NOW COME the People of the State of Michigan, by and through their attorneys, D.J.
Hilson, Special Prosecuting Attorney, and states the following for his complaint for declaratory
judgment:

A. Parties, Jurisdiction, and Venue

1. Plaintiff DJ Hilson is Special Prosecutor acting in the capacity as Special
Prosecutor on behalf of the Attorney General of the State of Michigan. This suit is brought by the
DJ Hilson in his official capacity.

2. On information and belief, Stefanie Lambert Junttila is a resident of Michigan.
3. Through this lawsuit, the Special Prosecutor Hilson seeks a declaratory judgment pursuant to MCR 2.605. This Court has jurisdiction to provide such relief.
4. The circumstances giving rise to this Complaint have arisen between 2021 and 2022 in Oakland County, making this Court an appropriate venue for this Complaint.

BACKGROUND

5. The People incorporates by reference the other paragraphs of this complaint.
6. In communications as it relates to a pending action that has been sealed pursuant to Court Order by the Oakland County Circuit Court, it has been asserted by Ms. Lambert Junttila that the People have a misunderstanding of Michigan Election Law. As part of this sealed proceedings, Plaintiff is required, by law, to provide legal interpretation and instruction and advice as it relates to election laws, constitutional matters, legal duties and obligations and legal authority, if any, of clerks to provide election systems or voting machines without a court order or otherwise authorized by law. Ms. Lambert Junttila through counsel has alleged misapplication of the law as it relates to these sealed proceedings, which creates an actual controversy.
7. It is solely the intent of the People to obtain a legal determination as to the applicable legal standards concerning the crime of undue possession of a voting machine and to clarify the legal prohibitions contained in MCL 168.932(b). More specifically the People request an order of declaratory judgment on the two following issues:
 - a. Whether the phrase, “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained” modifies and restricts the

language in the sentences preceding it, including, "A person shall not obtain undue possession of that ballot box or voting machine."?

b. Whether "undue possession" means possession that is not authorized by the Secretary of State or Court Order?

Count I - DECLARATORY JUDGMENT

8. The People incorporates by reference the other paragraphs of this complaint.

9. MCR 2.605(A) states:

(1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

(2) For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.

10. Upon information and belief, an actual controversy exists between the Special Prosecutor acting as Attorney General and Stefanie Lambert Junttila as to the interpretation of the MCL 168.932(b).

11. Pursuant to MCL 600.8311; Const 1963, art 6, § 13, this Court has subject matter jurisdiction over felony offenses, which would encompass any crimes prosecuted under MCL 168.932(b).

12. MCL 168.932(b) of the "Michigan Election Law," sets forth a list of felonies related to elections, which provides:

(b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or

voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. *A person shall not obtain undue possession of that ballot box or voting machine.* A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision. (emphasis added).

13. “If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and we enforce the statute as written. [] In other words, when statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed.” *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004) (citations omitted). The language of MCL 168.932(b) is clear and unambiguous, and the plain meaning of MCL 168.932(b) provides for multiple, distinct felony violations as follows:

- a. A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election.
- b. A person shall not willfully damage or destroy any ballot box or voting machine.
- c. A person shall not obtain undue possession of that ballot box or voting machine.
- d. A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine.
- e. A person shall not aid or abet in any act prohibited by this subdivision.

14. This plain meaning is further supported by the legislative history of the statute. The initial version of MCL 168.932(b) was written as a single sentence, where the time limitation of “during the progress of any election or primary election or after the closing of the polls and before the ballots are counted and the result ascertained” did apply to the undue possession provision. The statute was later amended in 1957 to be distinct phrases separated by semi-colons, thus

removing the applicability of the time limitation to the other phrases. In 1995, the Legislature further delineated the phrases as separate offenses by making each phrase into a separate and distinct sentence, each with its own subject, verb, and prohibited conduct. *In re MCI Telecommunications Complaint*, 460 Mich 396, 415; 596 NW2d 164 (1999) (“Where the Legislature has considered certain language and rejected it in favor of other language, the resulting statutory language should not be held to explicitly authorize what the Legislature explicitly rejected.”)

15. Thus, the People assert that the time limitation, “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained” does *not* apply to the prohibited conduct of “A person shall not obtain undue possession of that ballot box or voting machine.”

16. Turning to the next point of contention, the People further assert that “undue possession” must be that which is not allowable by law, and the only lawful authority that can be given for the possession of voting machines is by the Secretary of State or Court Order. Specifically, as outlined in detail below, the People allege that a local election official under the direct supervision of the Secretary of state does not have the authority to release voting machines independently.

17. Pursuant to MCL 168.21, “The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” And, “the Legislature [has] granted the Secretary a broad measure of discretion in conducting and supervising elections.” *Davis v Secretary of State*, 333 Mich App 588, 598; 963 NW2d 653 (2020).

18. The Secretary of State has the obligation to make rules and instructions for the conduct of elections, MCL 168.31.

19. “Under MCL 168.32, the Legislature authorized a Bureau of Elections within the office of the Secretary of State and authorized the Secretary of State to appoint a Director of Elections to whom is delegated the powers to perform the duties of the Secretary of State respecting the supervision and administration of election laws.” *Davis*, 333 Mich App at 598.

20. Further, it is the duty of local election officials to follow the instructions of the Secretary of State. See *Davis*, 333 Mich App at 598, citing *Secretary of State v Berrien Co Bd of Election Comm'rs*, 373 Mich 526, 530-531; 129 NW2d 864 (1964) (“Under MCL 168.31, local election officials must follow the Secretary of State’s instructions regarding the conduct of elections.”).

21. The duty of local election officials to follow the directives of the Secretary of State exists even where the directives relate to rules for the use of voting equipment that is owned by the local government. In *Berrien Co Bd of Election Comm'rs, supra*, 373 Mich at 528, the local election officials asserted “that because the voting machines are the property of the people of the township it was beyond the power of the plaintiff [Secretary of State] to order or direct the manner of their use and competent for the township board to direct, as they did by resolution adopted, use of the voting machines” in a manner contrary to the Secretary of State’s instruction. The Supreme Court rejected that contention when it held that it was the duty of the local election officials to follow the instructions received by the Secretary of State despite the local election official’s resolution. *Id.* at 530-531.

22. Further, in 2021-2022, the Michigan Constitution provided, “Every citizen of the United States who is an elector qualified to vote in Michigan shall have the following rights: . . .

(h) The right to have the results of statewide elections audited, in such manner as prescribed by law, to ensure the accuracy and integrity of elections.” Const 1963, art 2, §4(1)(h).¹

23. Michigan Election Law allows for the Secretary of State to engage in audits and to supervise local election officials in conducting audits. MCL 168.31a(2), effective December 28, 2018, states:

(1) In order to ensure compliance with the provisions of this act, after each election the secretary of state may audit election precincts.

(2) The secretary of state shall prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963. The secretary of state and county clerks *shall* conduct election audits, including statewide election audits, as set forth in the prescribed procedures. The secretary of state shall train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the secretary of state in their counties. An election audit must include an audit of the results of at least 1 race in each precinct selected for an audit. A statewide election audit must include an audit of the results of at least 1 statewide race or statewide ballot question in a precinct selected for an audit. An audit conducted under this section is not a recount and does not change any certified election results. The secretary of state *shall* supervise each county clerk in the performance of election audits conducted under this section. (Emphasis added)

¹ Michigan voters in the November 2022 election decided to expand and clarify this audit provision to state, “The right to have the results of statewide elections audited, in such a manner as prescribed by law, to ensure the accuracy and integrity of elections. The secretary of state shall conduct election audits, and shall supervise and direct county election officials in the conduct of such audits. No officer or member of the governing body of a national, state, or local political party, and no political party precinct delegate, shall have any role in the direction, supervision, or conduct of an election audit. Public election officials shall maintain the security and custody of all ballots and election materials during an election audit. Election audits shall be conducted in public based on methods finalized and made public prior to the election to be audited. All funding of election audits shall be publicly disclosed.” However, this provision did not become effective until December 24, 2022, which post-dates the controversy in issue before the Court.

It is noteworthy that the Secretary of State's involvement in a supervisory capacity of local audits is not discretionary, but mandatory as indicated by the use of the word "shall".

24. Neither the Constitution nor the statute allow for an individual voter to conduct an independent audit. *Bailey v Antrim County*, ___ Mich App ___; ___ NW2d ___ (2022) 2022 WL 1193720, at *5, lv den, ___ Mich ___; 982 NW2d 175 (2022).

25. Thus, authorization to release the physical voting equipment under any purported "audit" must be supervised by the Secretary of State and cannot be initiated by a private citizen.

26. Further, MCL 168.799a requires that following the final determination by the board of canvassers following an election, the original seal may be removed from an election program, but "shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state." Again, indicating that secured storage is incumbent upon the local election official, and the device must be preserved until the Secretary of State or its rules allow for the removal from the secured location.

27. Additionally, Michigan Election Law provides the Secretary of State with the discretion to release voting machines and equipment under certain circumstances. MCL 168.847 states:

The secretary of state may authorize the release of all ballots, ballot boxes, voting machines, and equipment after 30 days following certification of an election by the board of state canvassers in a precinct other than a precinct in which 1 or more of the following occur:

- (a) A petition for recount has been filed with the board of state canvassers.
- (b) A petition has been filed pursuant to section 879.¹
- (c) A court of competent jurisdiction has issued an order restraining interference with ballots, ballot boxes, voting machines, and equipment.

28. Mich. Admin. Code R 168.772 provides:

(3) Where the board of county commissioners provides for the purchase and use of an electronic voting system in a county, the county clerk shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

(4) Where the legislative body of a city, township, or village provides for the purchase and use of an electronic voting system, the clerk of the city, township, or village shall have custody of the devices and be responsible for their maintenance, repair, and preparation for elections.

The Clerk shall have custody and shall be responsible for three specific actions: maintenance, repair, or preparation for elections. *Id.* Nowhere in this code does the rule allow for the Clerk to independently be responsible for an audit. Nor does it allow for a clerk to unilaterally relinquish the custody of a voting machine, when read in conjunction MCL 168.847 which only provides the Secretary of State with discretion to release voting machines. Particularly, under the plain language of this rule when coupled with the Constitution and the Michigan Election Law, a clerk does not have authorization under this provision to relinquish custody for purposes of an audit.

29. In sum, looking at the Michigan Constitution, Michigan Election Law, and Michigan Administrative Code, it is clear that for purposes of “undue possession” means possession not authorized by the Secretary of State or valid court order, such as a search warrant.

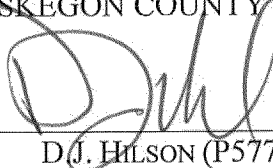
30. Thus, the language, “A person shall not obtain undue possession of that ballot box or voting machine[.]” means that an individual cannot possess a ballot box or voting machine without authorization from the Secretary of State or a valid court order.

31. The special prosecutor requests that the Court enter a declaratory judgment as to these two points of law.

RELIEF REQUESTED

WHEREFORE, The People of the State of Michigan by and through special prosecutor DJ Hilson request declaratory judgment finding that the undue possession of voting machines prohibition is not limited to events that occur “during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained,” and the People request declaratory judgment that “undue possession” is possession that is not authorized by the Secretary of State or by court order.

Respectfully submitted,
SPECIAL PROSECUTOR &
MUSKEGON COUNTY PROSECUTOR



Dated: March 10, 2023

By: D.J. HILSON (P57726)
Prosecuting Attorney

BUSINESS ADDRESS & TELEPHONE:
Hall of Justice, Fifth Floor
990 Terrace Street
Muskegon, MI 49442

ATTACHMENT 9

Knowles' Email Re Dominion Vote Shift

From: Kurt Knowles [REDACTED]
Sent: Wednesday, November 4, 2020 10:49 AM
To: Guy, Sheryl; Wing, Connie
Cc: Steve DeLongchamp; Jeff DeLongchamp; Michael Kelava
Subject: Re: Antrim Faulty Election Night Un-Official Totals

Hi Sheryl and Connie,

I'm pleased to say Mike knows what happened. We had several changes to ballots after the initial programming and Proof Approval in many of the townships and the CF Cards had already been loaded. When the last of those changes was completed, all the CF Cards (and USB Sticks for the VAT) should have been collected back from all the townships and reloaded. If we did not properly emphasize that it should be done, we're very sorry. Whenever major ballot changes, such as adding a race or adding a candidate to an existing race, the Dem Suites software renumbers all the races and candidates and this affects races even in townships/precincts that didn't change. Thankfully, the tapes should be correct. The only solution is the Manual Entry of all races that have totals on the tapes that don't agree with the Reports as they are now. I know Connie is already preparing to do the Manual Entries.

Thanks,

Kurt

ElectionSource

At 10:49 a.m. Nov. 4, Kurt Knowles of ElectionSource identifies the cause of problems with Antrim County's unofficial results. "When the last of those changes...

Show caption ▼

ATTACHMENT 10

Lori Bourbonais Email,
December 22, 2020

-----Original Message-----

From: "Bourbonais, Lori (MDOS)" <bourbonaisl@michigan.gov>

Sent: Tuesday, December 22, 2020 3:27pm

To: "Bourbonais, Lori (MDOS)" <bourbonaisl@michigan.gov>

Subject: Security of Election Materials

County/City/Township Clerks and Election Directors:

We are aware that some clerks have been contacted by an attorney or group claiming to be a part of the Rudy Giuliani legal team. It is our understanding that they are requesting access to tabulators or other election material used for the November 3, 2020 election. As a reminder, security of election materials for the November election has not yet been released and will not be released until after all audits are completed. Under law, access to these machines and materials may not be provided at this time. If an attorney or group requests to speak to you regarding the election, machines, or materials, you should confer with your city, township, or county counsel regarding the request.

Lori A. Bourbonais

Director, Elections Administration Division

Michigan Bureau of Elections

ATTACHMENT 11

Assistant Attorney General Hagaman-Clark's
Order Appointing Special Prosecutor

STATE OF MICHIGAN
OFFICE OF THE ATTORNEY GENERAL

IN THE MATTERS OF:
Matthew DePerno
Stefanie Lambert Juntilla
Daire Rendon
Ann Howard
Ben Cotton
Jeff Lenberg
Douglas Logan
James Penrose
Dar Leaf

**PETITION FOR APPOINTMENT
OF SPECIAL PROSECUTOR**

NOW COMES Dana Nessel, Attorney General for the State of Michigan, and petitions the Prosecuting Attorneys Coordinating Council (PACC) for the appointment of a Special Prosecuting Attorney for the following reasons:

1. The Michigan State Police and the Michigan Department of Attorney General (MDAG) are jointly investigating a conspiracy to unlawfully obtain access to voting machines used in the 2020 General Election.
2. The Michigan State Police and the special agents with the MDAG have completed a preliminary review and it is now time for a prosecutorial review for charges that include but are not limited to Conspiracy, MCL 750.157a; Using a Computer System to Commit a Crime, MCL 752.796; Willfully Damaging a Voting Machine, MCL 168.932(b); Malicious Destruction of Property, MCL 750.377a; Fraudulent Access to a Computer or Computer System, MCL 752.795a; and False Pretenses, MCL 750.218.

3. On February 10, 2022, Michigan Secretary of State Jocelyn Benson requested the MDAG and MSP investigate third party access to vote tabulators, components and technology in Roscommon, Michigan. That investigation has now been presented to the Criminal Trials and Appeals Division seeking approval for criminal charges against the above listed individuals.
4. It is alleged that DePerno, Lambert Juntilla and Rendon orchestrated a coordinated plan to gain access to voting tabulators that had been used in Roscommon County and Richfield Township (Roscommon County), Irving Township (Barry County) and Lake City Township (Missaukee County). In Roscommon County the clerk stated she was told by Rep Rendon that the House of Representatives was conducting an investigation in election fraud.
5. All 5 tabulators were taken to hotels and/or AIRBNB's in Oakland County where Lenberg, Cotton, Penrose and Logan broke into the tabulators and performed "tests" on the equipment. It was determined during the investigation that DePerno was present at a hotel room during such "testing."
6. Howard coordinated printing of fake ballots to be run through the tabulators and recruitment of "volunteers."
7. Irving Township Clerk Sharon Olson indicated that she was asked by Barry County Sheriff Dar Leaf to cooperate with investigators regarding an election fraud investigation. Subsequent to this conversation, Olson turned over her tabulator to a third party.
8. When this investigation began there was not a conflict of interest. However, during the course of the investigation, facts were developed that DePerno was one of the prime instigators of the conspiracy.

9. DePerno is now the presumptive Republican nominee for Attorney General.
10. A conflict arises when “the prosecuting attorney has a personal interest (financial or emotional) in the litigation.” *People v Doyle*, 159 Mich App 632 (1987).
11. It is hereby understood and agreed that pursuant to the provisions of MCL 49.160, if any Special Prosecutor appointed pursuant to this petition shall handle any matter on behalf of the petitioner, all costs of prosecution, other than personnel costs, shall be borne by the Michigan Department of Attorney General, who has been determined disqualified or otherwise unable to serve.

WHEREFORE, your Petitioner prays:

- A. That a Special Prosecuting Attorney be appointed in this matter to review the charging request and handle any prosecution that may result against DePerno, Lambert Juntilla, Rendon, Howard, Cotton, Lenberg, Logan, Penrose and Leaf.
- B. For any additional relief that law and justice may require.

Dated: August 5, 2022



Danielle Hagaman-Clark (P63017)
Division Chief
Criminal Trials and Appeals Division
Michigan Department of Attorney General

ATTACHMENT 12

Genetski v Benson, Michigan Court of Claims,
(Case NO. 20-000216-MM)

STATE OF MICHIGAN
COURT OF CLAIMS

ROBERT GENETSKI, County of Allegan Clerk,
individually and in his official capacity, and
MICHIGAN REPUBLICAN PARTY,

Plaintiffs,

OPINION AND ORDER GRANTING
SUMMARY DISPOSITION IN PART TO
PLAINTIFFS AND GRANTING
SUMMARY DISPOSITION IN PART TO
DEFENDANTS

v

Case No. 20-000216-MM

JOCELYN BENSON, in her official capacity, and
JONATHAN BRATER, Director of Elections, in
his official capacity,

Hon. Christopher M. Murray

Defendants.

_____ /

Before the Court is defendants' January 20, 2021 motion for summary disposition filed pursuant to MCR 2.116(C)(4) and (C)(8), as well as plaintiffs' February 3, 2021 cross-motion for summary disposition filed pursuant to MCR 2.116(C)(8). Plaintiffs' cross-motion will be GRANTED in part with respect to Count II of the amended complaint because the challenged signature-matching standards were issued in violation of the Administrative Procedures Act. As a result of the grant of summary disposition in plaintiffs' favor on Count II, Count I of the amended complaint will be dismissed without prejudice. In addition, defendants' motion for summary disposition will be GRANTED in part with respect to Counts III and IV of the amended complaint.

I. BACKGROUND

The issues raised implicate signature-matching requirements for absent voter ballot applications and absent voter ballot return envelopes contained in this state's election law. MCL

168.759 and MCL 168.761 require voters to sign applications for absent voter ballots in order to receive a ballot. In addition, this state’s election laws require voters who choose to vote by absent voter ballot to sign their absent voter ballot return envelopes in order to have their ballots counted. MCL 168.764a. The signatures on the applications and the return envelopes are compared against signatures in the qualified voter file or those that appear on the “master registration card” in order to determine whether the signatures match. Signatures on applications or return envelopes that do not “agree sufficiently” with those on file are to be rejected. MCL 168.761(2). As of October 6, 2020, MCL 168.761(2)¹ was amended by 2020 PA 177 to give notice to voters’ whose signatures do not “agree sufficiently” with those on file that their absent voter ballot application has been rejected. The purpose of the notice is to give voters the opportunity to correct inaccuracies with absent voter ballot signatures. The same notice requirements also apply to rejected signatures for absent voter ballots. MCL 168.765a(6). There is no dispute that this state’s election law does not define what it means for signatures to “agree” or to “agree sufficiently” for purposes of comparing the signature on file with the signature on a received absent voter ballot application or absent voter ballot.

On the day PA 177 became effective, defendant Jocelyn Benson issued what defendants refer to as “guidance” for local clerks who are charged with inspecting signatures on absent voter ballot applications and ballots. The document, which was entitled “Absent Voter Ballot Processing: Signature Verification and Voter Notification Standards” largely mirrored guidance

¹ 2020 PA 302 further amended MCL 168.761 and other provisions of this state’s election law. Those amendments do not become effective until June 27, 2021. This opinion and order only examines those provisions of the statute that are currently in effect at this time. And no issues have been raised with respect to the yet-to-be-effective statutory requirements.

defendant Benson had previously issued. This guidance regarding signature verification forms the heart of the issues in the present case and it requires additional examination.

The stated purpose of the at-issue document was to “provide[] standards” for reviewing signatures, verifying signatures, and curing missing or mismatched signatures. Under a heading entitled “Procedures for Signature Verification,” the document stated that signature review “begins with the presumption that” the signature on an absent voter ballot application or envelope is valid. Further, the form instructs clerks to, if there are “any redeeming qualities in the [absent voter] application or return envelope signature as compared to the signature on file, treat the signature as valid.” (Emphasis in original). “Redeeming qualities” are described as including, but not being limited to, “similar distinctive flourishes,” and “more matching features than nonmatching features.” Signatures “should be considered questionable” the guidance explained, only if they differ “in multiple, significant and obvious respects from the signature on file.” (Emphasis in original). “[W]henever possible,” election officials were to resolve “[s]light dissimilarities” in favor of finding that the voter’s signature was valid.²

The section on signature-verification procedures goes on to repeat the notion that “clerks should presume that a voter’s [absent voter] application or envelope signature is his or her genuine signature, as there are several acceptable reasons that may cause an apparent mismatch.” (Emphasis omitted). Next, the guidance gave excuses or hypothetical explanations for why signatures on absent voter ballot applications and absent voter ballots might not be an exact match to those that are on file. Finally, the document again mentioned the presumption when, in

² The guidance included a chart with what were deemed to be acceptable and unacceptable “defects” in signatures.

conclusion, it stated that clerks “*must perform* their signature verification duties with the presumption that the voter’s [absent voter] application or envelope signature is his or her genuine signature.” (Emphasis added). By all accounts, the guidance set forth in that document was not limited to the then-upcoming November 2020 general election, nor has it been rescinded. Rather, it appears that the guidance remains in effect for local clerks with respect to upcoming elections.

II. PLAINTIFFS’ COMPLAINT

Plaintiff Robert Genetski is the Allegan County Clerk. He, along with plaintiff Michigan Republican Party, filed a complaint alleging that defendant Benson’s October 6, 2020 guidance is unlawful. The December 30, 2020 amended complaint alleges that the presumption in favor of finding valid signatures is unlawful, as is the directive to find “any redeeming qualities” for signatures. They contend that the presumption contained in the guidance issued by defendant Benson will allow invalid votes to be counted. Plaintiff Genetski has not, however, alleged that this guidance caused him to accept a signature that he believed was invalid.

The four-count amended complaint asks the Court to issue declaratory and injunctive relief with respect to future elections. Count I alleges that defendant Benson violated various provisions of this state’s election law by issuing the challenged guidance regarding signature-matching requirements which allegedly conflicts with this state’s election law. They ask the Court to issue injunctive relief to remedy the allegedly unlawful guidance. Additionally, they seek a declaratory ruling regarding the validity of defendant Benson’s guidance.

Count II of the amended complaint alleges that defendant Benson’s guidance was a “rule” as defined by the Administrative Procedures Act (APA) that was issued without compliance with the APA. Plaintiffs allege that the guidance is in fact a rule because it is generally applicable and

requires local election officials to apply a mandatory presumption of validity to signatures. Plaintiffs ask the Court to declare that the “rule” is invalid.

Count III alleges a violation of Const 1963, art 1, §§ 2 and 5, as defendant Benson’s guidance will result in the counting of invalid absent voter ballots which will ultimately result in the dilution of valid votes cast by this state’s electorate. They argue that defendant Benson’s guidance is so vague and imprecise that it cannot be applied uniformly throughout the state.³

Count IV alleges that plaintiff Genetski had a right to request an audit of his choosing under Const 1963, art 2, § 4(1)(h) as it relates to absent voter ballots. Plaintiffs acknowledge that defendants have announced and/or completed a state-wide audit of the November 2020 general election; however, according to plaintiffs, the audit does not address plaintiffs’ concerns because it did not review whether signatures on absent voter ballots were properly evaluated. Plaintiffs ask the Court to declare that the right to request an audit under art 2, § 4(1)(h) encompasses the type of absent-voter-ballot review requested in the amended complaint. Plaintiff also suggests the manner in which such an audit should be conducted.

III. ANALYSIS

A. MOOTNESS AND RIPENESS

Defendants argue that this Court should refrain from evaluating the merits of plaintiffs’ complaint because the issues are either moot or not ripe. With respect to mootness, there is no dispute that Count III, which raises an equal protection claim arising out of the November 2020

³ Plaintiffs’ briefing has conceded that this claim is now moot, with the November 2020 election having already come and gone. As a result, the Court will not address this claim in any additional detail.

general election, is moot and must be dismissed. However, the Court declines to find that plaintiffs' remaining challenges are either moot or not ripe. Those issues concern the validity of guidance that is still in effect (Counts I and II), or an audit (Count IV) that, according to the plain text of art 2, § 4(1)(h) and MCL 168.31a, may be requested after the election has occurred. Moreover, defendants have not advanced a specific mootness/ripeness argument with respect to the audit claim. As a result, the Court declines to find that the issues raised in Counts I, II, and IV of the amended complaint would have no practical effect on an existing controversy or that it would be impossible to render relief. Cf. *Garrett v Washington*, 314 Mich App 436, 449-450; 886 NW2d 762 (2016) (describing the mootness doctrine).

The Court also rejects defendants' contention that there is no actual controversy. As noted, plaintiffs seek declaratory relief. MCR 2.605(A)(1) requires that there be "a case of actual controversy" for the issuance of declaratory relief. "In general, 'actual controversy' exists where a declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights." *Shavers v Kelley*, 402 Mich 554, 588; 267 NW2d 72 (1978). Here, plaintiffs—particularly plaintiff Genetski, who is a local clerk subject to the guidance at issue—sought a declaration regarding whether he is and will continue to be subject to guidance that by all accounts remains in effect at this time. This clearly presents an actual controversy that is appropriate for declaratory relief. See *id.*

Defendants argue that no actual controversy exists because the Legislature could change the applicable law, or because defendant Benson could decide to revoke the guidance. That argument would seek to turn the requirements of declaratory relief on their head and would eviscerate the purpose of declaratory relief. If the Court were to adopt the view that no actual controversy exists because the law could change, there could be no limit to the number of cases

that could be dismissed as moot. Here, plaintiffs have sought a declaration as to their legal rights with respect to the validity of a currently existing directive issued by defendant Benson in advance of the next election. That the law could hypothetically change in the future is not a reason to avoid issuing a declaration of the parties' currently existing legal rights, as plaintiffs have sought here. Indeed, the ability to seek an advance declaration of legal rights on an existing policy is one of the very reasons why the declaratory judgment rule was adopted in the first instance. See *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 496; 815 NW2d 132 (2012) (discussing the purposes of the declaratory judgment rule).

B. WHETHER DEFENDANT'S ACTIONS VIOLATED THE APA

The dispositive issue, as the Court see it, concerns the APA and whether defendant Benson was required to comply with the APA when she issued the "Signature Verification and Voter Notification Standards." The Secretary of State has authority, under MCL 168.31(1)(a), to "issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state." Under the APA, a "rule" is defined as "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency."⁴ MCL 24.207. A "rule" not promulgated in accordance with the

⁴ There is no dispute that defendant Benson is subject to the APA, generally. See MCL 24.203(2) (defining "agency" in a way that includes the Secretary of State). The only dispute is whether this particular action is subject to the APA.

APA's procedures is invalid. MCL 24.243; MCL 24.245; *Pharris v Secretary of State*, 117 Mich App 202, 205; 323 NW2d 652 (1982).

An agency must utilize formal APA rulemaking procedures when establishing policies that “do not merely interpret or explain the statute or rules from which the agency derives its authority,” but rather “establish the substantive standards implementing the program.” *Faircloth v Family Indep Agency*, 232 Mich App 391, 403-404; 591 NW2d 314 (1998). “[I]n order to reflect the APA's preference for policy determinations pursuant to rules, the definition of ‘rule’ is to be broadly construed, while the exceptions are to be narrowly construed.” *AFSCME v Dep't of Mental Health*, 452 Mich 1, 10; 550 NW2d 190 (1996). It is a question of law whether an agency policy is invalid because it was not promulgated as a rule under the APA. *In re PSC Guidelines for Transactions Between Affiliates*, 252 Mich App 254, 263; 652 NW2d 1 (2002).

As for whether the guidance or directive at issue is a “rule” subject to the APA, the Court must look beyond the labels used by the agency and make an independent determination of whether the action taken by the agency was permissible or whether it was an impermissible rule that evaded the APA's requirements. *AFSCME*, 452 Mich at 9. In other words, the Court “must review the actual action undertaken by the directive, to see whether the policy being implemented has the effect of being a rule.” *Id.* (citation and quotation marks omitted).

Examining the “Signature Verification and Voter Notification Standards” through that lens, the Court agrees with plaintiffs that the same constitutes a “rule” that should have been promulgated pursuant to the APA's procedures. The standards are generally applicable to all absent voter ballot applications and absent voter ballots, and it contains a mandatory statement from defendant, this state's chief election officer, see MCL 168.21, declaring that all local clerks

“*must perform* their signature verification duties” in accordance with the instructions. (Emphasis added). In addition, clerks must presume that signatures are valid. That this presumption is mandatory convinces the Court that it is not merely guidance, but instead is a generally applied standard that implements this state’s signature-matching laws. See MCL 24.207 (defining “rule”); *AFSCME*, 451 Mich at 8 (describing what constitutes a “rule” under the APA); *Spear v Mich Rehab Servs*, 202 Mich App 1, 5; 507 NW2d 761 (1993) (focusing on the mandatory nature of policies in support of the conclusion that the same constituted a “rule” under the APA).

Defendants cite three statutory exceptions to rulemaking—MCL 24.207(g), (h), and (j)—but the Court is not persuaded that the standards are saved by any of these exceptions. The first argument is that MCL 24.207(j), which is sometimes referred to as the “permissive power exception,” applies and exempts the standards from the APA’s rulemaking requirements. MCL 24.207(j) exempts from the APA’s definition of “rule,” a “decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected.” Here, defendant Benson points to MCL 168.31(1)(a) as the source of her “permissive statutory power.” That statute provides that the Secretary of State “shall” “issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections and registrations in accordance with the laws of this state.” MCL 168.31(1)(a). According to defendant Benson, MCL 168.31(1)(a) allows her to eschew the rule-making process in order to issue “instructions” like the standards at issue.

The Court disagrees. First, the Court disagrees with defendants’ characterization of the standards at issue, for the reasons stated above. Second, the cited statutory authority requires defendant Benson to issue instructions that are “in accordance with the laws of this state.” MCL 168.31(1)(a). Here, it is not apparent that the mandatory presumption of signature validity is “in

accordance with the laws of this state.”⁵ To that end, nowhere in this state’s election law has the Legislature indicated that signatures are to be presumed valid, nor did the Legislature require that signatures are to be accepted so long as there are any redeeming qualities in the application or return envelope signature as compared with the signature on file. Policy determinations like the one at issue—which places a thumb on the scale in favor of a signature’s validity—should be made pursuant to properly promulgated rules under the APA or by the Legislature. See *AFSCME*, 452 Mich at 10.

Third, a review of the plain language of MCL 168.31(1) and of caselaw discussing the permissive-power exemption does not support defendants’ argument.⁶ The primary problem with defendant Benson’s argument is that the language in MCL 168.31(1) is too generic to support her positions. MCL 168.31(1)(a) simply states that the secretary shall “issue instructions and promulgate rules pursuant to the” APA “for the conduct of elections.” If that were sufficient to constitute an explicit or implicit grant of authority to be excepted from the APA rule-making process, then defendants would never have to issue APA-promulgated rules for any election-related matters. This view, where the exception would effectively swallow the rule, does not find support in caselaw. See, e.g., *AFSCME*, 452 Mich at 12. That is, while defendant has statutory discretion to decide whether to take certain actions, the implementation of her discretionary decisions—absent a more precise directive than is contained in the statutes at issue—

⁵ Given that the standards are invalid for being enacted without compliance with the APA, the Court declines, for now, to determine whether the mandatory presumption imposed is contrary to the law, as plaintiffs have alleged in Count I. Resolution of that issue becomes unnecessary in light of the decision to grant relief to plaintiffs on Count II of the complaint.

⁶ The Court incorporates and restates its reasoning and discussion of a similar issue from *Davis v Benson*, (Docket Nos. 20-000207-MZ & 20-000208-MM).

must still adhere to the APA if that implementation takes the form of a rule. See *id.* (recognizing that the Department of Mental Health did not need to take a certain action; however, once the Department exercised its discretion to act, the implementation of the decision “must be promulgated as a rule.”); *Spear*, 202 Mich App at 5 (holding that while the agency’s “decision to employ a needs test represents the discretionary exercise of statutory authority exempt from the definition of a rule under [MCL 24.207(j)], the test itself, which is developed by the agency, is not exempt from the definition of a rule and, therefore, must be promulgated as a rule in compliance with the Administrative Procedures Act.”). Thus, while defendant Benson undoubtedly has discretion under MCL 168.31 to issue guidance or to instruct local clerks regarding signature validity requirements, the implementation of her discretionary decision can still be subject to the APA’s requirements.

Furthermore, the caselaw relied on by defendants in arguing for a different conclusion is easily distinguishable, and, in some cases, even lends support for the Court’s conclusion. See e.g., *Detroit Base Coalition for Human Rights of Handicapped v Dep’t of Social Servs*, 431 Mich 172, 187-188; 428 NW2d 335 (1988); *Mich Trucking Ass’n v Mich Pub Serv Comm*, 225 Mich App 424, 430; 571 NW2d 734 (1997); *By Lo Oil Co v Dep’t of Treasury*, 267 Mich App 19, 47; 703 NW2d 822 (2005). In the cases cited above, the pertinent agency’s enabling statute expressly or impliedly authorized the specific action later taken by the administrative agency; additionally, and significantly, those statutes also permitted the specific action to be achieved either through rulemaking *or* other means. See *Detroit Base Coalition*, 428 Mich at 187-188 (“The situations in which courts have recognized decisions of [an agency] as being within the [MCL 24.207(j)] exception are those in which explicit or implicit authorization for the actions in question has been found.”). Here, MCL 168.31(1) provides generalized authority to defendant, and it lacks

specificity with respect to the action taken (implementation of a mandatory presumption of signature validity), making the statute distinguishable from the statutes at issue in cases such as *Detroit Base Coalition*, *Mich Trucking Ass’n*, and *By Lo Oil Co.*⁷

Defendants raise concerns that this Court’s interpretation of MCL 168.31(1)(a) would leave the term “instructions” without any practical effect. According to defendants, this Court’s view would raise questions regarding whether defendant Benson could do anything when advising and directing local election officials as to the proper methods of conducting elections. The Court disagrees with the premise of defendants’ position because, regardless of what is permissible under MCL 168.31, it is apparent that that which occurred here is not permissible, absent compliance with the APA. Here, defendant issued a mandatory directive and required local election officials to apply a presumption of validity to all signatures on absent voter ballot applications and on absent voter ballots. The presumption is found nowhere in statute. The mandatory presumption goes beyond the realm of mere advice and direction, and instead is a substantive directive that adds to the pertinent signature-matching statutes. And for similar reasons, defendants’ arguments about efficiency and the need for quick action do not change the Court’s decision. That is, nothing about the Court’s opinion should be read as limiting the Secretary of State’s ability to take quick action when she so desires. However, when that action takes the form of a rule, then the APA and MCL 168.31 require that the APA be invoked. In other words, the statute gives the Secretary of State

⁷ Remarkably, defendants continue to place reliance on the conclusions of the majority in *Pyke v Dep’t of Social Servs*, 182 Mich App 619; 453 NW2d 274 (1990). But as noted in prior opinions, Judge Shepard’s dissent in *Pyke* was later adopted by the *Palozolo* Court, and as that Court noted, its decision was binding under what is now MCR 7.215(J)(1). *Palozolo v Dep’t of Social Servs*, 189 Mich App 530, 533-534 & n 1; 473 NW2d 765 (1991). The *Pyke* Court’s view on MCL 24.207(j) is irrelevant.

the authority and the ability to meet the needs of a situation. But when the action taken constitutes a “rule” under MCL 24.207, the appropriate procedures must be followed.

Defendants’ citation to the rule-making exceptions contained in MCL 24.207(g) and (h)—which are the primary exemptions cited in their reply briefing—are no more convincing. Turning first to MCL 24.207(g), this subsection is an exception to the APA’s rule-making requirements for an “intergovernmental, interagency, or intra-agency memorandum, directive, or communication that does not affect the rights of, or procedures and practices available to, the public.” This exception is inapplicable, however, because the at-issue standard involves a mandatory presumption that directly affects local election officials’ duties with respect to the determination of whether a voter’s signature on either an absent voter ballot or a returned ballot will be deemed to be valid. Cf. *Kent Co Aeronautics Bd v Dep’t of State Police*, 239 Mich App 563; 609 NW2d 593 (2000) (finding that a directive fit within the exception where it did not create any obligations or require compliance).

Nor is defendants’ citation to the exception contained in MCL 24.207(h) convincing. That exception applies to a “form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.” MCL 24.207(h). This exception “must be narrowly construed and requires that the interpretive statement at issue be merely explanatory.” *Clonlara, Inc v State Bd of Ed*, 442 Mich 230, 248; 501 NW2d 88 (1993) (citation and quotation marks omitted). If the purported “interpretive” statement changes the requirements of the law it is alleged to have interpreted, the exception does not apply. *Id.* See also *Schinzel v Dep’t of Corrections*, 124 Mich App 217, 221; 333 NW2d 519 (1983). Here, because nothing in this state’s election law refers to a presumption of validity, let alone a mandatory presumption, the standards at issue cannot be

deemed to be merely explanatory. See *Clonlara*, 442 Mich at 248, 251. That is, rather than merely explaining existing obligations under the law, the standards have imposed new obligations that do not appear within the plain language of this state’s signature-matching statutes.

In sum, the standards issued by defendant Benson on October 6, 2020, with respect to signature-matching requirements amounted to a “rule” that should have been promulgated in accordance with the APA. And absent compliance with the APA, the “rule” is invalid. Whether defendant Benson had authority to implement that which she did not need not be decided at this time because it is apparent the APA applied to the type of action taken in this case. Accordingly, plaintiffs are entitled to summary disposition on Count II of the complaint, and the Court will dismiss Count I without prejudice as a result.

C. PLAINTIFFS’ AUDIT CLAIMS ARE WITHOUT MERIT

Finally, the Court examines Count IV of the complaint, which concerns plaintiffs’ request for an audit. Const 1963, art 2, § 4(1)(h), provides that a qualified Michigan voter has the right to have “*the results* of statewide elections audited” in a manner prescribed by law. (Emphasis added). MCL 168.31a, amended after adoption of the aforementioned audit language, provides as follows:

(1) In order to ensure compliance with the provisions of this act, after each election the secretary of state may audit election precincts.

(2) *The secretary of state shall prescribe the procedures for election audits that include reviewing the documents, ballots, and procedures used during an election as required in section 4 of article II of the state constitution of 1963. The secretary of state and county clerks shall conduct election audits, including statewide election audits, as set forth in the prescribed procedures.* The secretary of state shall train and certify county clerks and their staffs for the purpose of conducting election audits of precincts randomly selected by the secretary of state in their counties. *An election audit must include an audit of the results of at least 1 race in each precinct selected for an audit. A statewide election audit must include an audit of the results*

of at least 1 statewide race or statewide ballot question in a precinct selected for an audit. An audit conducted under this section is not a recount and does not change any certified election results. The secretary of state shall supervise each county clerk in the performance of election audits conducted under this section.

(3) Each county clerk who conducts an election audit under this section shall provide the results of the election audit to the secretary of state within 20 days after the election audit. [Emphasis added.]

Plaintiffs acknowledge that an audit of the November 2020 general election results was conducted. They argue that they have the right to request an audit with respect to the subject of their choosing—signatures on absent voter ballot applications and on absent voter ballots—and in the manner of their choosing. For at least two reasons this claim is not supported by art 2, § 4 or the implementing statute, MCL 168.31a. First, the constitution speaks of an audit of election *results*, not signature-matching procedures. Second, while the statute allows for an audit that includes “reviewing the documents, ballots, and procedures” used in the election, the statute plainly leaves it to the Secretary of State to “prescribe the procedures for election audits” and mandates that the Secretary of State shall conduct audits “as set forth in the prescribed procedures.” In other words, there is no support in the statute for plaintiffs to demand that an audit cover the subject of their choosing or to dictate the manner in which an audit is conducted. MCL 168.31a(2) leaves that to the Secretary of State. As a result, plaintiffs have failed to state a claim on which relief can be granted as it concerns Count IV, and this count will be dismissed with prejudice pursuant to MCR 2.116(C)(8).

IV. CONCLUSION

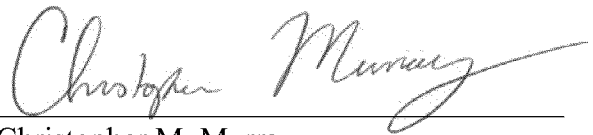
IT IS HEREBY ORDERED that pursuant to MCR 2.116(C)(10), plaintiffs’ cross-motion for summary disposition is GRANTED in part with respect to Count II of the amended complaint because the guidance issued by the Secretary of State on October 6, 2020, with respect to signature-matching standards was issued in violation of the Administrative Procedures Act.

IT IS FURTHER ORDERED that pursuant to MCR 2.116(C)(8) defendants' motion for summary disposition is GRANTED in part on Counts III and IV of the amended complaint.

IT IS FURTHER ORDERED that Count I of the amended complaint is dismissed without prejudice, for the reason that the at-issue standards are invalid under the Administrative Procedures Act.

This is a final order that resolves the last pending claim and closes the case.

Date: March 9, 2021

A handwritten signature in cursive script, reading "Christopher Murray", written in dark ink. The signature is fluid and extends to the right with a long, sweeping tail.

Christopher M. Murray
Judge, Court of Claims

ATTACHMENT 3



OFFICE OF THE
MUSKEGON COUNTY PROSECUTOR

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August 3, 2023

Contact: DJ Hilson
hilsonda@muskegoncounty.net

FOR IMMEDIATE RELEASE

**LAMBERT-JUNTILLA CHARGED IN ELECTION TABULATOR
INVESTIGATION**

Lambert joins Mathew DePerno and Daire Rendon in facing citizen grand jury authorized charges

Special Prosecutor D.J. Hilson, Muskegon County Prosecutor, and his team announced today that a third individual has been charged in the ongoing Election Tabulator Case. Charges were authorized by a citizens grand jury against Stephanie Lambert-Juntilla. This follows the charges that were filed on Tuesday Aug 1, 2023 against Matthew DePerno and Daire Rendon.

"As special prosecutor for the Attorney General, our review of the police investigation has led to charges related to the unauthorized possession and access to voting tabulators," Hilson said. "These charges were authorized by an independent citizens grand jury." Hilson added. "Protecting the election process is of the utmost importance for our state and country." "This investigation and prosecution is an important step in that direction."

The Lambert-Juntilla charges are:

COUNT I – Undue Possession of a Voting Machine, MCL 168.932(b) 5 Years and/or \$1,000.00

COUNT II – Conspiracy to Commit Undue Possession of a Voting Machine, MCL 168.932(b) 5 Years and/or \$1,000.00

COUNT III – Conspiracy to Commit Unauthorized Access to a Computer or Computer System, MCL 752.797(2)(a) 5 Years and/or \$10,000.00
COUNT IV - Willfully Damaging a Voting Machine, MCL 168.932(b). 5 Years and/or \$1,000.00

Ms. Lambert was arraigned in an Oakland County Circuit Court this afternoon and has been released on a personal recognizance bond.

"This citizen's grand jury carefully listened to the sworn testimony and analyzed the evidence as required by law and returned a decision to indict each of the defendants, Hilson stated. "We thank the grand jury for their careful deliberation and for fulfilling their sworn commitment to make a decision that was not influenced by politics, bias or prejudice."

This ends the charging decisions in this investigation. The decision not to issue charges on the other identified suspects, including Barry County Sheriff Dar Leaf and Jason Rybak, was based on careful consideration of the totality of the evidence gathered by investigators, review of the witness statements, evaluation of the law related to viable defenses, and decisions on what is fair and just.

It was determined that the county and municipal clerks that turned over the tabulators to the unauthorized third parties were deceived by some of the charged defendants. The clerks had no idea of the scope, nature or duration of how their tabulators were going to be manipulated or that they would be out of their possession for an extended period of time.

The computer experts that were asked to analyze the tabulators were also deceived by some of the charged Defendants and made to falsely believe on multiple occasions that their possession and tampering of the tabulators was lawful.

As it relates to Sheriff Dar Leaf and Jason Rybak there is not sufficient evidence to prove a crime and therefore charges will not be filed.

Pursuant to MRPC 3.6 the public is notified that a "charge is merely an accusation, and that the defendant(s) are each presumed innocent until and unless proven guilty.

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