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**IN THE SUPREME COURT OF PENNSYLVANIA**

COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

No. 3 MAP 2022

**THE SECRETARY'S RESPONSE IN OPPOSITION TO  
COUNTY OF FULTON'S EMERGENCY APPLICATIONS**

Respondent/Appellant, the Secretary of the Commonwealth (the “Secretary”), files this response to Fulton County’s<sup>1</sup> Emergency Application for a Stay upon Special Master’s Denial of Same and Fulton County’s Emergency Application for Reconsideration Regarding Order on Fulton County’s Emergency Application for a Stay upon Special Master’s Denial of Same. As the Court observed in its April 19, 2023 opinion holding Fulton County in contempt of court, sanctioning Fulton County and its attorneys, and directing the impoundment of Fulton County’s voting equipment from the November 2020 election to prevent further spoliation of evidence, the County and its attorneys have “repeatedly confounded the Special Master’s efforts to conduct these [Special Master contempt and sanctions] proceedings in an orderly and efficient manner with serial interruptions, delays, and even what can only be described as defiance.” *County of Fulton v. Secretary of Commonwealth*, 292 A.3d 974, 994 (Pa. 2023) (the “April 19 Opinion”). That behavior has not changed.

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<sup>1</sup> “Fulton County” as used herein refers to the County of Fulton, the Fulton County Board of Elections, Stuart L. Ulsh, in his official capacity as County Commissioner of Fulton County and in his capacity as a resident, taxpayer and elector in Fulton County, and Randy H. Bunch, in his official capacity as County Commissioner of Fulton County and in his capacity as a resident, taxpayer and elector of Fulton County.

## I. BACKGROUND

### A. The Original Action and Interlocutory Appeal to This Court

The Court is well aware of the history of this case. As summarized in the April 19 Opinion:

The underlying litigation began well over a year ago, prompted by the Secretary of the Commonwealth's decertification of certain voting equipment that Fulton County acquired from Dominion Voting Systems, Inc. ("Dominion") in 2019 and used in the 2020 general election. The Secretary decertified the voting equipment after learning that, following the 2020 election, Fulton County had allowed Wake Technology Services, Inc. ("Wake TSI"), to perform a probing inspection of that equipment as well as the software and data contained therein. The Secretary maintained that Wake TSI's inspection had compromised the integrity of the equipment. Fulton County and the other named Petitioner-Appellees filed a Petition for Review in the Commonwealth Court's original jurisdiction challenging the Secretary's decertification authority generally and as applied in this case.

During the pleading stage, the Secretary learned that Fulton County intended to allow another entity, Envoy Sage, LLC, to inspect the allegedly compromised equipment. The Secretary sought a protective order from the Commonwealth Court barring that inspection and any other third-party inspection during the litigation. The court denied relief. The Secretary appealed that ruling to this Court, and we entered a temporary order on January 27, 2022, to prevent the inspection and to preserve the status quo during our review of the Secretary's appeal. Months later—and with no public consideration, official proceedings, or notice to the courts or other parties to this litigation—the County allowed still another party, Speckin Forensics, LLC ("Speckin"), to inspect the voting equipment and electronic evidence at issue in this litigation. Upon learning of this alleged violation of our temporary order, the Secretary filed an "Application for an Order Holding [the County] in Contempt and Imposing Sanctions" ("Sanctions Application").

*Id.* at 978-79.

In response, the Court:

entered an order appointing Commonwealth Court President Judge Cohn Jubelirer as Special Master to conduct the evidentiary proceedings necessary to develop a record sufficient to address the Secretary's allegations and the relief the Secretary sought. [The Court] directed the Master to provide a report proposing findings of fact and conclusions of law on or before November 18, 2022. In that October 21, 2022 Order, this Court directed the Special Master (1) to determine whether the Secretary's application sounded in civil or criminal contempt; (2) to "afford the parties such process as is due in connection with that determination"; and (3) to make separate determinations as to each form of relief the Secretary seeks, including the imposition of sanctions, the award of counsel fees, and dismissal of Fulton County's underlying and ongoing challenge to the Secretary's authority to decertify Fulton County's voting machines.

*Id.* at 992.

**B. Fulton County and Its Counsel Repeatedly Delay and Obstruct the Proceedings Before the Special Master**

**1. Fulton County's and Its Attorneys' Conduct Prior to the Special Master Contempt Proceedings**

In the April 19 Opinion, the Court emphasized that in the lead-up to the Special Master contempt proceedings, "the County repeatedly confounded the Special Master's efforts to conduct these proceedings in an orderly and efficient manner with serial interruptions delays, and even what can only be described as defiance." *Id.* at 994. For example, Fulton County made numerous applications to enjoin discovery prior to the contempt proceedings, which "scuppered the Special Master's carefully crafted schedule." *Id.* at 995. After those applications were



denied, Fulton County nonetheless “declined its renewed opportunity to engage in good-faith discovery.” *Id.* Fulton County also offered various last-minute reasons why one or all of the County Commissioners would be unable to attend the Special Master contempt proceedings and refused to produce the County Commissioners for timely noticed pre-hearing depositions. *See id.* at 997-98.

## **2. Fulton County’s and Its Attorneys’ Conduct During the Special Master Contempt Proceedings**

Fulton County and its attorneys did not change their behavior during the Special Master contempt proceedings. The Court identified numerous examples of “Attorney Carroll’s transparent efforts to delay the [Special Master] hearing itself.” *Id.* at 1015. “Attorney Carroll frequently derailed and delayed the proceedings through a combination of dubious objections, lines of questioning on irrelevant subjects, and legal digressions and conspiratorial hypotheses with little discernible bearing upon the matter at hand.” *Id.* at 1016. Further, “[t]here are credible assertions that Attorney Carroll was taking dictation from Attorney Lambert [(whose application to appear *pro hac vice* the Court denied)] for substantial periods of the hearing.” *Id.* at 1017. “And this appears to have been an *ad hoc* workaround to avoid the intended limiting effect of the Special Master’s denial of *pro hac vice* admission to Attorney Lambert because Attorney Carroll filed motions to admit her that manifestly failed to conform to the applicable rules—*twice.*” *Id.* Additionally, the Court criticized the conduct of at least some of the

Fulton County parties during the contempt proceedings, identifying, for example, “Commissioners Ulsh and Bunch’s dubious invocations of the Fifth Amendment in response even to questions the answers to which either were subject to judicial notice or could not plausibly implicate them in criminal behavior.” *Id.*

### **3. Fulton County’s and Its Attorneys’ Conduct During the Underlying Appeal**

In addition to criticizing Fulton County’s and its attorneys’ conduct before and during the Special Master contempt proceedings, the Court also noted that it “could find further sanctionable conduct under Pa.R.A.P. 4019 in Attorney Carroll’s management of the underlying appeal. There, too, an unmistakable pattern emerged. He repeatedly failed to acknowledge this Court’s rules, orders, and directions in matters both procedural and substantive.” *Id.* First, Attorney Carroll “never filed a supplemental brief on the jurisdictional question that we deemed important enough to seek argument on *sua sponte*—even after this Court, *at his request*, forgave his first two failures to do so by granting him another extension to the date he requested.” Second, “[w]orse still, in invoking his then-recent formal entry of appearance in this Court as an excuse for his various failures to satisfy his obligations before this Court, he led this Court to believe that he had not had time to come up to speed on the case.” *Id.* “In omitting to mention in late July that he had been special counsel for the County since mid-April and had actively engaged in the underlying litigation one month earlier, he brazenly misled

this Court about his ability to have adhered to this Court’s orders.” *Id.* at 1017-18.

**C. The Court’s Contempt Order**

Both the Special Master and this Court agreed that Fulton County and its attorneys should be held in contempt of court and sanctioned for their conduct. As the Court made clear:

The County’s persistent efforts to surrender its machines to third parties of dubious qualifications for audits of unclear scope and intent impair resolution of the very legal question the County sought to litigate in the first place—potentially adversely to the Secretary’s ability to mount a defense against the County’s allegations.

Furthermore, the extensive ancillary litigation these actions forced the Secretary to undertake—beginning with the initial efforts to protect the machines against such incursions and continuing through these sanction proceedings—were necessitated only by such efforts.

No remedy can undo the harm that the County’s contempt caused its counterparties, nor can any sanction un-compromise the ongoing litigation of the County’s Petition for Review. The sanctions we impose, informed by the thorough, thoughtful, and persuasive analysis of the Special Master, simply are the next best thing. They will make the parties and their attorneys whole for what proved to be time wasted on securing a protective order that the County ultimately flouted in categorical derogation of the order’s animating goal. And we can hope that the sanctions will underscore for the County, Attorney Carroll, and other observers that they trifle with judicial orders and time-honored rules and norms in litigation at their peril.

*Id.* at 1020.

Thus, the Court held that “[r]egarding impoundment”:

We direct the parties to confer and agree on a neutral third-party escrow agent to take and retain possession of the voting equipment until further order of court, and we direct the Special Master to see that this task is completed—and to appoint a neutral agent if the parties cannot agree on one. The County is responsible for all costs

associated with the impoundment. Any effort to seek access to, or release of, the voting equipment must be directed to the Commonwealth Court, specifically whoever is then presiding over the County's underlying Petition for Review against the Secretary.

*Id.*

Fulton County filed a Petition for Writ of Certiorari in the United States Supreme Court, docketed as of May 27, 2023, requesting review of the April 19 Opinion (the "Petition," attached as Exhibit K). The Petition was docketed by the United States Supreme Court as No. 23-96.

**D. The Impoundment Proceedings Before the Special Master**

In accordance with the April 19 Opinion and the Special Master's subsequent orders, the Secretary attempted to negotiate in good faith with Fulton County regarding the selection of a qualified escrow agent. Unfortunately, those efforts were not reciprocated by Fulton County, and the parties were unable to reach agreement.

Accordingly, on July 28, 2023, the Secretary filed an application requesting that the Special Master appoint Pro V&V, a Voting System Test Laboratory accredited by the United States Election Assistance Commission, to take custody of Fulton County's voting equipment. Dominion joined in that request.

Also on July 28, 2023, Fulton County filed its own application to appoint an escrow agent. In its application, Fulton County "object[ed] to the process of placing the machines in escrow given that a petition for a writ of certiorari

objecting to that is pendig [sic], and specifically to the use of Pro V&V for the reasons stated above.” Fulton County’s Response to Dominion’s Application for Appointment of Third-Party Escrow Agent at 5, *County of Fulton v. Secretary of the Commonwealth*, No. 277 MD 2021 (Pa. Commw. Ct. July 28, 2023). Fulton County offered its own preferred escrow agent, Cerberus Dynamic Solutions, and “*request[ed] a hearing* to produce evidence to the Special Master to further demonstrate the reasons that Pro V & V should not be used, and why the vendor proposed by Fulton County should be used.” *Id.* (emphasis added).

In an Order dated August 3, 2023 (attached as Exhibit A), the Special Master reiterated the need to appoint a “neutral third-party escrow agent to take and retain possession of Fulton County’s decertified voting equipment as directed by the Supreme Court’s April 19, 2023 Opinion,” *see* Ex. A at 1, and thus set an August 28, 2023 evidentiary hearing (the “Escrow Agent Evidentiary Hearing”) on:

(A) the preferred agent’s experience and ability to ensure continuity in the chain of custody and the protection of the evidentiary value of Fulton County’s voting equipment for the duration of the agent’s custody over the equipment, and (B) the costs associated therewith.

*Id.* at 2.

**1. Fulton County’s First Attempt to Delay the Escrow Agent Evidentiary Hearing**

On August 18, 2023, ten days before the Escrow Agent Evidentiary Hearing that Fulton County had requested, Fulton County filed a Motion to Stay

Proceedings (the “Motion to Stay,” attached as Exhibit B) with the Special Master, arguing that “[t]he matter of custody of the machines is subject for review by the Supreme Court of the United States as a part of the relief requested in Fulton County’s Petition for Certiorari.” Ex. B at 1-2. The Secretary opposed the Motion to Stay and the Special Master denied the Motion on August 23, 2023.

## **2. Fulton County’s Second Attempt to Delay the Escrow Agent Evidentiary Hearing**

At 4:20 PM on Friday August 25, 2023, one business day before the Escrow Agent Evidentiary Hearing, counsel for the Secretary received an email from the litigation vendor Becker Gallagher (email attached as Exhibit C) attaching a document entitled “Emergency Application for Stay; Relief Requested Prior to August 28, 2023” (the “First SCOTUS Emergency Application for Stay,” attached as Exhibit D). The email stated “The original and 2 copies of the Emergency Application for Stay were sent via Next Day Service to the U.S. Supreme Court, and 3 copies Next Day and e-mail service to the following parties listed below, this 25th day of August, 2023.” Ex. C.

In the First SCOTUS Emergency Application for Stay, Fulton County made several objective misrepresentations. First, Fulton County falsely asserted that “*on August 23, 2023*, a Special Master was appointed to conduct an evidentiary hearing on August 28, 2023 to appoint a third-party escrow agent to take custody of certain voting machines.” Ex. C at 1 (emphasis added). Of course, this Court first

appointed the Special Master in an Order dated *October 21, 2022*, and directed the Special Master to ensure appointment of a third-party escrow agent on *April 19, 2023*.

Second, Fulton County incorrectly asserted that upon impoundment of Fulton County's voting equipment, "[t]he voting machines at issue will be switched on and necessary evidence of the asserted failures and other problems with the machines stored in memory will be erased." *Id.*; *see also id.* at 21-22 ("The data on the election equipment will be destroyed and deleted upon going into custody of a third party."). As made clear by the Special Master's August 3, 2023 Order setting the Escrow Agent Evidentiary Hearing, the purpose of appointment of an escrow agent is "the **protection** of the evidentiary value of Fulton County's voting equipment for the duration of the agent's custody over the equipment," Ex. A at 2 (emphasis added). Any assertion that the escrow agent is tasked with powering on the at issue election equipment or destroying evidence is false. *See also County of Fulton*, 292 A.3d at 1012 (describing purpose of impoundment as "ensur[ing] subsequent continuity in the chain of custody and the protection of such evidentiary value as the voting equipment may retain").

As of the date of this filing, the United States Supreme Court has not granted the First SCOTUS Emergency Application for Stay, nor has it directed the Secretary to respond to the Application. And, in fact, the Secretary is unable to

locate this First SCOTUS Emergency Application for Stay on the United States Supreme Court Docket, including Docket No. 23-96.

### **3. Fulton County’s Third Attempt to Delay the Escrow Agent Evidentiary Hearing**

On the morning of the Escrow Agent Evidentiary Hearing, Fulton County once again sought to delay the evidentiary hearing. At 8:01 AM, Fulton County filed an “Emergency Motion to Adjourn Proceedings” (the “Emergency Motion to Adjourn,” attached as Exhibit E) with the Special Master. In the Emergency Motion to Adjourn, Fulton County states:

1. On *August 26, 2023*, Counsel for Petitioners went to an urgent care facility, as he was experiencing severe right upper quadrant abdominal pain. The urgent care facility was not capable of providing treatment for his condition and the urgent care facility instructed Mr. Carroll immediately go to the Emergency Room.
2. On *August 26, 2023*, Mr. Carroll went directly to Paoli Hospital Emergency Room and was diagnosed with a broken rib and an infection.

Ex. E at ¶¶ 1-2 (emphasis added). The Emergency Motion to Adjourn sought an adjournment of the Escrow Agent Evidentiary Hearing until August 30, 2023, based on the assertion that Attorney Carroll could not be available for the Escrow Agent Evidentiary Hearing on August 28 as a result of his “significant pain” and prescription of “Opioid medication.” *Id.* at 2.

The Emergency Motion to Adjourn omitted two key facts. First, it did not mention that Fulton County is also represented by Pennsylvania co-counsel James



M. Stein, as well as out-of-state co-counsel Russell A. Newman. The Special Master granted Fulton County's Second Amended Motion to [Allow Attorney Newman to] Appear *Pro Hac Vice* on August 24, 2023, just a few days prior to Fulton County's Emergency Motion to Adjourn. The Emergency Motion to Adjourn also did not explain why Fulton County did not contact the other parties until it filed the Emergency Motion to Adjourn at 8:00 AM on the morning of the Escrow Agent Evidentiary Hearing, even though Attorney Carroll sought medical attention two days prior.

At 9:00 AM on August 28, 2023, when the Escrow Agent Evidentiary Hearing was scheduled to commence, the Special Master heard argument from Attorney Newman on behalf of Fulton County and counsel for the Secretary regarding the Emergency Motion to Adjourn. The Special Master denied the Motion from the bench but stated the Escrow Agent Evidentiary Hearing would not recommence until 1:00 PM, to give Fulton County time to make arrangements for Attorney Carroll to participate remotely (if he so chose), for Attorney Stein to attend the hearing (if he so chose), or for Fulton County to retain additional Pennsylvania counsel (if it so chose). Shortly thereafter, the Special Master issued a written order confirming as much (the "Order Denying Adjournment," attached

as Exhibit F). In the Order Denying Adjournment, the Special Master observed that in this Court's April 19 Opinion:

[T]he Supreme Court addressed a similar situation where Attorney Carroll filed a Motion to Adjourn Oral Argument two days before the September 14, 2022 argument scheduled before that Court, wherein Mr. Carroll "asserted emergent personal reasons that allegedly prevented him from 'preparing for oral argument ... and/or associating other counsel as a substitute this close to the time for the presentation of oral argument.'" In the accompanying footnote, the Supreme Court stated:

Attorney Carroll had not yet informed this Court that Attorney Lambert was his co-counsel, nor had he sought her admission pro hac vice below or in this Court. Although the rules governing pro hac vice representation direct that the sponsoring attorney must be in attendance at all court proceedings in connection with the representation, that **requirement is qualified by a carve-out** when sponsoring counsel is 'excused by court.' See Pa.R.Civ.P. 1012.1(d)(1).) This is not to say that we would have granted such a request. But, had Attorney Lambert been admitted pro hac vice, **it would have given Attorney Carroll a good-faith alternative to filing a disfavored, last-minute request for a continuance reflecting no contingency planning.**

Ex. F at 3, n.1 (quoting *County of Fulton*, 292 A.3d at 991 & n.69) (emphasis in original). The Special Master further explained, "[i]n the instant proceedings, the Special Master granted Attorney Newman admission pro hac vice four days prior to the scheduled hearing, which gives Attorney Carroll a good-faith alternative to

filing ‘a disfavored, last minute request for a continuance....’” *Id.* Thus, the

Special Master ordered that:

- Attorney Carrol “may attend and participate in the evidentiary hearing via WebEx Video Conferencing.” *Id.* at 1;
- “Attorney James M. Stein, who is presently counsel of record representing Fulton County, may attend the evidentiary hearing in person or remotely via WebEx.” *Id.* at 2;
- “The County may direct any attorney licensed to practice in the Commonwealth of Pennsylvania to enter an appearance in this matter and appear at the evidentiary hearing. Counsel unable to attend the evidentiary hearing in person may appear via WebEx.” *Id.*; and
- “The evidentiary hearing shall proceed at 1:00 p.m. as scheduled and, if no Pennsylvania counsel are able to attend on behalf of Fulton County, the Special Master will expect Attorney Russell M. Newman, who was admitted pro hac vice on August 24, 2023, to fully represent Fulton County during the hearing.” *Id.*

#### **4. Fulton County’s Fourth Attempt to Delay the Escrow Agent Evidentiary Hearing**

The Escrow Agent Evidentiary Hearing commenced in earnest at 1:00 PM on August 28, 2023, when counsel for the Secretary began examining the Secretary’s first witness. Approximately two-and-a-half hours into the proceedings, Attorney Newman informed the Special Master that Fulton County had filed a 26 page “Emergency Application for a Stay upon Special Master’s Denial of Same” (the “SCOPA Emergency Application for Stay,” attached as Exhibit G) for stay in the Supreme Court of Pennsylvania. As a result, Fulton County renewed its request for an adjournment of the Escrow Agent Evidentiary

Hearing, to allow the Supreme Court of Pennsylvania to rule on the new emergency application. After determining that the SCOPA Emergency Application for Stay had not yet been docketed or served on counsel, the Special Master continued to proceed with the Escrow Agent Evidentiary Hearing. Around 4:40 PM, the parties received correspondence from this Court directing any responses to the Application by 10:00 AM on August 31, 2023. The Special Master thus proceeded with the Escrow Agent Evidentiary Hearing.

**5. Fulton County’s Fifth Attempt to Delay the Escrow Agent Evidentiary Hearing**

At 6:46 PM on August 28, 2023, as the first day of the Escrow Agent Evidentiary Hearing was near concluding but with additional testimony scheduled to continue on August 30, 2023, counsel for the Secretary received an email from Fulton County’s United States Supreme Court counsel stating “[t]he attached was e-filed today in the [U.S.] Supreme Court” (email attached as Exhibit H). The email attached an “Amended Emergency Application for Stay; Relief Requested Prior to August 29, 2023” (the “Second SCOTUS Emergency Application for Stay,” attached as Exhibit I).

In the Second SCOTUS Emergency Application for Stay, Fulton County made the same misrepresentations as were made in the First SCOTUS Emergency Application for Stay, *see supra* at 10-11, as well as several other additional mischaracterizations and misrepresentations. First, in this pleading Fulton County

stated that this Court “ignored” Fulton County’s “immediate request for a stay of proceedings with the Pennsylvania Supreme Court merely issuing a letter ordering opposing counsel’s response to Emergency Application to Stay be filed *after* conclusion of the ongoing hearing that is the very request of the Emergency Application.” Ex. I at 2. Fulton County additionally stated, “[i]t is interpreted by Petitioner’s [sic] that the Pennsylvania Supreme Court is refusing to provide a final order that could timely be provided to the United States Supreme Court and is effectively a denial [sic] of Petitioner’s Emergency Application for Stay.” *Id.*

Second, Fulton County’s Second SCOTUS Emergency Application for Stay mischaracterized the Special Master’s Order Denying Adjournment, claiming that the Special Master “is holding the hearing requiring Mr. Carroll to represent his clients from his bedroom.” *Id.* Fulton County ignored that the Special Master gave Attorney Carrol the *option* to attend the Escrow Agent Evidentiary Hearing via WebEx, rather than *requiring* him to do so, and Fulton County ignored and omitted the numerous other accommodations the Special Master offered to Fulton County regarding attendance of Pennsylvania counsel other than Attorney Carroll. *See supra* at 14.

As of the date of this filing, the United States Supreme Court has not granted the Second SCOTUS Emergency Application for Stay, nor has it directed the Secretary to submit a response. And, as with the First SCOTUS Emergency

Application for Stay, the Secretary is unable to locate the Second SCOTUS Emergency Application for Stay on the United States Supreme Court Docket, including Docket No. 23-96.

**6. Fulton County’s Sixth Attempt to Delay the Escrow Agent Evidentiary Hearing**

On August 29, 2023, Fulton County filed in this Court an “Emergency Application for Reconsideration Regarding Order on Fulton County’s Emergency Application for a Stay upon Special Master’s Denial of Same” (the “SCOPA Emergency Application for Reconsideration,” attached as Exhibit J). The Emergency Application for Reconsideration appears to request that the Court expedite the schedule for ruling on Fulton County’s previously filed SCOPA Emergency Application for Stay. *See generally* Ex. J. In the SCOPA Emergency Application for Reconsideration, Fulton County purported to tell this Court when to act, requesting that the Court issue an order:

by 4:00 p.m. Eastern Standard Time, Tuesday, August 29, 2023, GRANTING or DENYING reconsideration of the Court’s decision to allow Respondents until Thursday, August 31, 2023 to respond to Fulton County’s August 28, 2023 Emergency Application for an Immediate Stay of the Special Master’s proceedings being held on August 28, 30, and 31, 2023.

Ex. J at 3 (prayer for relief). At approximately 3:56 PM on August 29, 2023, the Court directed the parties to file any responses to Fulton County’s SCOPA Emergency Application for Reconsideration by 10:00 AM on Thursday August 31.

## II. LEGAL ARGUMENT

As was the case in the earlier proceedings that resulted in this Court’s April 19 Opinion, Fulton County and its attorneys have “repeatedly confounded the Special Master’s efforts to conduct these proceedings in an orderly and efficient manner with serial interruptions, delays, and even what can only be described as defiance.” *County of Fulton*, 292 A.3d at 994. Among Fulton County’s myriad attempts to delay the Escrow Agent Evidentiary Hearing that ***Fulton County requested***, before the Court now are Fulton County’s SCOPA Emergency Application for Stay and SCOPA Emergency Application for Reconsideration (collectively, the “SCOPA Emergency Applications”). At bottom, Fulton County requests a stay of the Escrow Agent Evidentiary Hearing pending resolution of the Writ of Certiorari pending before the U.S. Supreme Court.

“[N]either the filing nor the granting of a petition for certiorari operates as a stay, either with respect to the execution of the judgment below or the issuance of the mandate below to a lower court.” *McCurry v. Allen*, 688 F.2d 581, 587 (8th Cir. 1982) (internal quotation marks and alteration omitted); *accord* 23 Moore’s Federal Practice – Civil § 523.04 (“The filing of a petition for certiorari does not

stay or suspend the judgment of the court below.”). Fulton County fails even to acknowledge the standard governing applications for a stay pending appeal, let alone attempt to carry the heavy burden that standard imposes. To prevail on an application for stay pending appeal, “the movant is required to make a substantial case on the merits and to show that without the stay, irreparable injury will be suffered.” *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 573 A.2d 1001, 1003 (Pa. 1990) (Memo. Op.). “Additionally, before granting a request for a stay, the court must be satisfied the issuance of the stay will not substantially harm other interested parties in the proceedings and will not adversely affect the public interest.” Fulton County cannot satisfy any of the prerequisites to entitlement to a stay.

**A. Fulton County Cannot Establish It Will Suffer Any Harm from Impoundment Absent a Stay, Let Alone Irreparable Harm**

As a threshold matter, Fulton County’s cursory assertion of irreparable harm is premised on a misstatement of fact. Fulton County states it seeks a stay “to prevent irreparable harm that will result from Fulton County tax funds being utilized to hold a hearing to place the election equipment (mothballed) and owned by Fulton County in the custody of a third party escrow agent where it will be ‘powered on’ and data will be deleted.” Ex. G at 3. As described above, nothing like the above is contemplated or permitted by the Court’s April 19 Opinion



directing appointment of an escrow agent and the impoundment of the Fulton County voting equipment.

The purpose of the impoundment that this Court ordered is to ensure the *preservation* of evidence, not its deletion. *See County of Fulton*, 292 A.3d at 1012 (describing purpose of impoundment as “ensur[ing] subsequent continuity in the chain of custody and the protection of such evidentiary value as the voting equipment may retain”). Likewise, in the Order scheduling the Escrow Agent Evidentiary Hearing, the Special Master stated she intends to select an escrow agent “to ensure continuity in the chain of custody and the protection of the evidentiary value of Fulton County’s voting equipment for the duration of the agent’s custody over the equipment.” Ex. A at 2. Moreover, as shown by the rough transcript of the Escrow Agent Evidentiary Hearing (attached as Exhibit L), during the hearing—before Fulton County filed the SCOPA Emergency Applications—the Secretary’s already-qualified expert in election technology and security, Ryan Macias, testified that based on his technological understanding of this Court’s April 19 Opinion, it is *not* necessary “for the voting equipment at issue to ever be[] powered on during or in connection with the period of its Court Ordered [im]poundment.” Ex. L at 44:8-13.

In any event, the mere *holding of a hearing* cannot constitute irreparable harm. Yet it is that—and not any ensuing order regarding transfer of the equipment

to particular escrow agent—that Fulton County seeks to stay.<sup>2</sup> Fulton County cannot demonstrate irreparable harm.

**B. Fulton County Is Unlikely to Succeed on the Merits of Its Petition for Writ of Certiorari**

Fulton County is seeking a stay “pending a decision on [Fulton County’s] petition for a writ of certiorari before the United States Supreme Court in case No. 23-96.” Ex. G at 25. The Supreme Court is exceedingly unlikely to grant Fulton County’s Petition for Writ of Certiorari, let alone to rule in Fulton County’s favor on the merits.

First, the United States Supreme Court is unlikely to grant certiorari in this case because it does not appear that the Court has jurisdiction over Fulton County’s Petition. Fulton County is seeking review of this Court’s April 19 Opinion awarding sanctions and holding Fulton County in contempt. The Petition exclusively asserts that the federal issue for review by the United States Supreme Court arises from the Elections Clause of the United States Constitution, Article I, Section 4. *See* Ex. K (questions presented). According to Fulton County, under the Elections Clause, the Pennsylvania General Assembly has delegated exclusive

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<sup>2</sup> Moreover, at this point Fulton County’s request to stay the Escrow Agent Evidentiary Hearing is largely moot. The Special Master has already presided over the Escrow Agent Evidentiary Hearing for two days, on Monday August 28, 2023 and Wednesday August 30, 2023. The parties are expected to conclude the presentation of evidence today, Thursday, August 31, 2023.

authority to the county boards of elections to manage election procedures. *See id.* As a result, Fulton County argues this Court was prohibited from holding Fulton County in contempt for violating this Court's orders prohibiting third party inspections of the Fulton County election equipment. *See id.*; *see also id.* at 24-39.

Although Fulton County may have made sporadic, oblique references to the Elections Clause in filings submitted to the Special Master, neither the Special Master's Proposed Findings of Fact and Conclusions of Law nor this Court's April 19 Opinion addressed any federal issue in holding Fulton County in contempt and awarding sanctions against Fulton County and its attorneys. The United States Supreme Court "has frequently stated that when 'the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.'" *Webb v. Webb*, 451 U.S. 493, 495 (1981). Thus, because this Court "failed to rule on a federal issue," the United States Supreme Court is likely "without jurisdiction in this case." *Id.* at 501-02.

In any event, this Court's April 19 Opinion makes clear that Fulton County is incorrect to assert that county boards of elections have exclusive authority to manage elections pursuant to the Pennsylvania Election Code. The Court concluded that:

In characterizing its authority as "exclusive," [Fulton] County writes 25 P.S. § 2621 out of the Election Code. That section describes the

Secretary's duty "to examine and reexamine voting machines, and to approve or disapprove them for use in this state, in accordance with the provisions of this act." 25 P.S. § 2621(b). **Notably, the architects of the Election Code believed that the powers and duties of both the Secretary and the county boards of elections merited their own entire articles of the Code. So to cite only the Code's provisions concerning county election boards is to disregard a suite of provisions pertaining to the Secretary—provisions which the County itself has discussed at length in the underlying litigation. In any event, no provision of the Election Code suggests that a county may unilaterally disregard a court order.** Where a party believes an order conflicts with a statute, it may seek relief on that basis. But it may not decide for itself which of the competing mandates prevails.

*County of Fulton*, 292 A.3d at 1002, n.109 (emphasis added). Further, to the extent that Fulton County is asserting in the Petition that the General Assembly's delegation of certain authority to county boards under the Elections Clause of the United States Constitution divests state courts of their power to hold parties in contempt for violating court orders or to prevent the spoliation of evidence, such an argument is plainly wrong. *See Moore v. Harper*, 143 S. Ct. 2065, 2088 (2023) ("[T]he Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law[.]"); *see also In re Terry*, 128 U.S. 289, 303 (1888) ("The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity; implied, because it is necessary to the exercise of all other powers.' Without such power, it was observed in *Easton v. State*, 39 Ala. 552, the

administration of the law would be in continual danger of being thwarted by the lawless.”).

**C. A Stay Will Substantially Harm the Public Interest**

Impounding Fulton County’s election equipment as quickly as possible is crucial to the public interest. As the April 19 Opinion recognized, in addition to the evidentiary value of the election equipment, “[t]he United States Department of Homeland Security broadly has identified electronic voting systems as ‘critical infrastructure.’” *Cnty. of Fulton*, 292 A.3d at 979 n.4. The term “critical infrastructure” means “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 U.S.C. § 5195c(e).

The longer the Fulton County election equipment is in Fulton County’s possession, the longer this critical infrastructure is at risk. By way of example only, counsel for Fulton County, Stefanie Lambert—identified in the April 19 Opinion as perhaps “every bit as culpable as Attorney Carroll” for Fulton County’s “pattern of non-compliance,” *County of Fulton*, 292 A.3d at 1018—was recently indicted in Michigan for unlawfully accessing and tampering with voting machines. *See* Joey Cappelletti, [Trump allies who ‘orchestrated’ plan to tamper with voting machines](#)

face charges in Michigan, AP News (Aug. 3, 2023), <https://apnews.com/article/stefanie-lambert-trump-michigan-election-fraud-bf9608af4b0972d41b5f4d303f5f6a29>. It has also been reported that Ms. Lambert is an unindicted co-conspirator in a highly publicized Fulton County, Georgia indictment concerning election fraud and the improper accessing of election equipment and data. *See* Chris Joyner, Who are the 30 unindicted co-conspirators in Trump Fulton County case?, The Atlanta Journal-Constitution (Aug. 21, 2023), <https://www.ajc.com/news/who-are-the-30-unindicted-co-conspirators-in-trump-fulton-county-case/P4UZSMM3QFFVLLSNOEON6JKQPM/>.

Although Attorney Lambert has not applied or been admitted *pro hac vice* to participate in the Escrow Agent Evidentiary Hearing, as it was reported regarding the Escrow Agent Evidentiary Hearing held on August 28, 2023, “[a]t one point, [Attorney] Carroll could be heard over his remote connection saying something like, ‘Can you hear this, Stefanie?’ but upon questioning from the judge, said he was telling someone else with him, ‘Can you hear what they’re saying about Stefanie?’” Matthew Santoni, Pa. County Loses Bid To Delay Voting Machine Custody Case, Law360 (Aug. 28, 2023), <https://www.law360.com/legalethics/articles/1715837/pa-county-loses-bid-to-delay-voting-machine-custody-case>

(attached as Exhibit M). The rough transcript of the evidentiary hearing reflects the same exchange.

ATTORNEY CARROLL: Can you hear me Stephanie.

...

PRESIDENT JUDGE JUBELIRER: While we have a moment I didn't want to interrupt earlier, but Attorney Carroll we heard earlier you call someone there Stephanie and I wonder if you could give us the identity of that person? Attorney Carroll? Can you hear me, Attorney Carroll.

...

ATTORNEY CARROLL: I'm sorry I'm having difficulties here. Yes, I was not talking to Stephanie she is not here, I was dealing with the fact that I am dealing with a lot of stress here in terms of time and if we could navigate this system remotely while I'm dealing with the issues of what this narcotic has done to me and I've said out loud and my mother's is here I believe can you here what they are saying about Stephanie that is what I said out loud.

Ex. L at 140:3-4; *id.* at 143:18-144:17

The evidence indicating Attorney Lambert's continued surreptitious involvement in this litigation, her recent indictment, and Fulton County's many

recent attempts to delay the Escrow Agent Evidentiary Hearing underscore the need for prompt impoundment of the Fulton County election equipment, to protect the public’s important interest in maintaining its critical infrastructure.

### III. CONCLUSION

In the April 19 Opinion—in addition to sanctioning Fulton County and its attorneys, holding Fulton County in contempt, and directing the Fulton County election equipment to be impounded and held by a neutral third-party escrow agent—this Court expressed its “hope that the sanctions will underscore for the County, Attorney Carroll, and other observers that they trifle with judicial orders and time-honored rules and norms in litigation at their peril.” *County of Fulton*, A.3d at 1020. Unfortunately, given Fulton County’s recent conduct detailed above, it appears that the Court’s exhortations fell on deaf ears. Fulton County’s pending SCOPA Emergency Applications are without merit and should be denied.

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Dated: August 31, 2023

By: /s/ John B. Hill  
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John B. Hill (I.D. No. 328340)  
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STATE

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(215) 982-2280

*Counsel for Respondent/Appellant*

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: August 31, 2023

*/s/ John B. Hill*  
John B. Hill

**IN THE SUPREME COURT OF PENNSYLVANIA**

---

COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

---

No. 3 MAP 2022

**[PROPOSED] ORDER**

And now, on this \_\_\_ day of \_\_\_\_\_, 2023, upon consideration of Fulton County’s Emergency Application for a Stay upon Special Master’s Denial of Same, Fulton County’s Emergency Application for Reconsideration Regarding Order on Fulton County’s Emergency Application for a Stay upon Special Master’s Denial of Same, and the Secretary of the Commonwealth’s response thereto, it is hereby ORDERED that:

1. Fulton County’s Emergency Application for a Stay upon Special Master’s Denial of Same is **DENIED**; and
2. Fulton County’s Emergency Application for Reconsideration Regarding Order on Fulton County’s Emergency Application for a Stay upon Special Master’s Denial of Same is **DENIED AS MOOT**.

BY THE COURT:

\_\_\_\_\_

# EXHIBIT A

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Fulton, Fulton County Board	:	
of Elections, Stuart L. Ulsh, in his	:	
official capacity as County	:	
Commissioner of Fulton County and	:	No. 277 M.D. 2021
in his capacity as a resident, taxpayer	:	No. 3 MAP 2022
and elector in Fulton County, and Randy	:	
H. Bunch, in his official capacity as	:	
County Commissioner of Fulton County	:	
and in his capacity as a resident,	:	
taxpayer and elector of Fulton County,	:	
Petitioners/Appellees	:	
	:	
v.	:	
	:	
Secretary of the Commonwealth,	:	
Respondent/Appellant:	:	

**ORDER**

NOW, August 3, 2023, upon consideration of Respondent/Appellant’s (Secretary) Application to Appoint Escrow Agent, Intervenor Dominion Voting Systems, Inc.’s Application to Appoint Third-Party Escrow Agent, and Petitioners/Appellees’ (collectively, Fulton County) Response thereto, wherein the parties indicate that they are unable to agree on a neutral third-party escrow agent to take and retain possession of Fulton County’s voting equipment as directed by the Supreme Court’s April 19, 2023 Opinion,<sup>1</sup> the Special Master hereby ORDERS as follows:

---

<sup>1</sup> “Regarding impoundment, we direct the parties to confer and agree on a neutral third-party escrow agent to take and retain possession of the voting equipment until further order of court, and we direct the Special Master to see that this task is completed—and to appoint a neutral agent if the parties cannot agree on one.” *County of Fulton v. Secretary of the Commonwealth*, 292 A.3d 974, 1020 (Pa. 2023).

1. An evidentiary hearing for purposes of the Special Master's appointment of a neutral third-party escrow agent is set for **Monday, August 28, 2023**, at 10:00 a.m., in Courtroom Number 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.<sup>2</sup> The parties shall appear at the hearing and be prepared to present evidence on their preferred escrow agent of choice, which shall include, but not be limited to, evidence on: (A) the preferred agent's experience and ability to ensure continuity in the chain of custody and the protection of the evidentiary value of Fulton County's voting equipment for the duration of the agent's custody over the equipment, and (B) the costs associated therewith. At the conclusion of the parties' evidentiary presentations, the Special Master will hear oral argument on any outstanding issues of law.
2. No later than **Monday, August 14, 2023**, the parties shall file and serve a list of all witnesses to be called at the hearing with a short offer of proof for each witness, the curriculum vitae and expert report for any expert witness, a list of exhibits, and a brief statement estimating the length of time for presentation of their respective evidence.
3. No later than **Friday, August 18, 2023**, the parties shall file and serve all prehearing applications, including, but not limited to, motions *in limine* and applications for admission *pro hac vice*, if any. Prehearing applications submitted after this deadline will not be considered. Absent a timely application for admission *pro hac vice*, counsel not admitted to practice in the Commonwealth of Pennsylvania will not be permitted to participate in the hearing or sit at counsel table.
4. The parties shall file and serve answers, if any, to all prehearing applications no later than **Monday, August 21, 2023**. Answers submitted after this deadline will not be considered.
5. No extensions or continuances of any of the above deadlines shall be granted **absent extraordinary circumstances**.

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<sup>2</sup> The hearing will be available to watch via a public livestream weblink posted on the Court's website.

6. A decorum order shall be issued in due course.



---

**RENÉE COHN JUBELIRER**, President Judge of the  
Commonwealth Court of Pennsylvania Appointed as  
Special Master

# **EXHIBIT B**



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

COUNTY OF FULTON, <i>et al.</i> ,	)	
	)	
Petitioners/Appellees,	)	
	)	
v.	)	No. 277 MD 2021
	)	No. 3 MAP 2022
SECRETARY OF THE COMMONWEALTH,	)	
	)	
Respondent/Appellant,	)	
	)	
and	)	
	)	
DOMINION VOTING SYSTEMS, INC.,	)	
	)	
Intervenor.	)	

**COUNTY OF FULTON’S  
MOTION TO STAY PROCEEDINGS**

COMES NOW County of Fulton by and through undersigned counsel, and hereby moves the Court to stay the proceedings. The Petitioners have filed County of Fulton’s Petition for Writ of Certiorari in the United States Supreme Court, Case No. 23-96, in a case styled *County of Fulton, Pennsylvania v. Secretary of the Commonwealth of Pennsylvania and Dominion Voting Systems, Inc.* This Court has ruled that the machines owned by Fulton County should be placed with a third-party vendor. The matter of custody of the machines is subject for review by the Supreme Court of the United States as a part of the relief requested in Fulton County’s

Petition for Certiorari. This matter is scheduled for a hearing August 28, 2023, with Dominion's response to Fulton County's Petition due on September 1, 2023. Petitioners show that there is no harm in delaying hearing and stay the proceedings in order to give the US Supreme Court the opportunity to rule on and grant Petitioners' requested relief.

Respectfully submitted,

Dated: August 18, 2023

**LAW OFFICE OF THOMAS CARROLL**

By: /s/ Thomas J. Carroll  
Thomas J. Carroll  
ID: 53296  
224 King Street  
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Attorney for Petitioners/Appellees

**CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted By: Thomas J. Carroll

Signature: /s/ Thomas J. Carroll  
PA I.D. No. 53296

Dated: August 18, 2023

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

---

County of Fulton, Fulton County Board of	:	
Elections, Stuart L. Ulsh, in his official capacity	:	<b>DOCKET NUMBER: 277 MD 2021</b>
as County Commissioner of Fulton County and	:	<b>3 MAP 2022</b>
in his capacity as a resident, taxpayer and	:	
elector in Fulton County, and Randy H. Bunch,	:	
in his official capacity as County Commissioner	:	
of Fulton County and in his capacity as a resident,	:	
taxpayer and elector of Fulton County	:	
<i>Petitioners</i>	:	
	:	
V.	:	
Secretary of the Commonwealth,	:	
<u><i>Respondent</i></u>	:	

**PROOF OF SERVICE**

TO THE JUDGES OF THE SAID COURT:

I, certify that this 18th day August 2023, I have served the attached document to the persons on the date and in the matter stated below, which service satisfies the requirements of Pa.R.A.P. 121:

# IN THE COMMONWEALTH COURT OF PENNSYLVANIA

## PROOF OF SERVICE

### Service

Served: Dimitrios Mavroudis  
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Petitioner Fulton County Board of Elections  
Petitioner Randy H. Bunch  
Petitioner Stuart L. Ulsh

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          /s/          Thomas Joseph Carroll          

Thomas J. Carroll

Person Serving: Carroll, Thomas  
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Law Firm: Thomas J. Carroll, Attorney At Law  
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Representing: Petitioner Bunch, Randy H  
Petitioner County of Fulton  
Petitioner Fulton County Board of Elections  
Petitioner Ulsh, Stuart L.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Fulton, Fulton County Board : 277 MD 2021  
of Elections, Stuart L. Ulsh, in his :  
official capacity as County :  
Commissioner of Fulton County and  
in his capacity as a resident, taxpayer  
and elector in Fulton County, and Randy  
H. Bunch, in his official capacity as  
County Commissioner of Fulton County  
and in his capacity as a resident,  
taxpayer and elector of Fulton County,  
Petitioners  
v.  
Secretary of the Commonwealth,  
Respondent

**PROOF OF SERVICE**

I hereby certify that this 18th day of August, 2023, I have served the attached document(s) to the persons on the date(s)  
and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

**Service**

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

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Representing: Respondent Secretary of the Commonwealth

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Service Method: eService  
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

**PROOF OF SERVICE**

*(Continued)*

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

/s/ Thomas J. Carroll

---

*(Signature of Person Serving)*

Person Serving: Carroll, Thomas J.  
Attorney Registration No: 053296  
Law Firm:  
Address: 224 King St  
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Representing: Petitioner Bunch, Randy H.  
Petitioner County of Fulton  
Petitioner Fulton County Board of Elections  
Petitioner Ush, Stuart L.

# EXHIBIT C

**From:** [Donna Wolf](#)  
**To:** [shawn.gallagher@bipc.com](mailto:shawn.gallagher@bipc.com); [Wiygul, Robert A.](#)  
**Cc:** [AttorneyLambert](#); [howard@kleinhendler.com](mailto:howard@kleinhendler.com)  
**Subject:** Emergency Application for Stay  
**Date:** Friday, August 25, 2023 4:21:14 PM  
**Attachments:** [SCOTUS Emergency Application for Stay.pdf](#)  
[Exhibits.pdf](#)

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**[EXTERNAL EMAIL - This message originated outside Hangley Aronchick.]**

The original and 2 copies of the Emergency Application for Stay were sent via Next Day Service to the U.S. Supreme Court, and 3 copies Next Day and e-mail service to the following parties listed below, this 25th day of August, 2023.

**Case No. and title:**

Emergency Application for Stay

**Names & email address of individuals served:**

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The original certificate of service and certificate of compliance are being sent to the Court.

If you have any questions or concerns regarding this information, please do not hesitate to



contact me. Thank you for your consideration.

Sincerely,

Donna

*Donna J. Wolf Moore*

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**Donna J. Wolf, J.D.**

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# **EXHIBIT D**

No. 23A\_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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COUNTY OF FULTON, PENNSYLVANIA, ET. AL.,  
Petitioner,

v.

SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA AND  
DOMINION VOTING SYSTEMS, INC.,  
Respondent,

---

ON PETITION FOR WRIT OF CERTIORARI TO  
THE PENNSYLVANIA SUPREME COURT

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**EMERGENCY APPLICATION FOR STAY; RELIEF REQUESTED PRIOR TO  
AUGUST 28, 2023**

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To the Honorable Samuel A. Alito, Jr. Associate Justice of the Supreme Court of the  
United States and Circuit Justice for the Third Circuit

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August 25, 2023

## **PARTIES TO THE PROCEEDING**

Petitioners are County of Fulton, Pennsylvania, Fulton County Board of Elections, Stuart L. Ulsh, in his Official Capacity as County Commissioner, and in his capacity as a Resident, Taxpayer, and Elector; and Randy H. Bunch, in his Official Capacity as County Commissioner and in his capacity as a Resident, Taxpayer, and Elector; and Attorneys for the Petitioners, Thomas J. Carroll and Stefanie Lambert.

Respondent is Al Schmidt, the acting Secretary of the Commonwealth of Pennsylvania.

Intervenor/Respondent is Dominion Voting Systems, Inc.

## **RELATED PROCEEDINGS**

- Petitioner, Fulton County, Fulton County Board of Elections, Commissioners Stuart L. Ulsh and Randy H. Bunch, filed a petition for review against Respondent, Secretary of the Commonwealth of Pennsylvania in the Commonwealth Court of Pennsylvania on August 18, 2021, Case No. 277 MD 2021;
- Respondent, Secretary of the Commonwealth of Pennsylvania filed an Appeal of the Commonwealth Court's decision to the Supreme Court of Pennsylvania on January 3, 2022, Case No. 3 MAP 2022.
- Respondent, Dominion Voting Systems, Inc., filed a motion to intervene in the Commonwealth Court, which was denied on January 10, 2022, in Case No. 277 MD 2021, and appealed by Dominion on January 19, 2022, in Case No. 4 MAP

2022. The Supreme Court of Pennsylvania ultimately granted Dominion's motion on March 21, 2022.

- Contempt proceedings were initiated by Respondent, Secretary of the Commonwealth, on October 18, 2022;
- Although part of the same appeal in the Pennsylvania Supreme Court, Case No. 3 MAP 2022, a Special Master was appointed and issued a report to the Supreme Court of Pennsylvania, which report is dated November 18, 2022.

### **CORPORATE DISCLOSURE**

Petitioners Fulton County and the Fulton County Board of Elections are governmental entities and not a corporation pursuant to Rule 29.6.

Petitioners Stuart L. Ulsh and Randy H. Bunch are individuals acting in their official capacities as members of the Fulton County Board of Elections, and in their individual capacities as citizens of the Commonwealth of Pennsylvania and of the United States of America, and thus are not corporate parties pursuant to Rule 29.6.

Petitioners Thomas J. Carroll and Stefanie Lambert are attorneys for Petitioners and are individuals and thus are not corporate parties pursuant to Rule 29.6.

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## OPINIONS BELOW AND DENIAL OF MOTION FOR A STAY

On April 19, 2023, the Pennsylvania Supreme Court dismissed an appeal in an underlying case under Pennsylvania's Election Code that had been brought by the Respondent Secretary of the Commonwealth and issued an order of contempt and other sanctions against Fulton County and its attorneys. (App. 1-107).

These decisions comprise the substantive rulings from which Petitioner seeks a writ of certiorari, which was docketed in this Court on August 2, 2023 as No. 23-96.

Petitioners seek, pursuant to Rule 23, an Emergency Stay of the proceedings below to prevent irreparable harm that will result from Fulton County tax funds being utilized to hold a hearing to place the election equipment (mothballed) and owned by Fulton County in the custody of a third party escrow agent where it will be "powered on" and data will be deleted. Order, attached as **Exhibit A**.

Specifically, on August 23, 2023, a Special Master was appointed to conduct an evidentiary hearing on August 28, 2023 to appoint a third-party escrow agent to take custody of certain voting machines. Exhibit A. The voting machines at issue will be switched on and necessary evidence of the asserted failures and other problems with the machines stored in memory will be erased. See Supporting Affidavit of Benjamin R. Cotton, attached as **Exhibit B**.

On August 23, 2023, the court below denied Petitioners' motion for a stay of the August 28<sup>th</sup> hearing, ruling that: "the Special Master will proceed as directed by the Supreme Court of Pennsylvania unless otherwise directed by the Supreme Court of the United States." See Order, attached as **Exhibit C**.



## JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C.S. § 1254(1).

## STATEMENT

### *A. Introduction*

Congress has delegated authority to the individual states regarding time, place, *and manner*, for conducting national elections. U.S. Const. Art. I, section 4, clause 1. See also, *United States Term Limits v. Thornton*, 514 U.S. 779, 804-05, 115 S. Ct. 1842, 1855, 131 L.Ed.2d 881, 901 (1995) (“the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” Art. I, § 4, cl. 1.). Pursuant to this delegated authority, the Pennsylvania General Assembly redelegate authority to Pennsylvania’s counties, and particularly to county boards of elections, to conduct these elections. As part of that delegation, Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds*, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.

\*\*\*

(f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary *for the guidance of voting machine custodians, elections officers and electors.*

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

Without legislative authority, Respondent Secretary decertified Petitioners' voting machines. This was after Petitioners had the voting machines examined by a third-party subsequent to the 2020 general election.

Petitioners filed a petition for review of the Secretary's actions. The Secretary filed a motion to enjoin further testing of the voting machines, which the court denied. The Secretary filed an interlocutory appeal of that order.

Subsequent to the filing of the appeal, and in the process of determining how to fulfill its legislatively delegated authority concerning the provision of voting machines, Petitioners had to consider the viability of continuing to use Dominion voting machines to fulfill its statutory duties to conduct elections. Fulton County also had to consider the status of and legitimacy of its contract with Dominion Voting Systems ("Dominion"). In these regards, Fulton County had another company analyze the Dominion voting machines. Fulton County then sued Dominion for breach of contract and breach of warranty because the inspection that was performed revealed that the Dominion voting machines were not fit for their intended use and purpose.

The Secretary filed a motion to hold Petitioners in contempt for violating the Supreme Court's order placing an injunction on the previously scheduled testing. The contempt proceedings resulted in the Supreme Court's decision to hold Fulton County and Fulton County's attorneys in contempt and to dismiss the Secretary's underlying appeal of the Commonwealth Court's denial of the Secretary's application to enjoin further inspections.

Among the constitutional errors committed by the Pennsylvania Supreme Court, and central to the petition for review pending before this Court, was the court's finding of contempt and award of sanctions where Petitioners were exercising their constitutionally delegated authority over their voting machines and systems. The dismissal deprived the citizens of the state of Pennsylvania, Fulton County, and the Secretary, of a fundamental decision regarding the constitutional delegation by the Pennsylvania legislature to the county boards of elections to conduct national elections. Principally, as Fulton County had challenged in its petition for review, the Secretary did not and could not usurp the powers of Fulton County over voting machines – authority to “purchase, preserve, store, and maintain” voting machines was statutorily delegated to Fulton County by virtue of the constitutional delegation to the Pennsylvania General Assembly under Article I, section 4 of the Constitution.

### ***B. Background***

On January 17, 2019, the Secretary (then Kathy Boockvar), certified the use of Dominion's “Democracy Suite 5.5A” voting system in Pennsylvania elections

pursuant to 25 Pa. Stat. Ann. § 3031.5. According to the Secretary’s report, “[t]he Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as “professional consultants” to conduct the examination of Democracy Suite 5.5A. (App. 11-12). The United States Election Assistance Commission (EAC) provides for the accreditation of laboratories qualified to test voting systems to meet federal standards. While SLI is an EAC accredited testing laboratory, CCD does not appear on EAC’s directory of approved laboratories.

In April of 2019, Petitioners contracted with Dominion to purchase and begin using two Democracy Suite 5.5A voting systems. The Democracy Suite 5.5A system was used through the November 3, 2020 general election.

Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following authority:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.*

\*\*\*

(f) *To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.*

(g) *To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.*

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

In September of 2016, the Secretary issued to the counties “Guidance on Electronic Voting System Preparation and Security”. (App. 11). This guidance document contemplated and expected that the counties would use “third-party vendors” to conduct the necessary “*purchase, preserve, store and maintain primary and election equipment*” that was expressly delegated and mandated to the counties pursuant to 25 Pa. Stat. Ann. 2642. This included measures to ensure security, perform maintenance, and preparations of the voting machines systems in use by the counties. Details of the Secretary’s guidance included the procedures for third-party vendors to perform file transfers. Further, the Secretary’s guidance “applie[d] to any vendor that is providing technical support to the counties for any component of the system involved in the canvass of the election.” (App. 11). The Secretary’s guidance was updated on October 13, 2020 and again contemplated the use of outside vendors to perform election preparation and maintenance on the voting systems. (App. 11).

Pursuant to 25 Pa. Stat. Ann. 2642, Petitioners hired Wake Technology Services, Inc. (Wake TSI), a managed service provider specializing in data center, network, server and desktop systems design, and cybersecurity and management, to include voting systems technology. Petitioners requested Wake TSI to assist it in an investigation and assessment of Fulton County’s voting systems and processes that were utilized in the November 2020 general election. Wake TSI’s reviewed the

Dominion Democracy Suite 5.5A operating and application systems, file data, log files, ballot images, and related files. (App. 113).

Pursuant to the Secretary's 2016 and 2020 guidance, Wake TSI ensured that proper chain of custody of the equipment was maintained at all times through the presence of Fulton County's Election Director (Commissioners and other staff were also present), who was the sole individual to remove or replace ballots in the ballot carts.

Wake TSI issued its "Fulton County Election System Analysis," report (the Wake TSI Report) dated February 19, 2021. In its report, Wake TSI concluded that the 2020 General Election was well run and conducted, in a diligent and effective manner. (App. 7). This seemingly fulfilled Petitioners' duties as set forth in 25 P.S. § 2642(g).

In its report, however, Wake TSI also found several problems with the Democracy Suite 5.5A system. Among these were errors in the ballot scanning, a failure of the system to meet Commonwealth Certification requirements, non-certified database tools on the system, changes made to Dominion's entire election management system (EMS) three weeks before the 2020 election, and a lack of commonwealth logic and accuracy inspections L&A inspections of the Dominion Voting Systems. (App. 7).

Several months after the publication of the Wake TSI Report, on July 8, 2021, Respondent Secretary issued "Directive 1 of 2021," which provided as follows:

County Boards of Elections shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified electronic voting systems, or any components of such systems, including but not limited to: election management software and systems, tabulators, scanners; counters, automatic tabulating equipment, voting devices, servers, ballot marking devices, paper ballot or ballot card printers, portable memory media devices (thumb drives, flash drives and the like), and any other hardware, software or devices being used as part of the election management system. (App. 11).

Directive 1 also provided for the revocation of funding for counties whose machines are decertified under the Directive, stating “[t]he Commonwealth of Pennsylvania will not reimburse any cost of replacement voting equipment for which certification or use authority has been withdrawn pursuant to this directive.” (App. 11).

In February of 2020, the Pennsylvania Economic Development authority voted to approve a \$90 Million bond issuance to cover costs for new voting machines across the Commonwealth of Pennsylvania. Petitioners claimed that the Secretary had no authority to withhold such funding pursuant to Directive 1.

Following the issuance of Directive 1, and without the opportunity for a hearing or other due process, the Secretary issued a letter (constituting an adjudication or “order”) to Petitioners (addressed to the County Solicitor) dated July 20, 2021, stating:

As a result of the access granted to Wake TSI, Fulton County’s certified system has been compromised and neither Fulton County; the vendor, Dominion Voting Systems; nor the Department of State can verify that the impacted components of Fulton County’s leased voting system are safe to use in future elections. Due to these actions and after careful consideration ... I have no other choice but to decertify the use of Fulton County’s leased

Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

Respondent's July 20, 2021 letter further stated that, "based on our discussions and correspondence with Fulton County officials, it appears that the contents of the Democracy Suite 5.5A that were used during the 2020 November election were subjected to a post-election review by a third-party in violation of Pennsylvania's Election Code." (App. 11).

On August 18, 2021, Petitioners sought review of the Secretary's July 20, 2021 decertification of Petitioner's Dominion "Democracy Suite 5.5A voting systems. And amended petition was filed on September 17, 2021.

The Secretary claimed to have the authority to decertify Petitioners' voting machine system via the regulatory "Directive 1 of 2021". The Secretary further claimed to have authority to issue Directive 1 pursuant to the Pennsylvania Election Code, 25 Pa. Stat. Ann. § 3031.5(a). The statute provides in pertinent parts, as follows:

(a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government. The costs of the examination shall be paid by the person requesting the examination in an amount set by the Secretary of the Commonwealth. Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any reexamination, the person, persons, or corporation, requesting such reexamination, shall pay to the Treasurer of the Commonwealth a reexamination fee of four hundred fifty



dollars (\$ 450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system therefore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

\*\*\*

(c) No electronic voting system not so approved shall be used at any election, and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth. 25 Pa. Stat. Ann. § 3031.5(a) and (c).

The Secretary cited subsection (a) for the authority to decertify Petitioners' Dominion voting system even though that provision does not provide for any such authority. Remarkably, the Secretary did not cite subsection (c) when making the decision to decertify Petitioners' Dominion voting system, likely because any withdrawal of approval of such voting systems would mean that the entire system "shall not thereafter be used or purchased for use" in the state of Pennsylvania.

Despite the findings contained in Respondent's July 20 2021, letter, Wake TSI's analysis of Fulton County's election systems was conducted in a manner that was bi-partisan and transparent. Petitioners' analysis and investigation of its voting system with the assistance of Wake TSI was conducted in accordance with the requirements of the Pennsylvania Election Code as well as the then-current Guidance issued by the Respondent. Wake TSI's analysis and examination of the Fulton County system and machine was conducted at the Petitioners' administrative offices and at no point did any of the physical components of the

voting system leave the custody or control of the Fulton County Board of Elections or its employees. The Election Director for Fulton County, or an Election Board Commissioner, remained in the room with the ballots throughout the entire course of Wake TSI's review. According to Wake TSI, the Election Director was the only person removing and replacing ballots in the ballot carts. Petitioners' IT Support Technician, or an Election Commissioner, remained with the technical team during the assessment of the voting system. Contrary to the Secretary's assertion, Wake TSI asserts that it did not conduct a full technology forensic audit of the operating system or the EMS.

In the first count of their petition for review, Petitioners sought a declaratory judgment that the Secretary failed to reexamine the voting system prior to decertification as required by 25 Pa. Stat. Ann. § 3031.5(b). The Petitioners alleged further that the Secretary's decision to decertify Petitioners' Democracy Suite 5.5A voting system was arbitrary, capricious, and an error of law because she failed to comply with the mandatory provisions of the Election Code and exceeded her statutory authority.

In a second count for declaratory judgment, Petitioners alleged that they were authorized by law and by the Secretary's own guidance to use the assistance of a third-party vendor to analyze the security of their voting systems. Petitioners demonstrated that Pennsylvania law mandates that they inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and

uniformly conducted.” 25 P.S. § 2642(g). Under this count, Petitioners alleged that the Secretary exceeded her authority in prohibiting the Petitioners from using third-party vendors to conduct an examination of the components of electronic voting systems being used by counties.

In a third count, Petitioners alleged that the Secretary had usurped the power and authority delegated to Petitioners by the Pennsylvania Election Code. Petitioners demonstrated that the Secretary’s July 8, 2021 Directive 1 prohibited any county from using third-party vendors to assist in the inspection of state-certified electronic voting systems and system components. Citing 25 Pa. Stat. Ann. § 2642(g), Petitioners asserted that the Pennsylvania Election Code mandates that County Boards of Elections “inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.”

In its fourth and final count, Petitioners sought a declaratory judgment that the Secretary could not withhold funding for the purchase of new voting machines. Petitioners further alleged that by the Respondent’s unauthorized directive withholding funding, they would be adversely affected and were deprived of their due process rights.

Petitioners noted the Secretary’s actions were even more suspect because there was no demonstration that the voting systems used by Petitioners had ever been certified in the first instance, and in fact, the certification had been called into question by Wake TSI.

Neither the Secretary, or any agent acting on her behalf, ever physically examined or reexamined the Democracy Suite 5.5A voting systems of Fulton County, despite the clear mandate to do so prior to revoking a system's approval. 25 Pa. Stat. Ann. § 3031.5(b). In this regard the authority of the Secretary speaks to only "systems". *Id.* The provision provides that the Secretary "shall examine the system and make and file a report with the Pennsylvania Department of State, attested by her signature and the seal of her office, stating whether the system so reexamined can be safely used in elections." 25 P.S. § 3031.5(b). No such report or certification as to the system was made.

The Secretary filed Preliminary Objections demurring only to Count III. The Secretary emphasized that the General Assembly delegated to the Secretary the authority to examine, approve, and reexamine voting systems and to issue directives or instructions for electronic voting procedures. The Secretary also noted that the General Assembly tasked the Secretary with determining whether a county's EMS "can be safely used by voters at elections as provided" in the Election Code.

As the petition for review was pending, the Fulton County Board of Commissioners voted on a motion to allow the Pennsylvania Senate Intergovernmental Operations Committee ("Senate Committee") to examine the County's voting equipment. The County then indicated that it was going to enlist another entity to perform an inspection.

In the meantime, Senator Cris Dush, who had replaced Senator Doug Mastriano as Chair of the Pennsylvania Senate Committee, wrote the County seeking permission to collect the digital data from the election computers and hardware used by Petitioners in the November 2020 election as part of the Senate Committee's investigation of the Commonwealth's election system.

On December 14, 2020, the Secretary learned that Fulton County had voted the same day to permit the inspection to go forward. The inspection was scheduled for December 22 and was to be conducted by Envoy Sage, LLC.

On December 17, 2021, the Secretary sought a protective order from the Commonwealth Court barring that inspection and any other third-party inspection during the litigation. The court denied relief.

The Secretary appealed that ruling to the Pennsylvania Court, and a single justice entered a temporary order, to prevent the inspection and to preserve the status quo during review of the Secretary's appeal. The order stated:

IT IS FURTHER ORDERED that the inspection of Fulton County's electronic voting equipment *that is currently scheduled to begin at 1:00 p.m. on January 14, 2022*, is hereby STAYED and ENJOINED pending further Order of the Court. (emphasis added).

On January 27, the full Court entered another order, providing as follows:

AND NOW, this 27th day of January, 2022, [Respondent's] "Emergency Application to Stay Third-Party Inspection of Electronic Voting System Scheduled to Begin at 1:00 p.m. on January 14, 2022" is GRANTED. The single-Justice Order entered on January 14, 2022, staying the lower court's ruling and enjoining the proposed third-party inspection of Fulton County's electronic voting equipment, shall remain in effect pending the disposition of the above-captioned appeal....

Petitioners were left at this point with no voting machine system and a dilemma with what to do with the existing contract it had with Dominion. In the course of fulfilling its statutorily delegated duties to *purchase, preserve, store and maintain primary and election equipment* pursuant to 25 Pa. Stat. Ann. § 2642(c), the County had a separate inspection performed on the now defunct and decertified Dominion voting machines. The report was issued by Speckin Forensics, LLC, on September 15, 2022 (the Speckin Report).

On September 21, 2022, Fulton County sued Dominion for breach of contract and breach of warranty because the Speckin Report revealed that the Dominion voting machines were not fit for their intended use and purpose. *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

In the breach of contract action, Fulton County alleges that it contracted with Dominion to provide “voting systems services, software licenses and related services,” to Fulton County for the conducting of elections in Fulton County. Fulton County addresses the findings in several forensics reports and independent analyses of Dominion voting machines to allege that the machines did not perform as promised to Fulton County in their written agreement.

Among the reports cited was the Speckin Report commissioned by Fulton County in July 2022, and received in September 2022, which detailed the deficiencies in and inadequacies of Dominion’s voting systems, equipment, hardware, software, and

services. Specifically, Petitioners show that the “security measures necessary to harden and secure” the Dominion machines was not completed; showing the last update or security patch to have been performed in April 2019” (a full year-and-a-half *before* the November 2020 election). Petitioners also discovered that external USB hard drives had been inserted in the machines on several occasions, and that there was no known list of approved external drives that could have been or were used or inserted into the machines. In this regard, there was no way to determine whether and to what extent these unauthorized drives compromised the data or the voting system.

Petitioners also demonstrated that there had been “substantial changes” to the drives as seen with the inclusion of over 900 .dll files and links created since the date of installation of the Dominion software and these pathways constituted a security breach due to the introduction of an unauthorized “script” into the Dominion voting systems used in Fulton County. Petitioners further demonstrated that a “python script” had been installed onto the systems *after* the Secretary’s supposed “certification,” and not only should such a script have been added to the system, but “[t]his python script can exploit and create any number of vulnerabilities” including, external access to the system from foreign sources, data export of the tabulations, or introduction of other metrics not part of or allowed by the certification process.” Petitioners further discovered that each of the drives of the Dominion machines were “interconnected in a system to one another” and that this would be required to share data and counts between devices. This networking,

allowing unauthorized access [to] any one device, and therefore allowed unauthorized access to any device connected to the network. Further, the Petitioners determined that an external IP address linked with Canada was found on the machines, which shows that at least one of the network devices was connected to an external device on an external network. This was the same device that the post-certification python script was found on. The report also revealed that log files for the adjudication device showed an IP address of 172.102.16.22, which was from a location in Quebec, Canada. This was direct evidence of remote connections to a foreign country. Remarkably, Petitioners found that the machines and devices only had Windows Defender protection dating to July 2016 and that no other updates to this software had been made.

Petitioners' findings confirmed that many of the "conditions" in the certification report which were required to be met for certification were not met and were not present before, during and after the November 2020 election and up to the present. Among other findings, this constituted a direct violation of and failure of the conditions required for certification of the Dominion voting machines in the state of Pennsylvania for the 2020 election and beyond. Fulton County's allegations show that Dominion breached its agreement to provide reliable and secure voting systems services, software licenses and related services.



This is ongoing litigation by and between Intervenor Dominion and Fulton County respecting the performance of and adequacy of the defunct and now useless Dominion machines.

Because Fulton County had Speckin analyze the Dominion machines, the Secretary filed an “Application for an Order Holding [Petitioners] in Contempt and Imposing Sanctions” in the underlying appeal, 3 MAP 2022. Despite the pendency of the Petitioners’ petition for review of the Secretary’s purported authority to (1) prohibit any examination of the voting machine system by any county (pursuant to Directive 1); and (2) its decision to decertify the Dominion voting machine systems being used by Petitioners, the Court appointed a special master to make an evidentiary record and to provide proposed findings of fact, conclusions of law, and sanctions to aid in this Court's resolution of the allegations at issue.

After an expedited evidentiary hearing<sup>1</sup> in which Petitioners were forced to provide testimony and evidence, despite the ongoing underlying litigation by and between Fulton County and Dominion, who intervened in the proceedings, and over the objections of Petitioners’ counsel on grounds that the decision to proceed with such a hearing prior to a decision by the special master on the legal question of whether the language of the Pennsylvania Supreme Court’s orders had even been violated, the Pennsylvania Supreme Court issued its opinion and order, dismissing

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<sup>1</sup> Expedited is an understatement. The Secretary filed the application for contempt on October 18, 2022 and the court ordered that Petitioners’ response be filed by October 20, 2022. The court then appointed the Special Master on October 21, 2022 and she issued an extremely expedited scheduling order for Petitioners to litigate with Dominion’s attorneys and those of the State of Pennsylvania. The scheduling order, which the Special Master issued on October 24, 2022, including a full round of discovery, and the scheduling of depositions was to take place before the first scheduled hearing on November 9. Additional days of hearings occurred on November 10 and November 14, 2022.

the underlying appeal, and finding Petitioners and their counsel in contempt of court and imposing sanctions.

The court also ordered the impoundment of the Dominion voting machine systems, despite the breach of contract action in which Petitioners are suing Dominion for the failed voting machine system it provided to Fulton County prior to the 2020 election.

In this regard, the court exceeded the scope of its contempt powers by forcing Petitioners to agree to surrender possession of evidence that could be critical to the claims in the breach of contract proceedings.

During the contempt proceedings, Petitioners argued that the subsequent inspection conducted in July 2022 did not violate the plain language of the Pennsylvania Supreme Court's stay orders. Petitioners further argued that they were authorized and required by Pennsylvania law, 25 Pa. Stat. Ann. § 2642, to inspect, examine and investigate the voting systems and voting machines so that they could make decisions about employing voting machines in future elections. Petitioners specifically argued that pursuant to Article I, section 4, clause 1 of the United States Constitution, the Pennsylvania General Assembly had mandated that they were to conduct inspections and make necessary preparations for upcoming elections. 24 Pa. Stat. Ann. § 2642(c), (d), and (i). They could not therefore be held in contempt for fulfilling this exclusive, delegated constitutional duty.

The Petitioners further argued that the contempt proceedings violated their rights to privileges and confidentialities because of the ongoing breach of contract suit against intervenor Dominion, based on Dominion's alleged failure to provide Petitioners with reliable voting equipment. See *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

The Court found Petitioners in contempt of its stay orders. The Court ruled that the language of the orders applied to future testing of the Petitioners' voting systems and that in conducting the July 2022 examination, Petitioners had violated its orders. Regarding Petitioners' argument that they were not violating the language of the court's January orders, the court reasoned that the spirit of the order applied to any and all future testing. The court ignored Petitioners' argument that the constitutional delegation by the Pennsylvania General Assembly to the counties under Article I, section 4, clause 1 of the United States Constitution allowed it to perform additional inspections of voting machine systems.

The court ruled only on the argument regarding the scope of its January orders and found Petitioners had deliberately, willfully, and wrongfully violated those orders. The court ordered Petitioners Fulton County and Petitioners' attorney, Thomas Carroll to be jointly responsible for attorneys' fees incurred by the Secretary and Dominion. The court ordered commencement of the attorneys' fees assessment as to Fulton County as of December 17, 2021 and as of April 13, 2022 for Attorney Carroll.

The court also referred Attorney Carroll to Pennsylvania’s Attorney Disciplinary Board for “examination of his conduct throughout the litigation” of the appeal of the court’s stay order and the contempt proceedings. The court also ordered Petitioners to transfer the voting equipment to a neutral escrow agent pursuant to an agreement between the parties.

**REASONS FOR GRANTING THE APPLICATION  
FOR AN EMERGENCY STAY**

The Petitioners will suffer irreparable harm should tax funds be utilized to hold a hearing to place its election equipment in the custody of a third-party vendor which will result in the data on the equipment being deleted or destroyed.

Benjamin R. Cotton cautioned in his August 24, 2023, Affidavit (Exhibit B) that the election data can be modified remotely if the election machines/equipment is powered on. More specifically, Cotton states that Cellular Modems, WiFi Modems, and Network Interface Cards are installed on the Motherboard of the Dominion voting equipment and can automatically connect to remote locations when the machines are powered on. Furthermore, Cotton cautions that by simply powering on the election machines/equipment, the election machines/equipment will alter dates and time of files, overwrite log file entries, modify system configuration settings, and change data file contents due to the system automatically changing logs and performing automated processes like antivirus scans, scheduled tasks, and other operations. See Cotton Aff. Exhibit B. See also Transcript, **Exhibit D**.

Petitioners have demonstrated that Fulton County will suffer irreparable harm by holding costly hearings on third-party custodians when Fulton County

believes it will win its appeal before the United States Supreme Court. The data on the election equipment will be destroyed and deleted upon going into custody of a third party and the Fulton County tax funds to pay for the instant hearing before the special master as well as all fees associated with moving the equipment to a third party will result in irreparable harm. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

There is no prejudice to Respondents by having the Special Master to hold off on an evidentiary hearing which will, as described above, irreparably destroy the evidence relied upon by Petitioners, should they prevail on their petition for certiorari in this Court.

Petitioners, in their petition for certiorari, have presented the grounds upon which they reasonably believe they will prevail upon their appeal to this Court.

**PRAYER FOR RELIEF**

Accordingly, Petitioners respectfully request, pursuant to Rule 23, an immediate Stay of the Special Master Hearing scheduled for August 28, 2023, until the appeal by Petitioners to this Court has been decided.

Respectfully submitted,

/s/ Howard Kleinhendler  
Howard Kleinhendler  
HOWARD KLEINHENDLER ESQUIRE  
*Counsel of Record for Petitioners*  
369 Lexington Avenue, RM 1201  
New York, New York 10017  
(917) 793-1188  
howard@kleinhendler.com

August 25, 2023

# **EXHIBIT A**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Fulton, Fulton County Board	:	
of Elections, Stuart L. Ulsh, in his	:	
official capacity as County	:	
Commissioner of Fulton County and	:	No. 277 M.D. 2021
in his capacity as a resident, taxpayer	:	No. 3 MAP 2022
and elector in Fulton County, and Randy	:	
H. Bunch, in his official capacity as	:	
County Commissioner of Fulton County	:	
and in his capacity as a resident,	:	
taxpayer and elector of Fulton County,	:	
Petitioners/Appellees	:	
	:	
v.	:	
	:	
Secretary of the Commonwealth,	:	
Respondent/Appellant:	:	

**ORDER**

NOW, August 23, 2023, the Special Master hereby ORDERS as follows:

1. The evidentiary hearing for purposes of the Special Master’s appointment of a neutral third-party escrow agent currently fixed for Monday, August 28, 2023, at 10:00 a.m. in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is hereby **RESCHEDULED to begin at 9:00 a.m. on the same date in the same place.** If necessary, the hearing shall reconvene on Wednesday, August 30, 2023, at 9:00 a.m., and Thursday, August 31, 2023, at 9:00 a.m., in the same location.
  
2. The parties are directed to serve all Notices to Attend and Subpoenas on their respective witnesses no later than Friday, August 25, 2023, in conformance with the Pennsylvania Rules of Civil Procedure. Notices to Attend and Subpoenas served prior to

issuance of this Order, indicating that the evidentiary hearing would begin at 10:00 a.m. on Monday, August 28, 2023, need not be reserved to reflect the rescheduling set forth in Paragraph 1 above.

3. Respondent/Appellant (Secretary) shall present its evidence and witness testimony beginning on Monday, August 28, 2023, and the parties shall endeavor to complete direct and cross examination of the Secretary's witnesses by the conclusion of this first day of the hearing.

4. Petitioner/Appellees (collectively, Fulton County) shall present its evidence and witness testimony following conclusion of the Secretary's evidence. The parties shall endeavor to expeditiously complete direct and cross examination of Fulton County's witnesses.

5. Fulton County is directed to retain the services of a court reporter for the evidentiary hearing. The court reporter shall be prepared for Court to be in session outside of normal Court hours. The court reporter shall provide a rough transcript to the Court and counsel at the conclusion of each day of the hearing and expedite preparation of a transcript following the conclusion of the hearing.



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**RENÉE COHN JUBELIRER**, President Judge of the  
Commonwealth Court of Pennsylvania Appointed as  
Special Master



**EXHIBIT B**

**AFFIDAVIT OF BENJAMIN R. COTTON 24 August 2023**

I, Ben Cotton, being duly sworn, hereby depose and state as follows:

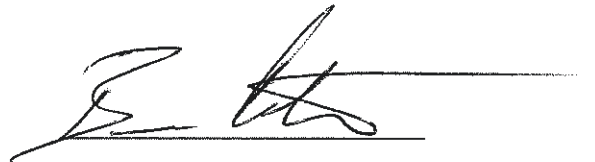
1. I am over the age of 18, and I understand and believe in the obligations of an oath. I make this affidavit of my own free will and based on first-hand information and my own personal observations.
2. I am the founder of CyFIR, LLC (CyFIR).
3. I have a master's degree in Information Technology Management 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 (19) 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, the EnCase Enterprise software and the collection and preservation of digital data.
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. In the course of my experience I have forensically collected digital evidence from thousands of Windows, Linux, MacOS, and cellular devices.

9. In the course of my experience I have forensically collected digital evidence from thousands of external digital devices such as USB drives, thumb drives, and SD Cards.
10. I have supported legal teams in the forensic preservation and examination of Dominion voting systems in Arizona, Michigan, and Georgia.
11. The dominion voting system individual components, such as the Election Management System (EMS), Image Cast Central (ICC), ImageCast Precinct (ICP), ImageCast X (ICX) Ballot Marking Device (BMD) and Adjudication Workstations, contain specialized applications running on Windows and Linux operating systems. These components and systems can easily be forensically preserved in accordance with the digital acquisition of evidence as outlined the under the Federal Rules of Evidence and the National Institute of Justice Digital Evidence Policies and Procedures.
12. Forensic preservation of all data on a digital device is critical to the preservation process, especially if litigation is either anticipated or ongoing. If a given device or system is currently in a powered down state, it is imperative that the device's hard drive and other digital storage be forensically imaged to preserve system metadata dates and times, data integrity of the device and the admissibility of the evidence into the US legal system. Simply powering up a Windows or Linux operating system will change the date/time metadata for tens of thousands of files, thus interfering with the analysis of that system and calling into question the integrity of the data on the system.
13. It is critical to the admissibility and quality of subsequent analysis that the system to be preserved is maintained in a data state that is as close to the time period as possible. If the system to be preserved is powered on, commonly termed as live, at the point that it is to be preserved then the volatile memory should be imaged first followed by a forensic acquisition of the hard drive and other storage devices.
14. If a device that is to be preserved is not imaged immediately and maintained in a powered on state, there is a technical certainty that the data contained on the hard drive and possibly other digital storage devices will be changed. The changing of the data on the system will not require interactive inputs for

these changes to take place. As a matter of the normal operating system functions, no matter if it is a Windows, Linux or MacOS operating system, if the system is powered on, the system will automatically change logs and perform automated processes (like antivirus scans, scheduled tasks and other operations) that will change the dates and times of files, over write log file entries, modify system configuration settings and change data file contents.

15. It is my experience that the Dominion voting system components have communications devices in the form of Network Interface Cards (NIC), WiFi modems, and Cellular Modems installed by the manufacturer on the mother boards of the systems. Depending on the configuration of the system, these communications devices can automatically connect to remote locations and devices if the systems are powered on. If these devices are allowed to connect to remote locations it is possible for authorized or unauthorized parties to remotely modify the component.


SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 24th DAY OF August 2023.



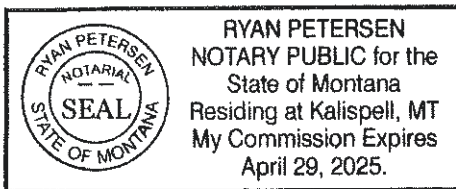
Benjamin R. Cotton

State of Montana  
County of Flathead

This instrument was signed or acknowledged before  
me on 08-24-23 by Benjamin R. Cotton  
(Name of signer)

  
(Notary Signature)

[Affix seal/stamp to the left or below]



**EXHIBIT C**

**In The Matter Of:**  
*Fulton County Elections Board vs.*  
*Secretary of Commonwealth*

---

*No. 277 MD 2021 No. 3 MAP 2022*  
*August 23, 2023*

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*Media Court Reporting*  
*216 West Front Street*  
*Media, PA 19063*  
*610.566.0805 fax 610.566.0318*  
*www.mediacourtreporting.com*

IN THE COMMONWEALTH COURT OF PENNSYLVANIA  
FULTON COUNTY ELECTIONS BOARD  
v.  
SECRETARY OF COMMONWEALTH  
No. 277 MD 2021 No. 3 MAP 2022  
Proceedings held on Wednesday, 8/23/23  
PROOF OF SERVICE

I hereby certify that I am this day serving the Notice of Filing of Transcript upon the persons and in the manner indicated below, which service satisfies the requirements of PA RAP 121. Service of first-class mail addressed as follows:

The Honorable Judge Renée Cohn Jubelirer  
Commonwealth Court of Pennsylvania  
601 Commonwealth Avenue  
Harrisburg, PA 17106

Service by e-mail at following:  
tom@thomasjcarrollllaw.com, with agreement of:  
THOMAS J. CARROLL, ESQUIRE  
LAW OFFICES OF THOMAS J. CARROLL  
610.419.6981  
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Pottstown, PA 19464

Service by e-mail at following:  
rwiygul@hangley.com, with agreement of:  
ROBERT A. WIYGUL, ESQUIRE  
HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER  
215.496.7042  
One Logan Square, 27th Floor  
Philadelphia, PA 19103

Dated Thursday, 8/24/23

Josephine Cardillo  
Media Court Reporting  
216 West Front Street  
Media, PA 19063  
610.566.0805  
crjoze52@gmail.com

COUNSEL APPEARED REMOTELY VIA PHONE AS FOLLOWS:

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412.562.8800  
shawn.gallagher@bipc.com  
Counsel for Intervener Dominion

Also Present: John Hill, Esquire,  
Hangley Aronchick

Dimitri Marvrudis, Esquire  
Tucker Law Group

Kathleen Jones Goldman, Esquire  
Buchanan Ingersoll

Paul Ritchey, Court Staff

Josephine Cardillo,  
Court Reporter

- - -

TO: The Honorable Renée Cohn Jubelirer

Please be advised that I have this date  
filed a transcript of the record in the case of:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA  
FULTON COUNTY ELECTIONS BOARD  
v.  
SECRETARY OF COMMONWEALTH  
No. 277 MD 2021 No. 3 MAP 2022  
Proceedings held on Wednesday, 8/23/23

See PA RAP 1922 (c)

DATED: Thursday, 8/24/23

Josephine Cardillo  
Media Court Reporting  
216 West Front Street  
Media, PA 19063  
610.566.0805  
crjoze52@gmail.com

1 MR. RITCHEY: This is Paul,  
2 administrative staff of the  
3 Commonwealth.  
4 First, will the court reporter  
5 please identify herself.  
6 COURT REPORTER: Josephine  
7 Cardillo, with Media Court Reporting,  
8 Media, PA.  
9 MR. RITCHEY: Thank you.  
10 First, counsel for the County of  
11 Fulton, then counsel for the Secretary,  
12 and then, finally, counsel for Intervener  
13 Dominion Voting Systems, Incorporated.  
14 ATTY CARROLL: Yes. From  
15 Fulton County, Thomas Carroll, Counsel  
16 for Fulton.  
17 ATTY WIYGUL: Good afternoon.  
18 For the Secretary of the Commonwealth,  
19 Robert Wiygul, from Hangley Aronchick  
20 Segal Pudlin & Schiller, and I believe  
21 I have two co-counsels dialing in  
22 separately, but I'll let them announce  
23 themselves.  
24 ATTY HILL: Yeah, this is John  
25 Hill, also from Hangley Aronchick Segal

<p style="text-align: right;">Page 5</p> <p>1 Pudlin &amp; Schiller, on behalf of the 2 Department. 3 ATTY MARVRUDIS: And this is 4 Dimitri Marvrudis from the law firm of 5 Tucker Law Group, on behalf of the 6 Secretary. 7 ATTY GALLAGHER: I'm Shawn 8 Gallagher, with Buchanan Ingersoll &amp; 9 Rooney, on behalf of the Intervener 10 Dominion. 11 ATTY GOLDMAN: Kathleen Jones 12 Goldman, also with Buchanan Ingersoll &amp; 13 Rooney on behalf of Dominion. 14 MR. RITCHEY: Thank you all. 15 Other than counsel, the court reporter, 16 and court staff, is anyone else present 17 on the call or listening to the call? 18 (No response.) 19 Okay. Hearing none, please stay 20 on the line. The conference will begin 21 shortly. 22 THE COURT: Good afternoon, 23 everyone. This is Judge Cohn 24 Jubelirer. I believe we have everyone 25 on today's call. Thank you very much,</p>	<p style="text-align: right;">Page 7</p> <p>1 Supreme Court 3 MAP 2022. 2 And as indicated in the order 3 issued yesterday, the primary focus of 4 today's conference was to determine 5 whether it is necessary for the third- 6 party escrow agent to have experience or 7 expertise with election security or 8 election technology or whether an agent 9 with expertise in convention of physical 10 security be sufficient. 11 It is recognized that -- well, it 12 appears that both parties, the Secretary 13 and the County, have in the recent past 14 proposed alternative escrow agents. The 15 Secretary, the Insurance Evidence 16 Services (IES) and Fulton County Auld &amp; 17 Associates Investigation, Inc. 18 So let me first ask the County -- 19 well, let me first ask the Secretary: Do 20 you believe that we need to have a 21 third-party escrow agent with experience 22 in election security, or would some other 23 entity be sufficient? 24 ATTY WIYGUL: Thank you, Your 25 Honor. This is Robert Wiygul for the</p>
<p style="text-align: right;">Page 6</p> <p>1 and you've all identified yourself, I 2 believe, for the court reporter who's 3 on. 4 Can I be heard? 5 COURT REPORTER: This is 6 Josephine Cardillo, the court reporter. 7 It sounded like, Your Honor, you were 8 cutting out, but I will do my best with 9 what I can hear. 10 THE COURT: Thank you very 11 much. Please speak up if you cannot 12 hear us. 13 Has everybody identified 14 themselves? Have all counsel identified 15 themselves for you? 16 COURT REPORTER: Yes, they 17 have. 18 THE COURT: Okay, excellent. 19 Thank you. 20 As you all know, we are here 21 today for a prehearing conference in the 22 matter of County of Fulton et al., 23 Petitioners and Appellees versus the 24 Secretary of the Commonwealth, 25 Respondent, 277 MD 2021 and as before the</p>	<p style="text-align: right;">Page 8</p> <p>1 Secretary. 2 We do believe that the escrow 3 agent should have experience with the 4 particular type of evidence that is at 5 issue here, which is, as we interpret the 6 Supreme Court order, voting equipment, 7 but also potentially data stored on that 8 voting equipment. 9 And so, I think I agree with Your 10 Honor's order that the purpose of the 11 escrow agreement is to secure physical 12 evidence for potential use in future 13 litigation, but we think that the type of 14 evidence at issue and important for your 15 consideration here -- and we're prepared 16 to present evidence of the hearing on 17 Monday on why that's the case and why the 18 specific type of evidence at issue calls 19 for expertise and experience that would 20 not be possessed simply by entities that 21 may have experience, other types of 22 physical evidence such as documents or, 23 you know, weapons, what have you. 24 So I think, in some ways, you 25 know, the background in election</p>



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1 experience is important. Your Honor did  
2 point out that the Secretary at one point  
3 had proposed as an alternative candidate  
4 to be escrow agent Insurance Evidence  
5 Services.  
6 We made clear in our filings, I  
7 think, that we believe they would be our  
8 second-choice alternative. We believe  
9 that Pro V&V was head-and-shoulders the  
10 best candidate here.  
11 But even Insurance Evidence  
12 Services had expertise and experience  
13 with storing pieces of technology with  
14 data on them, things of that nature. We  
15 think that that is, you know, a bare-  
16 minimum qualification, but, again, we do  
17 think that there are aspects to the  
18 security in preservation of election  
19 equipment that are unique and do call for  
20 unique experience and expertise.  
21 THE COURT: Well, I'm just  
22 trying to understand why, if the  
23 equipment is locked in a room and even  
24 if we have cameras that would show  
25 who's coming and going and there's a

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1 log and nobody is allowed to get in,  
2 and if the equipment is taken offline  
3 in a way that the Court goes in there,  
4 everybody watches, and your experts are  
5 comfortable with, why would you need to  
6 have anything more than that?  
7 ATTY WIYGUL: Well, Your Honor,  
8 we're prepared to present testimony on  
9 Monday, but there are particular  
10 environmental conditions -- you know,  
11 humidity, temperature, et cetera --  
12 that are appropriate and necessary for  
13 the preservation of different sorts of  
14 digital assets such as data stored on  
15 election equipment. We think there's  
16 particular expertise called for in that  
17 respect.  
18 In addition, I think one  
19 important aspect of the Supreme Court's  
20 order was maintenance of chain of  
21 custody, and there are particular ways in  
22 which the chain of custody of election  
23 equipment is preserved that turn on  
24 particular nature of the evidence at  
25 issue.

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1 There are all sorts of different  
2 fields that are attached to different  
3 parts of the equipment. There are  
4 different ways of recording information  
5 to ensure that the chain of custody for  
6 each relevant component of an election  
7 machine is preserved.  
8 We don't know what condition the  
9 machines are going to be in at the time  
10 they are picked up and collected by the  
11 escrow agent. The escrow agent may need  
12 to take steps at that point of  
13 acquisition to document and inventory the  
14 equipment so that an appropriate chain of  
15 custody can be kept from that point  
16 forward. That also requires specialized  
17 knowledge about election equipment and  
18 the way the security of election  
19 equipment is maintained.  
20 I'm also informed that it may be  
21 necessary to charge the machines in a  
22 particular way on a particular schedule  
23 in order to ensure the preservation of  
24 data required thereon and obviously doing  
25 that in a way that is safe and isn't

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1 going to pose any sort of other issue  
2 regarding the preservation of the machine  
3 as a matter of requiring specialized  
4 experience and expertise.  
5 So, again, I don't pretend to be  
6 the expert here, but we have consulted  
7 extensively with our expert, and we do  
8 believe, for that reason and others, that  
9 this is a matter requiring specialized  
10 knowledge, and it's not a role that any  
11 party that might be suited to preserve  
12 other types of physical evidence would be  
13 qualified to play.  
14 THE COURT: Well, if there was  
15 some sort of examination, I mean, would  
16 have anticipated that both parties and  
17 their experts would probably want to be  
18 present when the machines are, you  
19 know, examined and then transported  
20 into the custody of whatever the escrow  
21 agent states would be. And if there  
22 are times when there needs to be  
23 maintenance or other work on the  
24 machines pending this litigation, that  
25 both parties and their experts would

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1 want to be there when the door is  
2 opened and people are inside.  
3 So wouldn't that be sufficient  
4 rather than requiring the actual escrow  
5 agent to be the expert?  
6 I don't mean to put you on the  
7 spot; I'm just trying to understand what  
8 the needs are here of what we have to do.  
9 I'll tell you what. Let me ask the  
10 County's attorney to weigh in here, and  
11 then I can come back to you.  
12 ATTY CARROLL: Thank you, Your  
13 Honor.  
14 First, I would ask, respectfully,  
15 for a clarification from Attorney Wiygul  
16 as to his position as to which vendor  
17 they're keeping. He just threw out the  
18 possibility of a second one. I thought  
19 that had been rejected, so I would like  
20 clarification on that before I answer the  
21 next question.  
22 THE COURT: I'm sorry. I was  
23 just talking in generalities, and I  
24 think I'm the one who threw out this  
25 Insurance Evidence Services. I know,

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1 in reviewing the filing in this case, I  
2 saw that that had been recommended as  
3 an alternative as well as an Auld &  
4 Associates investigation from Fulton  
5 County.  
6 So I think I'm just trying in a  
7 general fashion to find out what  
8 requirements the parties believe there  
9 are for an escrow agent and whether the  
10 third-party escrow agent needs to have  
11 experience or expertise with election  
12 security.  
13 Does the County have a position  
14 about that?  
15 ATTY CARROLL: We should be  
16 able to resolve this if we knew whether  
17 there was more than one vendor being  
18 proposed at this point.  
19 THE COURT: I'm not thinking  
20 about who's being proposed; I'm trying  
21 to find what the type of vendor that  
22 needs to be selected must be. Does the  
23 County have a position?  
24 ATTY CARROLL: I'm having a  
25 little difficulty hearing, and I

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1 apologize.  
2 I think we might be able to  
3 resolve this matter if we understood that  
4 we have more than one vendor because we  
5 understood they were only proposing Pro  
6 V&V.  
7 THE COURT: Right. We're  
8 not -- let me be very clear, Attorney  
9 Carroll.  
10 Putting aside the vendor, the  
11 name, who's proposing the vendor, my  
12 question for you is whether it is  
13 necessary for whatever vendor is proposed  
14 to have experience or expertise with  
15 election securities or election  
16 technology or whether an agent with  
17 expertise in conventional physical  
18 security be a sufficient third-party  
19 escrow agent here. If you have a  
20 position.  
21 ATTY CARROLL: Yes. Well, we  
22 would need to establish the issues that  
23 relate to the conflicts of interest  
24 that exist for their recommendation  
25 before I can answer that question,

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1 address the competency of their  
2 third-party vendor and protect the  
3 equipment. We would need to evaluate  
4 that, too.  
5 THE COURT: Okay. So,  
6 basically, what I understand you to be  
7 saying, then, is that it's  
8 possible that -- it's not necessary for  
9 the third-party escrow agent to have  
10 the experience with the election  
11 integrity, and that you're more  
12 concerned about conflicts of interest  
13 with the vendor as opposed to any  
14 particular expertise.  
15 Is that what I'm understanding?  
16 ATTY CARROLL: Right, correct.  
17 And competency and qualifications as  
18 well if they're going to be doing any  
19 kind of evaluations of these machines,  
20 which they should not be doing.  
21 THE COURT: Okay. So --  
22 ATTY CARROLL: And the  
23 competency and the ability to secure  
24 it. That's the question at hand.  
25 THE COURT: The competency and

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1 the ability to secure the machines?  
2 ATTY CARROLL: Yes.  
3 THE COURT: Okay. And so, how  
4 much storage space would be needed;  
5 does anybody know? Secretary, do you  
6 know, Attorney Wiygul?  
7 ATTY WIYGUL: Your Honor, I  
8 can't. Unfortunately, I'm not in a  
9 position to give you, you know, the  
10 square footage or quantify it in that  
11 respect. We've spoken to a number of  
12 different potential vendors, and at the  
13 end of the day, Pro V&V was the one  
14 that was, in our view, willing and able  
15 to do the job.  
16 So what I've done is, I've  
17 obviously shared the specifics on the  
18 nature of the equipment and the items and  
19 the equipment with the vendors, and they  
20 confirmed to me whether they have  
21 sufficiency or not, but I can't give you  
22 a particular area number. Sorry.  
23 THE COURT: Okay. And,  
24 basically, we've got temperature and  
25 humidity concerns. Is there something

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1 different about -- you know, every  
2 year, when the machines are not being  
3 used, they're being stored by all of  
4 the counties, you know, and taken out  
5 and prepared for use for the primary,  
6 then put back in storage, and then  
7 taken out and prepared for use in the  
8 general election, and then put back  
9 into storage.  
10 And so, can somebody explain --  
11 and I understand this isn't on the  
12 record, but I'm just trying to  
13 understand.  
14 You know, I'm looking at the  
15 filings that have come in and am thinking  
16 about our task was simply to select a  
17 third-party vendor that could store these  
18 machines, and it did not appear initially  
19 to me that it was going to be anything  
20 more complicated than what occurs every  
21 year with all of the vending machines  
22 that are stored and then prepared for  
23 use.  
24 And so, what I'm trying to  
25 understand is why it appears that there

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1 is such a specific -- why there might be  
2 a need for the type of storage that we  
3 have here.  
4 So, Mr. Wiygul, you're the one  
5 who seems to be saying that there needs  
6 to be this special kind of expertise.  
7 Could you explain that a little bit more?  
8 ATTY WIYGUL: Yeah. Your  
9 Honor, I think I would answer, if I  
10 may, and I apologize for not seeming to  
11 answer your earlier question.  
12 But I think part of the answer  
13 is -- and, again, I'm paraphrasing what  
14 I've spoken to my expert about. There  
15 are indicators for escrowing technology  
16 such as election machines but not that  
17 they're unique to election machine. And  
18 those standards are followed by the  
19 companies that do business in that area,  
20 in that industry. And they do involve,  
21 you know, particular specifications in  
22 terms of environmental controls.  
23 And I'm not -- again, not being  
24 an expert myself, I can't tell you,  
25 unfortunately, what the, you know,

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1 specific ranges that need to be  
2 maintained for the temperature and the  
3 humidity are, but I know that there are  
4 industry standards for that, and I think  
5 that it's important in this case.  
6 In addition -- well, let me make  
7 a separate point. I think another part  
8 of the issue here is, we are talking  
9 about potentially long-term preservation  
10 of data on pieces of equipment. We're  
11 not in a situation where, you know, the  
12 machines, as I understand it, when  
13 they're used in elections, before each  
14 and every election, there is an  
15 inspection of the machines that is done.  
16 You know, there is a verification made  
17 that everything is installed with the  
18 version of software, et cetera, that it  
19 should be installed on.  
20 So the machines are not being  
21 used to preserve data over extremely long  
22 periods of time, which is what their  
23 value as evidence is. So I think that  
24 might also be a consideration, I'm sure,  
25 as well.

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1 But I think our primary point is  
2 that these are digital assets as opposed  
3 to documents or, you know, other physical  
4 objects. And so, they're more sensitive,  
5 and they do require more refined  
6 conditions in order to ensure that they  
7 are properly preserved over what could  
8 potentially be a long period of time.  
9 THE COURT: So, basically, any  
10 escrow agent that is familiar with  
11 preserving digital data, so any kind of  
12 computers or any kind of technology  
13 that contains digital information. Any  
14 of those types of entities would be an  
15 appropriate escrow agent for this  
16 equipment. It would not need to be a  
17 company that specializes in voting  
18 equipment.  
19 ATTY WIYGUL: Your Honor, I  
20 don't know that it would absolutely  
21 have to be a company that specializes  
22 in voting equipment.  
23 My understanding is -- and,  
24 again, I'm a little nervous about making  
25 factual proffers just because I'm not the

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1 expert here and I'm relying on my expert  
2 --  
3 THE COURT: Right.  
4 ATTY WIYGUL: -- but I  
5 understand that there are certainly a  
6 categorical distinctions between  
7 storing sensitive pieces of technology,  
8 the data, versus I'll call them, you  
9 know, dumb objects, you know, that  
10 don't have data on them.  
11 And even within the category of  
12 technology, I understand that there are  
13 different industry standards in terms of  
14 environmental conditions for different  
15 types of technology. And, again, I  
16 expected that this is something that our  
17 expert is going to be able to illuminate  
18 more fully.  
19 So I think the short answer to  
20 your question is: No, we don't think it  
21 has to be, you know -- that only a voting  
22 system test lab would have -- would be  
23 able to provide the appropriate  
24 environmental conditions, but we do think  
25 that some knowledge and some particular

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1 types of facilities are required here.  
2 THE COURT: Okay.  
3 (Indiscernible cross talk.)  
4 ATTY CARROLL: Your Honor, if I  
5 may --  
6 THE COURT: Yes, of course.  
7 ATTY CARROLL: I'm sorry. I  
8 apologize if I interrupted, Your Honor.  
9 I would ask for clarification of  
10 that position, of Mr. Wiygul's position,  
11 that data can disappear from these  
12 machines if they're not turned on and  
13 charted. That seems to be what he's  
14 saying.  
15 THE COURT: No. Well, I think  
16 what he's saying is, there's -- that --  
17 well, that data can be very -- I'm not  
18 sure exactly of what he was saying, but  
19 he was trying to answer my question.  
20 I think that in trying to figure  
21 out the appropriate -- because all we're  
22 looking at here, the only purpose, my  
23 only purpose in talking with you and what  
24 we're trying to do here is to find a  
25 place for these machines to be stored

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1 while your other litigation continues.  
2 And, you know, obviously, to the  
3 extent we can find a secure facility  
4 where the machines can be safely  
5 maintained in their current status  
6 without any additional or unnecessary  
7 complication is what I think we're  
8 looking for.  
9 ATTY CARROLL: Yes, Your Honor,  
10 I understand what you're saying, but  
11 I'm just trying to understand the --  
12 make a clarification so that I can  
13 evaluate my witness list to determine  
14 the standards of the industry that he  
15 is proposing in this proposed hearing.  
16 I've never seen this equipment in  
17 any way, but I think that, if I  
18 understand, a room that's ten-by-ten  
19 would be sufficient in terms of the size  
20 to store the equipment.  
21 THE COURT: Okay. It would be  
22 climate-controlled with controls on the  
23 humidity and temperature where he would  
24 keep, you know, sensitive equipment.  
25 Have both sides looked into such



<p style="text-align: right;">Page 25</p> <p>1 vendors? 2 ATTY WIYGUL: We have, Your 3 Honor. This is Robert Wiygul for the 4 Secretary. 5 We've investigated a number of 6 different vendors that deal with the 7 technology and preservation of 8 technological pieces of evidence. And, 9 you know, we thought Pro V&amp;V was head- 10 and-shoulders the best choice, and as has 11 been alluded to, at one point, in an 12 effort to try to negotiate the case, we 13 explored the possibility of an 14 alternative vendor who we did not think 15 was as qualified as Pro V&amp;V, but that we 16 thought might meet the baseline 17 requirements here. 18 And at the end of the day, they 19 were not willing to, you know, put 20 themselves into candidacy. And so, 21 that's why we have applied for the 22 appointment of Pro V&amp;V. 23 THE COURT: So they took 24 themselves out of consideration? 25 ATTY WIYGUL: That's right,</p>	<p style="text-align: right;">Page 27</p> <p>1 And so, part of the point of 2 these vigorous standards regarding both 3 environmental control and chain of 4 custody, and so that the parties, to 5 ensure that the procedures were such that 6 they have minimized to the greatest 7 degree feasibly possible, if not wholly 8 eliminated, the risk that, you know, data 9 may have been altered in a way that is 10 undetectable. 11 And I think that would be 12 important to the special managers in the 13 Supreme Court findings of our 14 exspoliation in the underlying 15 proceedings, which was that there would 16 necessarily be concrete proof that 17 changes or alterations or deletions had 18 occurred, but that there could be no 19 certainty, given what had transpired, 20 that they did not occur. 21 And I think that's -- you know, 22 it's that general phenomenon that is in 23 part in forming our advocacy for fairly 24 rigorous standards of maintenance and 25 chain of custody here.</p>
<p style="text-align: right;">Page 26</p> <p>1 Your Honor. 2 ATTY CARROLL: Your Honor, I 3 think that, again, the Fulton County's 4 response is dependent on whether 5 Mr. Wiygul's position is that data can 6 disappear over a period of time. He is 7 not clarifying that position, and 8 that's the key to this question here. 9 ATTY WIYGUL: Your Honor, may 10 I -- would you like me to address that 11 point? 12 THE COURT: Sure. 13 ATTY WIYGUL: I think the point 14 that I'm making here is I -- again, I'm 15 imparting information from my expert, 16 who has told me that it may be 17 important to him to do everything that 18 is necessary to preserve the equipment 19 and the data, that the machine be 20 charged periodically. 21 But I think -- I mean, the other 22 consideration here -- and I think this 23 goes back to the evidence that came in in 24 the November hearing is, it's not always 25 clear whether data has been altered.</p>	<p style="text-align: right;">Page 28</p> <p>1 ATTY CARROLL: Your Honor, I 2 would object to that. That's not what 3 we're here for today, Your Honor. It's 4 clearly stated what we're here for, and 5 he's trying to expand the scope into 6 something that has already been 7 resolved. 8 THE COURT: In what way? Can 9 you explain your objection? 10 ATTY CARROLL: I'm sorry. 11 Could you say that again? It's hard to 12 hear you. 13 THE COURT: Okay. This is 14 informal. There are no real 15 objections, and I will overrule your 16 objection. 17 So, okay. I wanted to have a 18 better understanding, and I think I do 19 now. I had hoped that we would be able 20 to avoid some of the testimony that if it 21 was possible to find a vendor that would 22 be competent and capable of storing 23 technologically-sensitive equipment but 24 not necessarily having an expertise in 25 voting machines.</p>

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1 I had thought that the parties'  
2 experts would be able to examine the  
3 machines, you know, before they're placed  
4 into custody, you know, when necessary  
5 for purposes of the litigation. But we  
6 can think about that.

7 ATTY CARROLL: Your Honor, I'm  
8 sorry to interrupt you. I could not  
9 hear you. Can I ask for a  
10 clarification of what you said about an  
11 examination? I'm not hearing you.

12 THE COURT: What I said was  
13 what my initial understanding had been  
14 of how the escrow would occur, you  
15 know, that there would be an inspection  
16 at the beginning, before the items were  
17 placed into escrow. And then to the  
18 extent that they were needed during the  
19 course of any litigation obviously that  
20 would occur.

21 But either there would be  
22 inventory, and when you take possession,  
23 if there were any inspections necessary  
24 in order to document the condition of the  
25 equipment as it was placed into escrow so

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1 that it would be there.

2 But I think that what we're going  
3 to have to do is continue with the  
4 hearing as it's currently scheduled on  
5 Monday, but I would like you both to  
6 think of whether you can come up with a  
7 potential escrow agent that would have  
8 expertise in maintaining technologically-  
9 sensitive equipment and whether that  
10 would be sufficient for our purposes  
11 here.

12 And I'm not sure if there's  
13 anything further that needs to be  
14 discussed here. Is there anything  
15 further, Attorney Wiygul?

16 ATTY WIYGUL: I'd just like to  
17 make two quick points, if I may, Your  
18 Honor. One is, I appreciate the goal  
19 that Your Honor has laid out. I think  
20 that ensuring evidence, as I understand  
21 Your Honor's suggestion, really was a  
22 candidate that fell into that niche  
23 from our perspective. And as I said,  
24 they, unfortunately, were not willing  
25 to go forward. So we did make that

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1 effort and, unfortunately, it was not  
2 successful at the end of the day.

3 The second point I would make is,  
4 as I was reading Your Honor's order from  
5 yesterday with respect to the question of  
6 experience specific to election security,  
7 the Secretary does agree that the expert  
8 is certainly not going to be involved in  
9 any kind of forensic examination of the  
10 machines or any audit or anything like  
11 that.

12 So to the extent that there are  
13 evidentiary questions or questions of  
14 presenting potential evidence regarding  
15 auditing or forensic analysis, we do  
16 believe that that evidence is not  
17 relevant to the purpose of this hearing.

18 ATTY CARROLL: Your Honor, if I  
19 may just reply.

20 THE COURT: Yes.

21 ATTY CARROLL: You had put  
22 forward today that it was your  
23 understanding that there would be an  
24 inspection that is, in fact, new  
25 evidence or new information that was

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1 not --

2 THE COURT: No, I'm sorry. I  
3 may have -- I apologize if I misspoke.  
4 Maybe "inspection" was the wrong word  
5 to use. Probably "inventory" was a  
6 better word for me to use.

7 But that there would be some --  
8 you know, that the machines and all of  
9 the equipment that would be placed into  
10 escrow would be inventoried before it's  
11 placed into the escrow, into storage,  
12 where it will be safely and securely  
13 maintained during the pendency of the  
14 litigation.

15 And, frankly, I didn't appreciate  
16 how complicated this idea of securing  
17 these machines would be, but I look  
18 forward to being educated about it  
19 beginning Monday.

20 ATTY CARROLL: Right. Your  
21 Honor, I would just then -- now that  
22 you clarified that you meant inspection  
23 over --

24 THE COURT: Inventory.

25 ATTY CARROLL: I mean inventory

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1 over inspection, I would have the same  
2 question: Who would do the inventory  
3 and what would it consist of? 'Cause  
4 that has never been put forward before.  
5 That's what I'm asking now.  
6 THE COURT: Well, I would think  
7 that whenever items are placed into an  
8 escrow, that there would be an  
9 inventory of those items so that  
10 everybody is on the same page as when  
11 the escrow is finished, that the  
12 inventory would need to be matched with  
13 the items that are there to assure that  
14 there has been -- you know, that  
15 everything continues to be secure.  
16 ATTY CARROLL: So my question  
17 would be: Is the Court ordering --  
18 THE COURT: I'm not ordering  
19 anything.  
20 ATTY CARROLL: -- a forensic  
21 inventory? This is --  
22 THE COURT: No, this court is  
23 not ordering anything. This court is  
24 not ordering anything.  
25 ATTY CARROLL: Okay. I'm

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1 sorry, Your Honor. Thank you.  
2 THE COURT: I think that we --  
3 Dominion, I apologize. I have not  
4 asked you for your... position on  
5 anything that we've discussed.  
6 ATTY GALLAGHER: This is Shawn  
7 Gallagher, Your Honor.  
8 I mean, we agree with the  
9 position of the Secretary. I mean, we  
10 were just asked if the equipment at issue  
11 has been designated as critical  
12 infrastructure by the Department of  
13 Homeland Security, you know.  
14 And for those reasons, we agree  
15 that Pro V&V, which is a nonpartisan,  
16 federally-accredited voting system test  
17 lab, would be the appropriate escrow  
18 agent.  
19 THE COURT: Okay. And with  
20 regard to the question of whether a  
21 vendor with experience in maintaining  
22 sensitive technological information but  
23 not necessarily voting equipment would  
24 be an adequate third-party escrow  
25 agent. Does Dominion have a position

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1 about that?  
2 ATTY GALLAGHER: I would just  
3 echo the comments of Mr. Wiygul. Same  
4 position.  
5 THE COURT: Okay. Thank you.  
6 ATTY GALLAGHER: Thank you.  
7 THE COURT: Okay. I appreciate  
8 your time today, and I will look  
9 forward to seeing all of you on Monday.  
10 ATTY WIYGUL: Your Honor, will  
11 you indulge me? Can I just ask a  
12 couple of administrative questions that  
13 will help us in preparing for the  
14 hearing? It doesn't involve the  
15 outstanding evidentiary issues.  
16 THE COURT: Okay.  
17 ATTY WIYGUL: Thank you, Your  
18 Honor.  
19 One of our proposed witnesses is  
20 going to be in Florida, a representative  
21 of Pro V&V, and he has filed a motion  
22 seeking permission for him to testify  
23 remotely. I don't believe that either  
24 party filed an opposition to that.  
25 And just for administrative

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1 purposes, I wonder if Your Honor might  
2 give us some guidance about when we might  
3 expect a ruling on that.  
4 THE COURT: Yes. We will issue  
5 an order with regard to this afternoon.  
6 ATTY WIYGUL: Thank you.  
7 And I think my only other  
8 questions are that the parties seem to  
9 have a pretty wide difference of opinion  
10 about the length of the hearing, and I  
11 wonder if Your Honor had any guidance as  
12 to that for purposes of making hotel  
13 reservations and that sort of thing.  
14 THE COURT: I am not inclined  
15 to have this hearing last any longer  
16 than is necessary. We have not made  
17 arrangements for that. So I suppose  
18 that would be -- let's see.  
19 Secretary, you've said six hours,  
20 was it?  
21 ATTY WIYGUL: I think it was  
22 four hours, Your Honor, to present the  
23 direct testimony of our witnesses.  
24 THE COURT: Okay. And let's  
25 see, Mr. Carroll, your estimate was

<p style="text-align: right;">Page 37</p> <p>1 significantly different. 2 ATTY CARROLL: Yes. I think it 3 would take several days to address the 4 competency, conflict, and ability to 5 secure the evidence from all of these 6 witnesses. 7 THE COURT: Well, yeah. And we 8 do have other hearings scheduled. In 9 fact, we have another hearing in 10 another case scheduled for the next 11 day. 12 So I was anticipating it taking 13 only one day. If we need to have it go 14 into a second day, it would have to be 15 later in the week, but I don't anticipate 16 it taking more than a day-and-a-half or 17 two days. 18 We'll have to try to, you know, 19 limit the testimony or be very efficient 20 with the questioning, I think. 21 ATTY CARROLL: Your Honor, I 22 just have one question if Mr. Wiygul is 23 finished with his remarks. 24 THE COURT: Yes. 25 ATTY CARROLL: That would be if</p>	<p style="text-align: right;">Page 39</p> <p>1 late or two breaks. Whatever we need to 2 do, we will do. 3 But I would also respect the time 4 and effort that everybody is putting in 5 and the fact that, under the current 6 orders of the Supreme Court, the 7 taxpayers of Fulton County are paying a 8 price for this, and I want to be mindful 9 that we're careful in how we spend their 10 tax dollars as well. 11 And so, I think I'm going to ask 12 everyone to be as efficient as they can 13 with the questioning of the witnesses and 14 be as prepared as they can and see how 15 expeditiously we can resolve this 16 inquiry, which is really just -- the 17 focus is just to an find an appropriate 18 place where this equipment can be 19 maintained securely during the pendency 20 of the litigation that you have and that 21 you're currently involved in. 22 (Indiscernible cross talk.) 23 ATTY WIYGUL: I'm sorry, Your 24 Honor. 25 THE COURT: Go ahead.</p>
<p style="text-align: right;">Page 38</p> <p>1 the Court intended rule on our request 2 to stay based on the petition having 3 been filed. 4 THE COURT: I'm sorry. Could 5 you say that again, please? 6 ATTY CARROLL: With regard to 7 the application of these files for a 8 stay based on the petition being filed 9 to the United States Supreme Court, are 10 you planning on making a ruling on 11 that? 12 THE COURT: I can make a ruling 13 on that before we begin. 14 ATTY CARROLL: Thank you, Your 15 Honor. 16 THE COURT: I appreciate the 17 difficulty of trying to approve the 18 proper place for this equipment to be 19 stored, and I understand the importance 20 of it. I do want to make sure that 21 both sides have the opportunity they 22 need to present the testimony that is 23 relevant to the inquiry at hand. 24 And so, we will endeavor to do 25 that if we have to come early or stay</p>	<p style="text-align: right;">Page 40</p> <p>1 ATTY WIYGUL: I was just going 2 to inquire in terms of, again, just 3 from an administrative standpoint to 4 make sure, in the interest of 5 efficiency, that we have our witnesses 6 ready to go at the right time. 7 Does Your Honor have a view as to 8 which party should go first in presenting 9 the evidence? I think, you know, the 10 Secretary could be accurately described 11 as the (indiscernible), so we were 12 prepared to put on our evidence first, 13 but I did want to inquire the Court about 14 its expectation. 15 THE COURT: Thank you. 16 We'll issue an order later today 17 that will set forth our understanding of 18 how the hearing will proceed, and that 19 will give you what you need. 20 ATTY WIYGUL: Thank you, Your 21 Honor. 22 THE COURT: Thank you for 23 asking the question. 24 Are there any other questions? 25 ATTY CARROLL: Not from the</p>



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1 Fulton County side, Your Honor.  
2 THE COURT: Okay. Thank you  
3 very much. I appreciate your input  
4 today and your all being present, and  
5 look forward to seeing you on Monday.  
6 Thank you.

7 (Proceedings end at 1:55 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the  
edings, evidence, and objections are  
ined fully and accurately in the  
graphic notes taken by me upon the  
edings in the foregoing matter taken on  
sday, August 23, 2023, and that this is a  
and correct transcript of same.

\_\_\_\_\_,  
Josephine Cardillo  
Professional Court Reporter  
and Notary Public

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ter.)

<hr/> <b>A</b> <hr/>	<b>analysis (1)</b> 31:15	16:16,22;17:2,7;19:8; 21:19;22:4;23:4,7;
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# **EXHIBIT D**



**In The Matter Of:**  
*Fulton County Elections Board vs.*  
*Secretary of Commonwealth*

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*No. 277 MD 2021 No. 3 MAP 2022*  
*August 23, 2023*

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FULTON COUNTY ELECTIONS BOARD

v.

SECRETARY OF COMMONWEALTH

No. 277 MD 2021 No. 3 MAP 2022

Proceedings held on Wednesday, 8/23/23

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Dated Thursday, 8/24/23

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TO: The Honorable Renée Cohn Jubelirer

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

FULTON COUNTY ELECTIONS BOARD

v.

SECRETARY OF COMMONWEALTH

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DATED: Thursday, 8/24/23

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Buchanan Ingersoll

Paul Ritchey, Court Staff

Josephine Cardillo,  
Court Reporter

- - -

1 MR. RITCHEY: This is Paul,  
2 administrative staff of the  
3 Commonwealth.

4 First, will the court reporter  
5 please identify herself.

6 COURT REPORTER: Josephine  
7 Cardillo, with Media Court Reporting,  
8 Media, PA.

9 MR. RITCHEY: Thank you.

10 First, counsel for the County of  
11 Fulton, then counsel for the Secretary,  
12 and then, finally, counsel for Intervener  
13 Dominion Voting Systems, Incorporated.

14 ATTY CARROLL: Yes. From  
15 Fulton County, Thomas Carroll, Counsel  
16 for Fulton.

17 ATTY WIYGUL: Good afternoon.  
18 For the Secretary of the Commonwealth,  
19 Robert Wiygul, from Hangley Aronchick  
20 Segal Pudlin & Schiller, and I believe  
21 I have two co-counsels dialing in  
22 separately, but I'll let them announce  
23 themselves.

24 ATTY HILL: Yeah, this is John  
25 Hill, also from Hangley Aronchick Segal

1 Pudlin & Schiller, on behalf of the  
2 Department.

3 ATTY MARVRUDIS: And this is  
4 Dimitri Marvrudis from the law firm of  
5 Tucker Law Group, on behalf of the  
6 Secretary.

7 ATTY GALLAGHER: I'm Shawn  
8 Gallagher, with Buchanan Ingersoll &  
9 Rooney, on behalf of the Intervener  
10 Dominion.

11 ATTY GOLDMAN: Kathleen Jones  
12 Goldman, also with Buchanan Ingersoll &  
13 Rooney on behalf of Dominion.

14 MR. RITCHEY: Thank you all.  
15 Other than counsel, the court reporter,  
16 and court staff, is anyone else present  
17 on the call or listening to the call?

18 (No response.)

19 Okay. Hearing none, please stay  
20 on the line. The conference will begin  
21 shortly.

22 THE COURT: Good afternoon,  
23 everyone. This is Judge Cohn  
24 Jubelirer. I believe we have everyone  
25 on today's call. Thank you very much,

1 and you've all identified yourself, I  
2 believe, for the court reporter who's  
3 on.

4 Can I be heard?

5 COURT REPORTER: This is  
6 Josephine Cardillo, the court reporter.  
7 It sounded like, Your Honor, you were  
8 cutting out, but I will do my best with  
9 what I can hear.

10 THE COURT: Thank you very  
11 much. Please speak up if you cannot  
12 hear us.

13 Has everybody identified  
14 themselves? Have all counsel identified  
15 themselves for you?

16 COURT REPORTER: Yes, they  
17 have.

18 THE COURT: Okay, excellent.  
19 Thank you.

20 As you all know, we are here  
21 today for a prehearing conference in the  
22 matter of County of Fulton et al.,  
23 Petitioners and Appellees versus the  
24 Secretary of the Commonwealth,  
25 Respondent, 277 MD 2021 and as before the

1 Supreme Court 3 MAP 2022.

2 And as indicated in the order  
3 issued yesterday, the primary focus of  
4 today's conference was to determine  
5 whether it is necessary for the third-  
6 party escrow agent to have experience or  
7 expertise with election security or  
8 election technology or whether an agent  
9 with expertise in convention of physical  
10 security be sufficient.

11 It is recognized that -- well, it  
12 appears that both parties, the Secretary  
13 and the County, have in the recent past  
14 proposed alternative escrow agents. The  
15 Secretary, the Insurance Evidence  
16 Services (IES) and Fulton County Auld &  
17 Associates Investigation, Inc.

18 So let me first ask the County --  
19 well, let me first ask the Secretary: Do  
20 you believe that we need to have a  
21 third-party escrow agent with experience  
22 in election security, or would some other  
23 entity be sufficient?

24 ATTY WIYGUL: Thank you, Your  
25 Honor. This is Robert Wiygul for the



1 Secretary.

2 We do believe that the escrow  
3 agent should have experience with the  
4 particular type of evidence that is at  
5 issue here, which is, as we interpret the  
6 Supreme Court order, voting equipment,  
7 but also potentially data stored on that  
8 voting equipment.

9 And so, I think I agree with Your  
10 Honor's order that the purpose of the  
11 escrow agreement is to secure physical  
12 evidence for potential use in future  
13 litigation, but we think that the type of  
14 evidence at issue and important for your  
15 consideration here -- and we're prepared  
16 to present evidence of the hearing on  
17 Monday on why that's the case and why the  
18 specific type of evidence at issue calls  
19 for expertise and experience that would  
20 not be possessed simply by entities that  
21 may have experience, other types of  
22 physical evidence such as documents or,  
23 you know, weapons, what have you.

24 So I think, in some ways, you  
25 know, the background in election

1 experience is important. Your Honor did  
2 point out that the Secretary at one point  
3 had proposed as an alternative candidate  
4 to be escrow agent Insurance Evidence  
5 Services.

6 We made clear in our filings, I  
7 think, that we believe they would be our  
8 second-choice alternative. We believe  
9 that Pro V&V was head-and-shoulders the  
10 best candidate here.

11 But even Insurance Evidence  
12 Services had expertise and experience  
13 with storing pieces of technology with  
14 data on them, things of that nature. We  
15 think that that is, you know, a bare-  
16 minimum qualification, but, again, we do  
17 think that there are aspects to the  
18 security in preservation of election  
19 equipment that are unique and do call for  
20 unique experience and expertise.

21 THE COURT: Well, I'm just  
22 trying to understand why, if the  
23 equipment is locked in a room and even  
24 if we have cameras that would show  
25 who's coming and going and there's a

1 log and nobody is allowed to get in,  
2 and if the equipment is taken offline  
3 in a way that the Court goes in there,  
4 everybody watches, and your experts are  
5 comfortable with, why would you need to  
6 have anything more than that?

7 ATTY WIYGUL: Well, Your Honor,  
8 we're prepared to present testimony on  
9 Monday, but there are particular  
10 environmental conditions -- you know,  
11 humidity, temperature, et cetera --  
12 that are appropriate and necessary for  
13 the preservation of different sorts of  
14 digital assets such as data stored on  
15 election equipment. We think there's  
16 particular expertise called for in that  
17 respect.

18 In addition, I think one  
19 important aspect of the Supreme Court's  
20 order was maintenance of chain of  
21 custody, and there are particular ways in  
22 which the chain of custody of election  
23 equipment is preserved that turn on  
24 particular nature of the evidence at  
25 issue.

1           There are all sorts of different  
2           fields that are attached to different  
3           parts of the equipment. There are  
4           different ways of recording information  
5           to ensure that the chain of custody for  
6           each relevant component of an election  
7           machine is preserved.

8           We don't know what condition the  
9           machines are going to be in at the time  
10          they are picked up and collected by the  
11          escrow agent. The escrow agent may need  
12          to take steps at that point of  
13          acquisition to document and inventory the  
14          equipment so that an appropriate chain of  
15          custody can be kept from that point  
16          forward. That also requires specialized  
17          knowledge about election equipment and  
18          the way the security of election  
19          equipment is maintained.

20          I'm also informed that it may be  
21          necessary to charge the machines in a  
22          particular way on a particular schedule  
23          in order to ensure the preservation of  
24          data required thereon and obviously doing  
25          that in a way that is safe and isn't

1 going to pose any sort of other issue  
2 regarding the preservation of the machine  
3 as a matter of requiring specialized  
4 experience and expertise.

5 So, again, I don't pretend to be  
6 the expert here, but we have consulted  
7 extensively with our expert, and we do  
8 believe, for that reason and others, that  
9 this is a matter requiring specialized  
10 knowledge, and it's not a role that any  
11 party that might be suited to preserve  
12 other types of physical evidence would be  
13 qualified to play.

14 THE COURT: Well, if there was  
15 some sort of examination, I mean, would  
16 have anticipated that both parties and  
17 their experts would probably want to be  
18 present when the machines are, you  
19 know, examined and then transported  
20 into the custody of whatever the escrow  
21 agent states would be. And if there  
22 are times when there needs to be  
23 maintenance or other work on the  
24 machines pending this litigation, that  
25 both parties and their experts would

1 want to be there when the door is  
2 opened and people are inside.

3 So wouldn't that be sufficient  
4 rather than requiring the actual escrow  
5 agent to be the expert?

6 I don't mean to put you on the  
7 spot; I'm just trying to understand what  
8 the needs are here of what we have to do.  
9 I'll tell you what. Let me ask the  
10 County's attorney to weigh in here, and  
11 then I can come back to you.

12 ATTY CARROLL: Thank you, Your  
13 Honor.

14 First, I would ask, respectfully,  
15 for a clarification from Attorney Wiygul  
16 as to his position as to which vendor  
17 they're keeping. He just threw out the  
18 possibility of a second one. I thought  
19 that had been rejected, so I would like  
20 clarification on that before I answer the  
21 next question.

22 THE COURT: I'm sorry. I was  
23 just talking in generalities, and I  
24 think I'm the one who threw out this  
25 Insurance Evidence Services. I know,

1 in reviewing the filing in this case, I  
2 saw that that had been recommended as  
3 an alternative as well as an Auld &  
4 Associates investigation from Fulton  
5 County.

6 So I think I'm just trying in a  
7 general fashion to find out what  
8 requirements the parties believe there  
9 are for an escrow agent and whether the  
10 third-party escrow agent needs to have  
11 experience or expertise with election  
12 security.

13 Does the County have a position  
14 about that?

15 ATTY CARROLL: We should be  
16 able to resolve this if we knew whether  
17 there was more than one vendor being  
18 proposed at this point.

19 THE COURT: I'm not thinking  
20 about who's being proposed; I'm trying  
21 to find what the type of vendor that  
22 needs to be selected must be. Does the  
23 County have a position?

24 ATTY CARROLL: I'm having a  
25 little difficulty hearing, and I

1 apologize.

2 I think we might be able to  
3 resolve this matter if we understood that  
4 we have more than one vendor because we  
5 understood they were only proposing Pro  
6 V&V.

7 THE COURT: Right. We're  
8 not -- let me be very clear, Attorney  
9 Carroll.

10 Putting aside the vendor, the  
11 name, who's proposing the vendor, my  
12 question for you is whether it is  
13 necessary for whatever vendor is proposed  
14 to have experience or expertise with  
15 election securities or election  
16 technology or whether an agent with  
17 expertise in conventional physical  
18 security be a sufficient third-party  
19 escrow agent here. If you have a  
20 position.

21 ATTY CARROLL: Yes. Well, we  
22 would need to establish the issues that  
23 relate to the conflicts of interest  
24 that exist for their recommendation  
25 before I can answer that question,



1 address the competency of their  
2 third-party vendor and protect the  
3 equipment. We would need to evaluate  
4 that, too.

5 THE COURT: Okay. So,  
6 basically, what I understand you to be  
7 saying, then, is that it's  
8 possible that -- it's not necessary for  
9 the third-party escrow agent to have  
10 the experience with the election  
11 integrity, and that you're more  
12 concerned about conflicts of interest  
13 with the vendor as opposed to any  
14 particular expertise.

15 Is that what I'm understanding?

16 ATTY CARROLL: Right, correct.  
17 And competency and qualifications as  
18 well if they're going to be doing any  
19 kind of evaluations of these machines,  
20 which they should not be doing.

21 THE COURT: Okay. So --

22 ATTY CARROLL: And the  
23 competency and the ability to secure  
24 it. That's the question at hand.

25 THE COURT: The competency and

1 the ability to secure the machines?

2 ATTY CARROLL: Yes.

3 THE COURT: Okay. And so, how  
4 much storage space would be needed;  
5 does anybody know? Secretary, do you  
6 know, Attorney Wiygul?

7 ATTY WIYGUL: Your Honor, I  
8 can't. Unfortunately, I'm not in a  
9 position to give you, you know, the  
10 square footage or quantify it in that  
11 respect. We've spoken to a number of  
12 different potential vendors, and at the  
13 end of the day, Pro V&V was the one  
14 that was, in our view, willing and able  
15 to do the job.

16 So what I've done is, I've  
17 obviously shared the specifics on the  
18 nature of the equipment and the items and  
19 the equipment with the vendors, and they  
20 confirmed to me whether they have  
21 sufficiency or not, but I can't give you  
22 a particular area number. Sorry.

23 THE COURT: Okay. And,  
24 basically, we've got temperature and  
25 humidity concerns. Is there something

1 different about -- you know, every  
2 year, when the machines are not being  
3 used, they're being stored by all of  
4 the counties, you know, and taken out  
5 and prepared for use for the primary,  
6 then put back in storage, and then  
7 taken out and prepared for use in the  
8 general election, and then put back  
9 into storage.

10 And so, can somebody explain --  
11 and I understand this isn't on the  
12 record, but I'm just trying to  
13 understand.

14 You know, I'm looking at the  
15 filings that have come in and am thinking  
16 about our task was simply to select a  
17 third-party vendor that could store these  
18 machines, and it did not appear initially  
19 to me that it was going to be anything  
20 more complicated than what occurs every  
21 year with all of the vending machines  
22 that are stored and then prepared for  
23 use.

24 And so, what I'm trying to  
25 understand is why it appears that there

1 is such a specific -- why there might be  
2 a need for the type of storage that we  
3 have here.

4 So, Mr. Wiygul, you're the one  
5 who seems to be saying that there needs  
6 to be this special kind of expertise.  
7 Could you explain that a little bit more?

8 ATTY WIYGUL: Yeah. Your  
9 Honor, I think I would answer, if I  
10 may, and I apologize for not seeming to  
11 answer your earlier question.

12 But I think part of the answer  
13 is -- and, again, I'm paraphrasing what  
14 I've spoken to my expert about. There  
15 are indicators for escrowing technology  
16 such as election machines but not that  
17 they're unique to election machine. And  
18 those standards are followed by the  
19 companies that do business in that area,  
20 in that industry. And they do involve,  
21 you know, particular specifications in  
22 terms of environmental controls.

23 And I'm not -- again, not being  
24 an expert myself, I can't tell you,  
25 unfortunately, what the, you know,

1 specific ranges that need to be  
2 maintained for the temperature and the  
3 humidity are, but I know that there are  
4 industry standards for that, and I think  
5 that it's important in this case.

6 In addition -- well, let me make  
7 a separate point. I think another part  
8 of the issue here is, we are talking  
9 about potentially long-term preservation  
10 of data on pieces of equipment. We're  
11 not in a situation where, you know, the  
12 machines, as I understand it, when  
13 they're used in elections, before each  
14 and every election, there is an  
15 inspection of the machines that is done.  
16 You know, there is a verification made  
17 that everything is installed with the  
18 version of software, et cetera, that it  
19 should be installed on.

20 So the machines are not being  
21 used to preserve data over extremely long  
22 periods of time, which is what their  
23 value as evidence is. So I think that  
24 might also be a consideration, I'm sure,  
25 as well.

1           But I think our primary point is  
2           that these are digital assets as opposed  
3           to documents or, you know, other physical  
4           objects. And so, they're more sensitive,  
5           and they do require more refined  
6           conditions in order to ensure that they  
7           are properly preserved over what could  
8           potentially be a long period of time.

9           THE COURT: So, basically, any  
10          escrow agent that is familiar with  
11          preserving digital data, so any kind of  
12          computers or any kind of technology  
13          that contains digital information. Any  
14          of those types of entities would be an  
15          appropriate escrow agent for this  
16          equipment. It would not need to be a  
17          company that specializes in voting  
18          equipment.

19          ATTY WIYGUL: Your Honor, I  
20          don't know that it would absolutely  
21          have to be a company that specializes  
22          in voting equipment.

23          My understanding is -- and,  
24          again, I'm a little nervous about making  
25          factual proffers just because I'm not the

1 expert here and I'm relying on my expert  
2 --

3 THE COURT: Right.

4 ATTY WIYGUL: -- but I  
5 understand that there are certainly a  
6 categorical distinctions between  
7 storing sensitive pieces of technology,  
8 the data, versus I'll call them, you  
9 know, dumb objects, you know, that  
10 don't have data on them.

11 And even within the category of  
12 technology, I understand that there are  
13 different industry standards in terms of  
14 environmental conditions for different  
15 types of technology. And, again, I  
16 expected that this is something that our  
17 expert is going to be able to illuminate  
18 more fully.

19 So I think the short answer to  
20 your question is: No, we don't think it  
21 has to be, you know -- that only a voting  
22 system test lab would have -- would be  
23 able to provide the appropriate  
24 environmental conditions, but we do think  
25 that some knowledge and some particular

1 types of facilities are required here.

2 THE COURT: Okay.

3 (Indiscernible cross talk.)

4 ATTY CARROLL: Your Honor, if I  
5 may --

6 THE COURT: Yes, of course.

7 ATTY CARROLL: I'm sorry. I  
8 apologize if I interrupted, Your Honor.

9 I would ask for clarification of  
10 that position, of Mr. Wiygul's position,  
11 that data can disappear from these  
12 machines if they're not turned on and  
13 charted. That seems to be what he's  
14 saying.

15 THE COURT: No. Well, I think  
16 what he's saying is, there's -- that --  
17 well, that data can be very -- I'm not  
18 sure exactly of what he was saying, but  
19 he was trying to answer my question.

20 I think that in trying to figure  
21 out the appropriate -- because all we're  
22 looking at here, the only purpose, my  
23 only purpose in talking with you and what  
24 we're trying to do here is to find a  
25 place for these machines to be stored



1 while your other litigation continues.

2 And, you know, obviously, to the  
3 extent we can find a secure facility  
4 where the machines can be safely  
5 maintained in their current status  
6 without any additional or unnecessary  
7 complication is what I think we're  
8 looking for.

9 ATTY CARROLL: Yes, Your Honor,  
10 I understand what you're saying, but  
11 I'm just trying to understand the --  
12 make a clarification so that I can  
13 evaluate my witness list to determine  
14 the standards of the industry that he  
15 is proposing in this proposed hearing.

16 I've never seen this equipment in  
17 any way, but I think that, if I  
18 understand, a room that's ten-by-ten  
19 would be sufficient in terms of the size  
20 to store the equipment.

21 THE COURT: Okay. It would be  
22 climate-controlled with controls on the  
23 humidity and temperature where he would  
24 keep, you know, sensitive equipment.

25 Have both sides looked into such

1 vendors?

2 ATTY WIYGUL: We have, Your  
3 Honor. This is Robert Wiygul for the  
4 Secretary.

5 We've investigated a number of  
6 different vendors that deal with the  
7 technology and preservation of  
8 technological pieces of evidence. And,  
9 you know, we thought Pro V&V was head-  
10 and-shoulders the best choice, and as has  
11 been alluded to, at one point, in an  
12 effort to try to negotiate the case, we  
13 explored the possibility of an  
14 alternative vendor who we did not think  
15 was as qualified as Pro V&V, but that we  
16 thought might meet the baseline  
17 requirements here.

18 And at the end of the day, they  
19 were not willing to, you know, put  
20 themselves into candidacy. And so,  
21 that's why we have applied for the  
22 appointment of Pro V&V.

23 THE COURT: So they took  
24 themselves out of consideration?

25 ATTY WIYGUL: That's right,

1 Your Honor.

2 ATTY CARROLL: Your Honor, I  
3 think that, again, the Fulton County's  
4 response is dependent on whether  
5 Mr. Wiygul's position is that data can  
6 disappear over a period of time. He is  
7 not clarifying that position, and  
8 that's the key to this question here.

9 ATTY WIYGUL: Your Honor, may  
10 I -- would you like me to address that  
11 point?

12 THE COURT: Sure.

13 ATTY WIYGUL: I think the point  
14 that I'm making here is I -- again, I'm  
15 imparting information from my expert,  
16 who has told me that it may be  
17 important to him to do everything that  
18 is necessary to preserve the equipment  
19 and the data, that the machine be  
20 charged periodically.

21 But I think -- I mean, the other  
22 consideration here -- and I think this  
23 goes back to the evidence that came in in  
24 the November hearing is, it's not always  
25 clear whether data has been altered.

1                   And so, part of the point of  
2                   these vigorous standards regarding both  
3                   environmental control and chain of  
4                   custody, and so that the parties, to  
5                   ensure that the procedures were such that  
6                   they have minimized to the greatest  
7                   degree feasibly possible, if not wholly  
8                   eliminated, the risk that, you know, data  
9                   may have been altered in a way that is  
10                  undetectable.

11                  And I think that would be  
12                  important to the special managers in the  
13                  Supreme Court findings of our  
14                  exspoliation in the underlying  
15                  proceedings, which was that there would  
16                  necessarily be concrete proof that  
17                  changes or alterations or deletions had  
18                  occurred, but that there could be no  
19                  certainty, given what had transpired,  
20                  that they did not occur.

21                  And I think that's -- you know,  
22                  it's that general phenomenon that is in  
23                  part in forming our advocacy for fairly  
24                  rigorous standards of maintenance and  
25                  chain of custody here.

1                   ATTY CARROLL: Your Honor, I  
2                   would object to that. That's not what  
3                   we're here for today, Your Honor. It's  
4                   clearly stated what we're here for, and  
5                   he's trying to expand the scope into  
6                   something that has already been  
7                   resolved.

8                   THE COURT: In what way? Can  
9                   you explain your objection?

10                  ATTY CARROLL: I'm sorry.  
11                  Could you say that again? It's hard to  
12                  hear you.

13                  THE COURT: Okay. This is  
14                  informal. There are no real  
15                  objections, and I will overrule your  
16                  objection.

17                  So, okay. I wanted to have a  
18                  better understanding, and I think I do  
19                  now. I had hoped that we would be able  
20                  to avoid some of the testimony that if it  
21                  was possible to find a vendor that would  
22                  be competent and capable of storing  
23                  technologically-sensitive equipment but  
24                  not necessarily having an expertise in  
25                  voting machines.

1 I had thought that the parties'  
2 experts would be able to examine the  
3 machines, you know, before they're placed  
4 into custody, you know, when necessary  
5 for purposes of the litigation. But we  
6 can think about that.

7 ATTY CARROLL: Your Honor, I'm  
8 sorry to interrupt you. I could not  
9 hear you. Can I ask for a  
10 clarification of what you said about an  
11 examination? I'm not hearing you.

12 THE COURT: What I said was  
13 what my initial understanding had been  
14 of how the escrow would occur, you  
15 know, that there would be an inspection  
16 at the beginning, before the items were  
17 placed into escrow. And then to the  
18 extent that they were needed during the  
19 course of any litigation obviously that  
20 would occur.

21 But either there would be  
22 inventory, and when you take possession,  
23 if there were any inspections necessary  
24 in order to document the condition of the  
25 equipment as it was placed into escrow so

1           that it would be there.

2                       But I think that what we're going  
3           to have to do is continue with the  
4           hearing as it's currently scheduled on  
5           Monday, but I would like you both to  
6           think of whether you can come up with a  
7           potential escrow agent that would have  
8           expertise in maintaining technologically-  
9           sensitive equipment and whether that  
10          would be sufficient for our purposes  
11          here.

12                      And I'm not sure if there's  
13          anything further that needs to be  
14          discussed here. Is there anything  
15          further, Attorney Wiygul?

16                      ATTY WIYGUL: I'd just like to  
17          make two quick points, if I may, Your  
18          Honor. One is, I appreciate the goal  
19          that Your Honor has laid out. I think  
20          that ensuring evidence, as I understand  
21          Your Honor's suggestion, really was a  
22          candidate that fell into that niche  
23          from our perspective. And as I said,  
24          they, unfortunately, were not willing  
25          to go forward. So we did make that

1 effort and, unfortunately, it was not  
2 successful at the end of the day.

3 The second point I would make is,  
4 as I was reading Your Honor's order from  
5 yesterday with respect to the question of  
6 experience specific to election security,  
7 the Secretary does agree that the expert  
8 is certainly not going to be involved in  
9 any kind of forensic examination of the  
10 machines or any audit or anything like  
11 that.

12 So to the extent that there are  
13 evidentiary questions or questions of  
14 presenting potential evidence regarding  
15 auditing or forensic analysis, we do  
16 believe that that evidence is not  
17 relevant to the purpose of this hearing.

18 ATTY CARROLL: Your Honor, if I  
19 may just reply.

20 THE COURT: Yes.

21 ATTY CARROLL: You had put  
22 forward today that it was your  
23 understanding that there would be an  
24 inspection that is, in fact, new  
25 evidence or new information that was



1 not --

2 THE COURT: No, I'm sorry. I  
3 may have -- I apologize if I misspoke.  
4 Maybe "inspection" was the wrong word  
5 to use. Probably "inventory" was a  
6 better word for me to use.

7 But that there would be some --  
8 you know, that the machines and all of  
9 the equipment that would be placed into  
10 escrow would be inventoried before it's  
11 placed into the escrow, into storage,  
12 where it will be safely and securely  
13 maintained during the pendency of the  
14 litigation.

15 And, frankly, I didn't appreciate  
16 how complicated this idea of securing  
17 these machines would be, but I look  
18 forward to being educated about it  
19 beginning Monday.

20 ATTY CARROLL: Right. Your  
21 Honor, I would just then -- now that  
22 you clarified that you meant inspection  
23 over --

24 THE COURT: Inventory.

25 ATTY CARROLL: I mean inventory

1 over inspection, I would have the same  
2 question: Who would do the inventory  
3 and what would it consist of? 'Cause  
4 that has never been put forward before.  
5 That's what I'm asking now.

6 THE COURT: Well, I would think  
7 that whenever items are placed into an  
8 escrow, that there would be an  
9 inventory of those items so that  
10 everybody is on the same page as when  
11 the escrow is finished, that the  
12 inventory would need to be matched with  
13 the items that are there to assure that  
14 there has been -- you know, that  
15 everything continues to be secure.

16 ATTY CARROLL: So my question  
17 would be: Is the Court ordering --

18 THE COURT: I'm not ordering  
19 anything.

20 ATTY CARROLL: -- a forensic  
21 inventory? This is --

22 THE COURT: No, this court is  
23 not ordering anything. This court is  
24 not ordering anything.

25 ATTY CARROLL: Okay. I'm

1           sorry, Your Honor. Thank you.

2                   THE COURT: I think that we --  
3           Dominion, I apologize. I have not  
4           asked you for your... position on  
5           anything that we've discussed.

6                   ATTY GALLAGHER: This is Shawn  
7           Gallagher, Your Honor.

8                   I mean, we agree with the  
9           position of the Secretary. I mean, we  
10          were just asked if the equipment at issue  
11          has been designated as critical  
12          infrastructure by the Department of  
13          Homeland Security, you know.

14                   And for those reasons, we agree  
15          that Pro V&V, which is a nonpartisan,  
16          federally-accredited voting system test  
17          lab, would be the appropriate escrow  
18          agent.

19                   THE COURT: Okay. And with  
20          regard to the question of whether a  
21          vendor with experience in maintaining  
22          sensitive technological information but  
23          not necessarily voting equipment would  
24          be an adequate third-party escrow  
25          agent. Does Dominion have a position

1 about that?

2 ATTY GALLAGHER: I would just  
3 echo the comments of Mr. Wiygul. Same  
4 position.

5 THE COURT: Okay. Thank you.

6 ATTY GALLAGHER: Thank you.

7 THE COURT: Okay. I appreciate  
8 your time today, and I will look  
9 forward to seeing all of you on Monday.

10 ATTY WIYGUL: Your Honor, will  
11 you indulge me? Can I just ask a  
12 couple of administrative questions that  
13 will help us in preparing for the  
14 hearing? It doesn't involve the  
15 outstanding evidentiary issues.

16 THE COURT: Okay.

17 ATTY WIYGUL: Thank you, Your  
18 Honor.

19 One of our proposed witnesses is  
20 going to be in Florida, a representative  
21 of Pro V&V, and he has filed a motion  
22 seeking permission for him to testify  
23 remotely. I don't believe that either  
24 party filed an opposition to that.

25 And just for administrative

1 purposes, I wonder if Your Honor might  
2 give us some guidance about when we might  
3 expect a ruling on that.

4 THE COURT: Yes. We will issue  
5 an order with regard to this afternoon.

6 ATTY WIYGUL: Thank you.

7 And I think my only other  
8 questions are that the parties seem to  
9 have a pretty wide difference of opinion  
10 about the length of the hearing, and I  
11 wonder if Your Honor had any guidance as  
12 to that for purposes of making hotel  
13 reservations and that sort of thing.

14 THE COURT: I am not inclined  
15 to have this hearing last any longer  
16 than is necessary. We have not made  
17 arrangements for that. So I suppose  
18 that would be -- let's see.

19 Secretary, you've said six hours,  
20 was it?

21 ATTY WIYGUL: I think it was  
22 four hours, Your Honor, to present the  
23 direct testimony of our witnesses.

24 THE COURT: Okay. And let's  
25 see, Mr. Carroll, your estimate was

1 significantly different.

2 ATTY CARROLL: Yes. I think it  
3 would take several days to address the  
4 competency, conflict, and ability to  
5 secure the evidence from all of these  
6 witnesses.

7 THE COURT: Well, yeah. And we  
8 do have other hearings scheduled. In  
9 fact, we have another hearing in  
10 another case scheduled for the next  
11 day.

12 So I was anticipating it taking  
13 only one day. If we need to have it go  
14 into a second day, it would have to be  
15 later in the week, but I don't anticipate  
16 it taking more than a day-and-a-half or  
17 two days.

18 We'll have to try to, you know,  
19 limit the testimony or be very efficient  
20 with the questioning, I think.

21 ATTY CARROLL: Your Honor, I  
22 just have one question if Mr. Wiygul is  
23 finished with his remarks.

24 THE COURT: Yes.

25 ATTY CARROLL: That would be if

1 the Court intended rule on our request  
2 to stay based on the petition having  
3 been filed.

4 THE COURT: I'm sorry. Could  
5 you say that again, please?

6 ATTY CARROLL: With regard to  
7 the application of these files for a  
8 stay based on the petition being filed  
9 to the United States Supreme Court, are  
10 you planning on making a ruling on  
11 that?

12 THE COURT: I can make a ruling  
13 on that before we begin.

14 ATTY CARROLL: Thank you, Your  
15 Honor.

16 THE COURT: I appreciate the  
17 difficulty of trying to approve the  
18 proper place for this equipment to be  
19 stored, and I understand the importance  
20 of it. I do want to make sure that  
21 both sides have the opportunity they  
22 need to present the testimony that is  
23 relevant to the inquiry at hand.

24 And so, we will endeavor to do  
25 that if we have to come early or stay

1 late or two breaks. Whatever we need to  
2 do, we will do.

3 But I would also respect the time  
4 and effort that everybody is putting in  
5 and the fact that, under the current  
6 orders of the Supreme Court, the  
7 taxpayers of Fulton County are paying a  
8 price for this, and I want to be mindful  
9 that we're careful in how we spend their  
10 tax dollars as well.

11 And so, I think I'm going to ask  
12 everyone to be as efficient as they can  
13 with the questioning of the witnesses and  
14 be as prepared as they can and see how  
15 expeditiously we can resolve this  
16 inquiry, which is really just -- the  
17 focus is just to find an appropriate  
18 place where this equipment can be  
19 maintained securely during the pendency  
20 of the litigation that you have and that  
21 you're currently involved in.

22 (Indiscernible cross talk.)

23 ATTY WIYGUL: I'm sorry, Your  
24 Honor.

25 THE COURT: Go ahead.



1                   ATTY WIYGUL: I was just going  
2                   to inquire in terms of, again, just  
3                   from an administrative standpoint to  
4                   make sure, in the interest of  
5                   efficiency, that we have our witnesses  
6                   ready to go at the right time.

7                   Does Your Honor have a view as to  
8                   which party should go first in presenting  
9                   the evidence? I think, you know, the  
10                  Secretary could be accurately described  
11                  as the (indiscernible), so we were  
12                  prepared to put on our evidence first,  
13                  but I did want to inquire the Court about  
14                  its expectation.

15                  THE COURT: Thank you.

16                  We'll issue an order later today  
17                  that will set forth our understanding of  
18                  how the hearing will proceed, and that  
19                  will give you what you need.

20                  ATTY WIYGUL: Thank you, Your  
21                  Honor.

22                  THE COURT: Thank you for  
23                  asking the question.

24                  Are there any other questions?

25                  ATTY CARROLL: Not from the

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Fulton County side, Your Honor.

THE COURT: Okay. Thank you very much. I appreciate your input today and your all being present, and look forward to seeing you on Monday. Thank you.

(Proceedings end at 1:55 p.m.)

\* \* \*

## CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence, and objections are contained fully and accurately in the stenographic notes taken by me upon the proceedings in the foregoing matter taken on Wednesday, August 23, 2023, and that this is a true and correct transcript of same.

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Josephine Cardillo

Professional Court Reporter  
and Notary Public

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28:4 <b>states (2)</b> 12:21;38:9 <b>status (1)</b> 24:5 <b>stay (4)</b> 5:19;38:2,8,25 <b>steps (1)</b> 11:12 <b>storage (5)</b> 17:4;18:6,9;19:2; 32:11 <b>store (2)</b> 18:17;24:20 <b>stored (6)</b> 8:7;10:14;18:3,22; 23:25;38:19 <b>storing (3)</b> 9:13;22:7;28:22 <b>successful (1)</b> 31:2 <b>sufficiency (1)</b> 17:21 <b>sufficient (6)</b> 7:10,23;13:3; 15:18;24:19;30:10 <b>suggestion (1)</b> 30:21 <b>suited (1)</b> 12:11 <b>suppose (1)</b> 36:17 <b>Supreme (6)</b> 7:1;8:6;10:19; 27:13;38:9;39:6 <b>sure (6)</b> 20:24;23:18; 26:12;30:12;38:20; 40:4 <b>system (2)</b> 22:22;34:16 <b>Systems (1)</b> 4:13	7:8;9:13;15:16; 19:15;21:12;22:7,12, 15:25;7 <b>temperature (4)</b> 10:11;17:24;20:2; 24:23 <b>ten-by-ten (1)</b> 24:18 <b>terms (4)</b> 19:22;22:13; 24:19;40:2 <b>test (2)</b> 22:22;34:16 <b>testify (1)</b> 35:22 <b>testimony (5)</b> 10:8;28:20;36:23; 37:19;38:22 <b>thereon (1)</b> 11:24 <b>thinking (2)</b> 14:19;18:15 <b>third- (1)</b> 7:5 <b>third-party (7)</b> 7:21;14:10;15:18; 16:2,9;18:17;34:24 <b>Thomas (1)</b> 4:15 <b>thought (4)</b> 13:18;25:9,16; 29:1 <b>threw (2)</b> 13:17,24 <b>times (1)</b> 12:22 <b>today (6)</b> 6:21;28:3;31:22; 35:8;40:16;41:4 <b>today's (2)</b> 5:25;7:4 <b>told (1)</b> 26:16 <b>took (1)</b> 25:23 <b>transpired (1)</b> 27:19 <b>transported (1)</b> 12:19 <b>try (2)</b> 25:12;37:18 <b>trying (12)</b> 9:22;13:7;14:6,20; 18:12,24;23:19,20, 24:24;11;28:5;38:17 <b>Tucker (1)</b> 5:5 <b>turn (1)</b> 10:23 <b>turned (1)</b> 23:12 <b>two (4)</b> 4:21;30:17;37:17;	39:1 <b>type (5)</b> 8:4,13,18;14:21; 19:2 <b>types (5)</b> 8:21;12:12;21:14; 22:15;23:1  <b>U</b>  <b>under (1)</b> 39:5 <b>underlying (1)</b> 27:14 <b>understood (2)</b> 15:3,5 <b>undetectable (1)</b> 27:10 <b>Unfortunately (4)</b> 17:8;19:25;30:24; 31:1 <b>unique (3)</b> 9:19,20;19:17 <b>United (1)</b> 38:9 <b>unnecessary (1)</b> 24:6 <b>up (3)</b> 6:11;11:10;30:6 <b>use (6)</b> 8:12;18:5,7,23; 32:5,6 <b>used (3)</b> 18:3;20:13,21  <b>V</b>  <b>V&amp;V (8)</b> 9:9;15:6;17:13; 25:9,15,22;34:15; 35:21 <b>value (1)</b> 20:23 <b>vending (1)</b> 18:21 <b>vendor (13)</b> 13:16;14:17,21; 15:4,10,11,13;16:2, 13;18:17;25:14; 28:21;34:21 <b>vendors (4)</b> 17:12,19;25:1,6 <b>verification (1)</b> 20:16 <b>version (1)</b> 20:18 <b>versus (2)</b> 6:23;22:8 <b>view (2)</b> 17:14;40:7 <b>vigorous (1)</b> 27:2 <b>Voting (9)</b>	4:13;8:6,8;21:17, 22;22:21;28:25; 34:16,23  <b>W</b>  <b>watches (1)</b> 10:4 <b>way (7)</b> 10:3;11:18,22,25; 24:17;27:9;28:8 <b>ways (3)</b> 8:24;10:21;11:4 <b>weapons (1)</b> 8:23 <b>week (1)</b> 37:15 <b>weigh (1)</b> 13:10 <b>whenever (1)</b> 33:7 <b>wholly (1)</b> 27:7 <b>who's (4)</b> 6:2;9:25;14:20; 15:11 <b>wide (1)</b> 36:9 <b>willing (3)</b> 17:14;25:19;30:24 <b>within (1)</b> 22:11 <b>without (1)</b> 24:6 <b>witness (1)</b> 24:13 <b>witnesses (5)</b> 35:19;36:23;37:6; 39:13;40:5 <b>WIYGUL (28)</b> 4:17,19;7:24,25; 10:7;13:15;17:6,7; 19:4,8;21:19;22:4; 25:2,3,25;26:9,13; 30:15,16;35:3,10,17; 36:6,21;37:22; 39:23;40:1,20 <b>Wiygul's (2)</b> 23:10;26:5 <b>wonder (2)</b> 36:1,11 <b>word (2)</b> 32:4,6 <b>work (1)</b> 12:23 <b>wrong (1)</b> 32:4  <b>Y</b>  <b>year (2)</b> 18:2,21 <b>yesterday (2)</b>	7:3;31:5  <b>1</b>  <b>1:55 (1)</b> 41:7  <b>2</b>  <b>2021 (1)</b> 6:25 <b>2022 (1)</b> 7:1 <b>277 (1)</b> 6:25  <b>3</b>  <b>3 (1)</b> 7:1
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# **EXHIBIT E**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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County of Fulton, Fulton County Board of	:	
Elections, Stuart L. Ulsh, in his official capacity	:	<b>DOCKET NUMBER: 277 MD 2021</b>
as County Commissioner of Fulton County and	:	<b>3 MAP 2022</b>
in his capacity as a resident, taxpayer and	:	
elector in Fulton County, and Randy H. Bunch,	:	
in his official capacity as County Commissioner	:	
of Fulton County and in his capacity as a resident,	:	
taxpayer and elector of Fulton County	:	
<i>Petitioners</i>	:	
	:	
V.	:	
Secretary of the Commonwealth,	:	
<u><i>Respondent</i></u>	:	

**EMERGENCY MOTION TO ADJOURN PROCEEDINGS**

THOMAS J CARROLL, Attorney for Petitioners/Appellees (hereinafter Petitioners), moves the Court for an adjournment of the Hearing for purposes of the Special Master’s appointment of a neutral third-party agent and states as follows:

1. On August 26, 2023, Counsel for Petitioners went to an urgent care facility, as he was experiencing severe right upper quadrant abdominal pain. The urgent care facility was not capable of providing treatment for his condition and the urgent care facility instructed Mr. Carroll immediately go to the Emergency Room.

2. On August 26, 2023, Mr. Carroll went directly to Paoli Hospital Emergency Room and was diagnosed with a broken rib and an infection. Attached hereto and made a part hereof is the redacted “After Visit Summary” and marked as Exhibit “A”.

3. Counsel for Petitioner was prescribed Opioid medication for the pain and an Antibiotic for the infection. The Opioid medication has warnings to not drive or operate machinery while taking it. Said Warnings are contained on the prescription pill bottle and on page 1 of the After Visit Summary. Attached hereto and made a part hereof is the redacted “After Visit Summary” and marked as Exhibit “A”.

4. Counsel for Petitioner was provided a letter from the Emergency Department that confirms he was seen and treated in the Paoli Hospital Emergency Room on August 26, 2023. In consideration of the medical condition, which is involved in this situation, the letter further states that Mr. Carroll can return to work on 08/30/2023. Attached hereto and made a part hereof is the “Paoli Hospital Letter” and marked as Exhibit “B”.

5. Counsel for Petitioner continues to be in significant pain as a result of both The broken rib and the infection and as a result of the pain and the taking of the prescribed medications cannot be available for the Hearing pursuant to Doctor’s Orders.

WHEREFORE, for the reasons stated in this Emergency Motion to Adjourn Proceedings respectfully requests this Court to grant its Motion to Adjourn Oral Argument.

Respectfully submitted by:



Attorney ID: 53296

Attorney for Petitioners

LAW OFFICE OF THOMAS J CARROLL

224 King Street

Pottstown, PA, 19464

(610)419-6981

[tom@thomasjcarrolllaw.com](mailto:tom@thomasjcarrolllaw.com)

**EXHIBIT "A"**



# AFTER VISIT SUMMARY

**Thomas Carroll** MRN: [REDACTED] 8/26/2023 Paoli Hospital Emergency Department 484-565-1043

## Instructions



### Your medications have changed

- ➔ START taking:
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]

Review your updated medication list below.



### Read the attached information

- [REDACTED] Infection Adult (English)
- Rib Fracture (English)



### Pick up these medications at Gateway Pharmacy

[REDACTED]  
[REDACTED]  
[REDACTED]

Address: [REDACTED]  
Phone: [REDACTED]

## Today's Visit

Your care team consisted of: [REDACTED]  
[REDACTED], [REDACTED], PA-C

### Diagnoses

- Right upper quadrant abdominal pain
- Closed fracture of one rib of right side, initial encounter
- [REDACTED] infection with [REDACTED]

### Lab Tests Completed

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Reflex to Culture (Macroscopic)

### Lab Tests in Progress

[REDACTED]

### Imaging Tests

- CT ABDOMEN PELVIS WITH IV CONTRAST
- ECG 12 lead

### Medications Given

[REDACTED]



Blood Pressure  
[REDACTED]



Temperature (Temporal)  
[REDACTED]



Pulse  
[REDACTED]



Respiration  
[REDACTED]



Oxygen Saturation  
[REDACTED]

## What's Next

You currently have no upcoming appointments scheduled.

## Additional Information

### Sedative / Opioid Instructions:

You were prescribed a sedative and/or opioid pain medication:

- Do not drive, work or operate heavy machinery while taking this medication.
- Do not drink alcohol while taking this medication.
- Only take the medication exactly as prescribed.
- Side effects of opioids include drowsiness, confusion, nausea, vomiting, slowed breathing and constipation.
- Side effects of sedatives include drowsiness, light-headedness, confusion, unsteadiness and dizziness.

**EXHIBIT "B"**



August 27, 2023



**Paoli Hospital**  
Main Line Health®

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**Patient:** Thomas Carroll  
**Date of Birth:** [REDACTED]  
**Date of Visit:** 8/26/2023

**Department Information:** 255 W. LANCASTER  
AVENUE  
PAOLI PA 19301  
484-565-1000

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To Whom It May Concern:

Thomas Carroll was seen and treated in our emergency department on 8/26/2023.  
Thomas Carroll may return to work on 08/30/2023.

If you have any questions or concerns, please don't hesitate to call.

A handwritten signature in black ink, appearing to read "Susanne M. Collins".

Collins, Susanne M, PA C

**VERIFICATION**

I, Thomas J. Carroll, Esquire, in the foregoing matter, hereby verify that the statements made in the foregoing Emergency Motion to Adjourn Proceedings are true correct to the best of my knowledge, information and belief. **The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. section 4904 relating to unsworn falsification to authorities.**



\_\_\_\_\_

Date: 8/28/2023

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: August 28, 2023



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Thomas J. Carroll

# **EXHIBIT F**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Fulton, Fulton County Board	:	
of Elections, Stuart L. Ulsh, in his	:	
official capacity as County	:	
Commissioner of Fulton County and	:	No. 277 M.D. 2021
in his capacity as a resident, taxpayer	:	No. 3 MAP 2022
and elector in Fulton County, and Randy	:	
H. Bunch, in his official capacity as	:	
County Commissioner of Fulton County	:	
and in his capacity as a resident,	:	
taxpayer and elector of Fulton County,	:	
Petitioners/Appellees	:	
	:	
v.	:	
	:	
Secretary of the Commonwealth,	:	
Respondent/Appellant:	:	

**ORDER**

NOW, August 28, 2023, upon consideration of Petitioner/Appellant’s (collectively, Fulton County) Emergency Motion to Adjourn Proceedings (Motion) requesting an emergency stay of the scheduled August 28, 2023 evidentiary hearing, the Motion is DENIED and the Special Master hereby ORDERS as follows:

1. The evidentiary hearing for purposes of the Special Master’s appointment of a neutral third-party escrow agent currently fixed for Monday, August 28, 2023, at 9:00 a.m. in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, shall RECONVENE at 1:00 p.m. today, August 28, 2023, in the same place.
  
2. Attorney Thomas J. Carroll (Attorney Carroll) may attend and participate in the evidentiary hearing via WebEx Video Conferencing (WebEx). The Special Master notes that the Motion

does not contain any direct representation that Attorney Carroll's present medical conditions prevent his participation in the evidentiary hearing other than that Attorney Carroll "was prescribed . . . medication [with] warnings to not drive or operate machinery while taking it." Motion ¶ 3.

3. Attorney James M. Stein, who is presently counsel of record representing Fulton County, may attend the evidentiary hearing in person or remotely via WebEx.

4. The County may direct any attorney licensed to practice in the Commonwealth of Pennsylvania to enter an appearance in this matter and appear at the evidentiary hearing. Counsel unable to attend the evidentiary hearing in person may appear via WebEx. Counsel intending to appear via WebEx shall immediately provide their email address and telephone number to [CommCourtRemote@pacourts.us](mailto:CommCourtRemote@pacourts.us), [Bridget.Holbein@pacourts.us](mailto:Bridget.Holbein@pacourts.us) and [Paul.Ritchey@pacourts.us](mailto:Paul.Ritchey@pacourts.us).

5. Fulton County's attorney(s) chosen pursuant to Paragraph 2, 3, or 4 of this Order is directed to join the hearing 15 minutes before the starting time. To facilitate participation in the hearing, various WebEx applications are available for download at [pacourts.webex.com](http://pacourts.webex.com). Please see Protocol for WebEx Video Hearings, attached to this Order. In the event of technical difficulties, the attorney may contact the Court's IT staff at 717-255-1626. The Court will immediately send Attorney Stein and Attorney Carroll WebEx invitations in the event they participate in the hearing remotely.

6. The evidentiary hearing shall proceed at 1:00 p.m. as scheduled and, if no Pennsylvania counsel are able to attend on behalf of Fulton County, the Special Master will expect Attorney Russell M. Newman, who was admitted pro hac vice on August 24, 2023, to fully represent Fulton County during the hearing. *See* Pa.R.Civ.P. 1012.1(d)(2) ("Upon [pro hac vice admission] being granted, the sponsor. . . shall attend all proceedings before the court **unless excused by the court**"). *See also* *Cty. of Fulton v. Sec. of Commonwealth*, 292 A.3d 974, 991 n.69 (Pa. 2023) (*Fulton County*

D).<sup>1</sup> Counsel admitted to practice in Pennsylvania may enter an appearance on behalf of Fulton County at any time during the evidentiary hearing.



**RENÉE COHN JUBELIRER**, President Judge of the Commonwealth Court of Pennsylvania Appointed as Special Master

Order Exit  
08/28/2023

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<sup>1</sup> In *Fulton County I*, the Supreme Court addressed a similar situation where Attorney Carroll filed a Motion to Adjourn Oral Argument two days before the September 14, 2022 argument scheduled before that Court, wherein Mr. Carroll “assert[ed] emergent personal reasons that allegedly prevented him from ‘prepar[ing] for oral argument ... and/or associat[ing] other counsel as a substitute this close to the time for the presentation of oral argument.’” *Fulton County I*, 292 A.2d at 991. In the accompanying footnote, the Supreme Court stated:

Attorney Carroll had not yet informed this Court that Attorney Lambert was his co-counsel, nor had he sought her admission pro hac vice below or in this Court. Although the rules governing pro hac vice representation direct that the sponsoring attorney must be in attendance at all court proceedings in connection with the representation, that **requirement is qualified by a carve-out** when sponsoring counsel is ‘excused by court.’ See Pa.R.Civ.P. 1012.1(d)(1).) This is not to say that we would have granted such a request. But, had Attorney Lambert been admitted pro hac vice, **it would have given Attorney Carroll a good-faith alternative to filing a disfavored, last-minute request for a continuance reflecting no contingency planning.**

*Id.*, at 991 n.69 (emphasis added). In the instant proceedings, the Special Master granted Attorney Newman admission pro hac vice four days prior to the scheduled hearing, which gives Attorney Carroll a good-faith alternative to filing “a disfavored, last minute request for a continuance....” *Id.*



## Protocol for WebEx Video Hearings

### **Protocol BEFORE the hearing:**

Twenty-four (24) hours before the scheduled hearing, the Court shall provide counsel, any pro se party, and the court reporter with the information for connecting to the video hearing, including the date and time of the hearing. This invitation will be sent by email.

It is the responsibility of counsel to provide the connection information to their clients and witnesses. It is the responsibility of any pro se party to provide the connection information to their witnesses.

It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.

A witness list must be provided to the Court by the date set forth in the court's scheduling order, and otherwise no later than forty-eight (48) hours before the hearing, with a valid email address for each witness. The Court will provide the attorneys with a contact email to which the witness list should be sent. The witness list shall include the case caption and docket number and the full name of each prospective witness.

All participants must appear by video connection unless otherwise authorized by the Court.

Email invitations will be sent to participants at least 24 hours before the hearing. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.

All parties and witnesses must connect to the hearing or call into the video system at least 15 minutes before the scheduled start time.

### **Minimum Technology requirements:**

All counsel and pro se parties appearing before the Court must have one of the following:

A computer with a functioning web camera, microphone and speakers;

A video conferencing system that supports Session Initiation Protocol (SIP) calling;



A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or

An alternative device used to connect to Cisco WebEx in the past.

If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed in 0 below.

The Court's IT Department will endeavor to contact counsel, any pro se party, and witnesses in advance of the hearing to test their connection to the WebEx platform.

### **Ground Rules and Video Conferencing Etiquette:**

When not speaking, please mute your microphone. This helps prevent background noise.

Earbuds or headphones are preferable to avoid feedback.

Be aware of your behavior. Because you are on a video conference, people can see what you are doing at all times and *WebEx video conferences are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.

If connecting from a laptop, plug in the laptop wall power.

Follow all instructions in the video conference invitation and note important supplemental information, such as a backup phone number in case you are disconnected.

Please be respectful; speak slowly and only one at a time.

Try not to speak over other parties. There is a slight delay when using video technology.

The Court appointed crier will be on the call to open and close court and to swear-in witnesses if needed.

### **Technical Support**

**If you have any questions or need technical assistance, contact 717-255-1626.**

## Invitation from the Court:

Prior to your scheduled hearing, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

**Commonwealth Court Legal Systems invites you to join this Webex meeting.**

Meeting number (access code): 613 778 564 ③  
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020  
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

[Join meeting](#) ①

**Join by phone**  
Tap to call in from a mobile device (attendees only)  
[1-855-244-8681](#) Call-in toll-free number (US/Canada) ②  
[1-850-479-3207](#) Call-in toll number (US/Canada)  
[Toll-free calling restrictions](#)

**Join from a video system or application** ④  
Dial [613778564@pacourts.webex.com](tel:613778564@pacourts.webex.com)  
You can also dial 173.243.2.68 and enter your meeting number.

**Join using Microsoft Lync or Microsoft Skype for Business** ⑤  
Dial [613778564.pacourts@lync.webex.com](tel:613778564.pacourts@lync.webex.com)

In the invitation, there are multiple connection options:

WebEx: Click on the Green *Join Meeting* button. ①

Phone: Dial either of the numbers listed under *Join by phone*. ②

When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③

Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④

Microsoft Lync/Skype for Business connection information is also provided. ⑤

## Controls while connected to WebEx:

Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



From left to right, the controls are:

Mute/unmute microphone

Turn on/off camera

Share your desktop

Recording control (Only available to the Court)

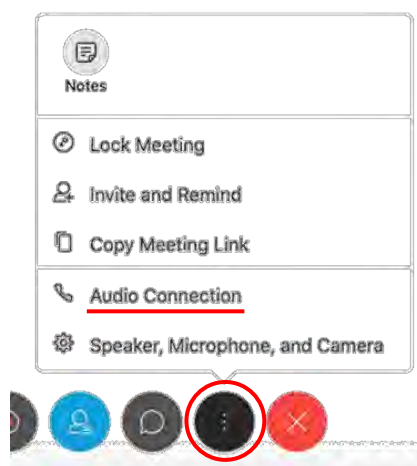
Open/Close the participant list

Chat windows

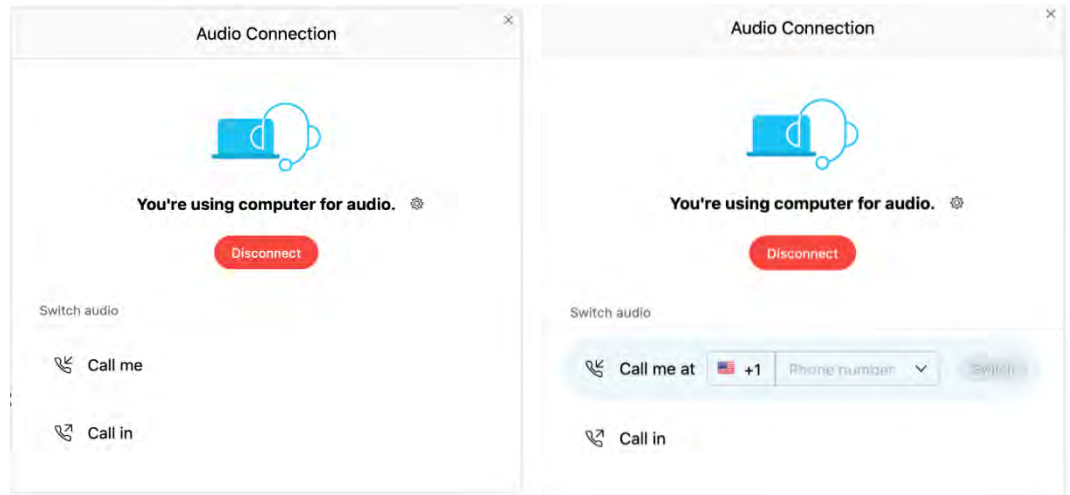
Options – has more controls available

End Meeting

Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



Click on the option “Call Me.” Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



At the end of your call, press the red X to be disconnected.

### **Procedures regarding Exhibits:**

Exhibits should be pre-marked numerically: i.e., P-1, P-2, etc.; and R-1, R-2, etc.

Be aware of personal identifying or confidential information contained in exhibits used during a video hearing, and redact where appropriate consistent with the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

No later than the date on any order of the Court, or in the absence of a specific date, twenty-four (24) hours prior to the hearing, counsel and any pro se party shall upload all exhibits intended for use during the hearing to the link provided and should email the Court at [CommCourtRemote@pacourts.us](mailto:CommCourtRemote@pacourts.us) to confirm all exhibits have been successfully uploaded. Parties are directed to provide their witnesses with copies of the exhibits in advance of the hearing to which the witnesses can refer during their testimony.

# EXHIBIT G

**IN THE SUPREME COURT OF PENNSYLVANIA**

COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

No.: 277 M.D. 2021

No.: 3 MAP 2022

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**RESPONDENT APPELLEE FULTON COUNTY'S  
EMERGENCY APPLICATION FOR A STAY UPON SPECIAL MASTER'S  
DENIAL OF SAME**

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## INTRODUCTION

The following is an emergency application to STAY THE SPECIAL MASTER’S PROCEEDINGS pursuant to Rule 3315 (review of Special Master’s Order Denying Stay), currently being held, after the Special Master denied same. (**Attachment A**, Special Master’s Order Denying Stay, August 23, 2023). Petitioners filed this emergency application seeking an immediate ruling from the court.

On April 19, 2023, the this Court dismissed an appeal in the underlying case under Pennsylvania’s Election Code that had been brought by the Respondent Secretary of the Commonwealth and issued an order of contempt and other sanctions against Fulton County and its attorneys. Petitioners filed a petition for a writ of certiorari before the United States Supreme Court, No. 23-96.

Petitioners seek an Emergency Stay of the proceedings before the Special Master to prevent irreparable harm that will result from Fulton County tax funds being utilized to hold a hearing to place the election equipment (mothballed) and owned by Fulton County in the custody of a third party escrow agent where it will be “powered on” and data will be deleted. Order, attached as **Attachment B**.

Specifically, on August 23, 2023, this Court appointed the Special Master to conduct an evidentiary hearing on August 28, 2023 to appoint a third-party escrow agent to take custody of certain voting machines. The voting machines at issue will be switched on and necessary evidence of the asserted failures and other



problems with the machines stored in memory will be erased. See Supporting Affidavit of Benjamin R. Cotton, attached as **Attachment C**.

On August 23, 2023, the Special Master denied Petitioners’ motion for a stay of the August 28<sup>th</sup> hearing, ruling that: “the Special Master will proceed as directed by the Supreme Court of Pennsylvania unless otherwise directed by the Supreme Court of the United States.”

### **STATEMENT IN SUPPORT OF EMERGENCY STAY**

#### ***A. Introduction***

Congress has delegated authority to the individual states regarding time, place, *and manner*, for conducting national elections. U.S. Const. Art. I, section 4, clause 1. See also, *United States Term Limits v. Thornton*, 514 U.S. 779, 804-05, 115 S. Ct. 1842, 1855, 131 L.Ed.2d 881, 901 (1995) (“the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” Art. I, § 4, cl. 1.). Pursuant to this delegated authority, the Pennsylvania General Assembly re delegated authority to Pennsylvania’s counties, and particularly to county boards of elections, to conduct these elections. As part of that delegation, Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.*

\*\*\*

(f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary *for the guidance of voting machine custodians, elections officers and electors.*

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

Without legislative authority, Respondent Secretary decertified Petitioners' voting machines. This was after Petitioners had the voting machines examined by a third-party subsequent to the 2020 general election.

Petitioners filed a petition for review of the Secretary's actions. The Secretary filed a motion to enjoin further testing of the voting machines, which was denied. The Secretary filed an interlocutory appeal of that order.

Subsequent to the filing of the appeal, and in the process of determining how to fulfill its legislatively delegated authority concerning the provision of voting

machines, Petitioners had to consider the viability of continuing to use Dominion voting machines to fulfill its statutory duties to conduct elections. Fulton County also had to consider the status of and legitimacy of its contract with Dominion Voting Systems (“Dominion”). In these regards, Fulton County had another company analyze the Dominion voting machines. Fulton County then sued Dominion for breach of contract and breach of warranty because the inspection that was performed revealed that the Dominion voting machines were not fit for their intended use and purpose.

The Secretary filed a motion to hold Petitioners in contempt for violating the Court’s order placing an injunction on the previously scheduled testing. The contempt proceedings resulted in the Supreme Court’s decision to hold Fulton County and Fulton County’s attorneys in contempt and to dismiss the Secretary’s underlying appeal of the Commonwealth Court’s denial of the Secretary’s application to enjoin further inspections.

Among the constitutional errors asserted and central to the petition for review pending before the Supreme Court of the United States was this Court’s finding of contempt and award of sanctions where Petitioners were exercising their constitutionally delegated authority over their voting machines and systems. Petitioners submit that the dismissal deprived the citizens of the state of Pennsylvania, Fulton County, and the Secretary, of a fundamental decision

regarding the constitutional delegation by the Pennsylvania legislature to the county boards of elections to conduct national elections. Principally, as Fulton County had challenged in its petition for review, the Secretary did not and could not usurp the powers of Fulton County over voting machines – authority to “purchase, preserve, store, and maintain” voting machines was statutorily delegated to Fulton County by virtue of the constitutional delegation to the Pennsylvania General Assembly under Article I, section 4 of the Constitution.

***B. Background***

On January 17, 2019, the Secretary (then Kathy Boockvar), certified the use of Dominion’s “Democracy Suite 5.5A” voting system in Pennsylvania elections pursuant to 25 Pa. Stat. Ann. § 3031.5. According to the Secretary’s report, “[t]he Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as “professional consultants” to conduct the examination of Democracy Suite 5.5A. The United States Election Assistance Commission (EAC) provides for the accreditation of laboratories qualified to test voting systems to meet federal standards. While SLI is an EAC accredited testing laboratory, CCD does not appear on EAC’s directory of approved laboratories.

In April of 2019, Petitioners contracted with Dominion to purchase and begin using two Democracy Suite 5.5A voting systems. The Democracy Suite 5.5A system was used through the November 3, 2020 general election.

Section 2642 of the Pennsylvania Election Code, delegates to County Boards of

Elections the following authority:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.*

\*\*\*

(f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary *for the guidance of voting machine custodians, elections officers and electors.*

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

In September of 2016, the Secretary issued to the counties “Guidance on Electronic Voting System Preparation and Security”. This guidance document contemplated and expected that the counties would use “third-party vendors” to conduct the necessary “*purchase, preserve, store and maintain primary and election equipment*” that was expressly delegated and mandated to the counties pursuant to 25 Pa. Stat. Ann. 2642. This included measures to ensure security,

perform maintenance, and preparations of the voting machines systems in use by the counties. Details of the Secretary's guidance included the procedures for third-party vendors to perform file transfers. Further, the Secretary's guidance "applie[d] to any vendor that is providing technical support to the counties for any component of the system involved in the canvass of the election." The Secretary's guidance was updated on October 13, 2020 and again contemplated the use of outside vendors to perform election preparation and maintenance on the voting systems.

Pursuant to 25 Pa. Stat. Ann. 2642, Petitioners hired Wake Technology Services, Inc. (Wake TSI), a managed service provider specializing in data center, network, server and desktop systems design, and cybersecurity and management, to include voting systems technology. Petitioners requested Wake TSI to assist it in an investigation and assessment of Fulton County's voting systems and processes that were utilized in the November 2020 general election. Wake TSI's reviewed the Dominion Democracy Suite 5.5A operating and application systems, file data, log files, ballot images, and related files.

Pursuant to the Secretary's 2016 and 2020 guidance, Wake TSI ensured that proper chain of custody of the equipment was maintained at all times through the presence of Fulton County's Election Director (Commissioners and other staff were

also present), who was the sole individual to remove or replace ballots in the ballot carts.

Wake TSI issued its “Fulton County Election System Analysis,” report (the Wake TSI Report) dated February 19, 2021. In its report, Wake TSI concluded that the 2020 General Election was well run and conducted, in a diligent and effective manner. This seemingly fulfilled Petitioners’ duties as set forth in 25 P.S. § 2642(g).

In its report, however, Wake TSI also found several problems with the Democracy Suite 5.5A system. Among these were errors in the ballot scanning, a failure of the system to meet Commonwealth Certification requirements, non-certified database tools on the system, changes made to Dominion’s entire election management system (EMS) three weeks before the 2020 election, and a lack of commonwealth logic and accuracy inspections L&A inspections of the Dominion Voting Systems.

Several months after the publication of the Wake TSI Report, on July 8, 2021, Respondent Secretary issued “Directive 1 of 2021,” which provided as follows:

County Boards of Elections shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified electronic voting systems, or any components of such systems, including but not limited to: election management software and systems, tabulators, scanners; counters, automatic tabulating equipment, voting devices, servers, ballot marking devices, paper ballot or ballot card printers, portable memory media devices (thumb drives, flash

drives and the like), and any other hardware, software or devices being used as part of the election management system.

Directive 1 also provided for the revocation of funding for counties whose machines are decertified under the Directive, stating “[t]he Commonwealth of Pennsylvania will not reimburse any cost of replacement voting equipment for which certification or use authority has been withdrawn pursuant to this directive.”

In February of 2020, the Pennsylvania Economic Development authority voted to approve a \$90 Million bond issuance to cover costs for new voting machines across the Commonwealth of Pennsylvania. Petitioners claimed that the Secretary had no authority to withhold such funding pursuant to Directive 1.

Following the issuance of Directive 1, and without the opportunity for a hearing or other due process, the Secretary issued a letter (constituting an adjudication or “order”) to Petitioners (addressed to the County Solicitor) dated July 20, 2021, stating:

As a result of the access granted to Wake TSI, Fulton County’s certified system has been compromised and neither Fulton County; the vendor, Dominion Voting Systems; nor the Department of State can verify that the impacted components of Fulton County’s leased voting system are safe to use in future elections. Due to these actions and after careful consideration ... I have no other choice but to decertify the use of Fulton County’s leased Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

Respondent’s July 20, 2021 letter further stated that, “based on our discussions and correspondence with Fulton County officials, it appears that the contents of the



Democracy Suite 5.5A that were used during the 2020 November election were subjected to a post-election review by a third-party in violation of Pennsylvania's Election Code."

On August 18, 2021, Petitioners sought review of the Secretary's July 20, 2021 decertification of Petitioner's Dominion "Democracy Suite 5.5A voting systems. And amended petition was filed on September 17, 2021.

The Secretary claimed to have the authority to decertify Petitioners' voting machine system via the regulatory "Directive 1 of 2021". The Secretary further claimed to have authority to issue Directive 1 pursuant to the Pennsylvania Election Code, 25 Pa. Stat. Ann. § 3031.5(a). The statute provides in pertinent parts, as follows:

- (a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government. The costs of the examination shall be paid by the person requesting the examination in an amount set by the Secretary of the Commonwealth. Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any reexamination, the person, persons, or corporation, requesting such reexamination, shall pay to the Treasurer of the Commonwealth a reexamination fee of four hundred fifty dollars (\$ 450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system therefore examined and approved by him. The Secretary of the Commonwealth

may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

\*\*\*

(b) No electronic voting system not so approved shall be used at any election, and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth. 25 Pa. Stat. Ann. § 3031.5(a) and (c).

(c)

The Secretary cited subsection (a) for the authority to decertify Petitioners’

Dominion voting system even though that provision does not provide for any such authority. Remarkably, the Secretary did not cite subsection (c) when making the decision to decertify Petitioners’ Dominion voting system, likely because any withdrawal of approval of such voting systems would mean that the entire system “shall not thereafter be used or purchased for use” in the state of Pennsylvania.

Despite the findings contained in Respondent’s July 20 2021, letter, Wake TSI’s analysis of Fulton County’s election systems was conducted in a manner that was bi-partisan and transparent. Petitioners’ analysis and investigation of its voting system with the assistance of Wake TSI was conducted in accordance with the requirements of the Pennsylvania Election Code as well as the then-current Guidance issued by the Respondent. Wake TSI’s analysis and examination of the Fulton County system and machine was conducted at the Petitioners’ administrative offices and at no point did any of the physical components of the

voting system leave the custody or control of the Fulton County Board of Elections or its employees. The Election Director for Fulton County, or an Election Board Commissioner, remained in the room with the ballots throughout the entire course of Wake TSI's review. According to Wake TSI, the Election Director was the only person removing and replacing ballots in the ballot carts. Petitioners' IT Support Technician, or an Election Commissioner, remained with the technical team during the assessment of the voting system. Contrary to the Secretary's assertion, Wake TSI asserts that it did not conduct a full technology forensic audit of the operating system or the EMS.

In the first count of their petition for review, Petitioners sought a declaratory judgment that the Secretary failed to reexamine the voting system prior to decertification as required by 25 Pa. Stat. Ann. § 3031.5(b). The Petitioners alleged further that the Secretary's decision to decertify Petitioners' Democracy Suite 5.5A voting system was arbitrary, capricious, and an error of law because she failed to comply with the mandatory provisions of the Election Code and exceeded her statutory authority.

In a second count for declaratory judgment, Petitioners alleged that they were authorized by law and by the Secretary's own guidance to use the assistance of a third-party vendor to analyze the security of their voting systems. Petitioners demonstrated that Pennsylvania law mandates that they inspect systematically and

thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.” 25 P.S. § 2642(g). Under this count, Petitioners alleged that the Secretary exceeded her authority in prohibiting the Petitioners from using third-party vendors to conduct an examination of the components of electronic voting systems being used by counties.

In a third count, Petitioners alleged that the Secretary had usurped the power and authority delegated to Petitioners by the Pennsylvania Election Code. Petitioners demonstrated that the Secretary’s July 8, 2021 Directive 1 prohibited any county from using third-party vendors to assist in the inspection of state-certified electronic voting systems and system components. Citing 25 Pa. Stat. Ann. § 2642(g), Petitioners asserted that the Pennsylvania Election Code mandates that County Boards of Elections “inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.”

In its fourth and final count, Petitioners sought a declaratory judgment that the Secretary could not withhold funding for the purchase of new voting machines. Petitioners further alleged that by the Respondent’s unauthorized directive

withholding funding, they would be adversely affected and were deprived of their due process rights.

Petitioners noted the Secretary's actions were even more suspect because there was no demonstration that the voting systems used by Petitioners had ever been certified in the first instance, and in fact, the certification had been called into question by Wake TSI.

Neither the Secretary, or any agent acting on her behalf, ever physically examined or reexamined the Democracy Suite 5.5A voting systems of Fulton County, despite the clear mandate to do so prior to revoking a system's approval. 25 Pa. Stat. Ann. § 3031.5(b). In this regard the authority of the Secretary speaks to only "systems". *Id.* The provision provides that the Secretary "shall examine the system and make and file a report with the Pennsylvania Department of State, attested by her signature and the seal of her office, stating whether the system so reexamined can be safely used in elections." 25 P.S. § 3031.5(b). No such report or certification as to the system was made.

The Secretary filed Preliminary Objections demurring only to Count III. The Secretary emphasized that the General Assembly delegated to the Secretary the authority to examine, approve, and reexamine voting systems and to issue directives or instructions for electronic voting procedures. The Secretary also noted that the General Assembly tasked the Secretary with determining whether a

county's EMS “can be safely used by voters at elections as provided” in the Election Code.

As the petition for review was pending, the Fulton County Board of Commissioners voted on a motion to allow the Pennsylvania Senate Intergovernmental Operations Committee (“Senate Committee”) to examine the County’s voting equipment. The County then indicated that it was going to enlist another entity to perform an inspection.

In the meantime, Senator Cris Dush, who had replaced Senator Doug Mastriano as Chair of the Pennsylvania Senate Committee, wrote the County seeking permission to collect the digital data from the election computers and hardware used by Petitioners in the November 2020 election as part of the Senate Committee’s investigation of the Commonwealth’s election system.

On December 14, 2020, the Secretary learned that Fulton County had voted the same day to permit the inspection to go forward. The inspection was scheduled for December 22 and was to be conducted by Envoy Sage, LLC.

On December 17, 2021, the Secretary sought a protective order from the Commonwealth Court barring that inspection and any other third-party inspection during the litigation. The court denied relief.

The Secretary appealed that ruling to the Pennsylvania Court, and a single justice entered a temporary order, to prevent the inspection and to preserve the status quo during review of the Secretary's appeal. The order stated:

IT IS FURTHER ORDERED that the inspection of Fulton County's electronic voting equipment *that is currently scheduled to begin at 1:00 p.m. on January 14, 2022*, is hereby STAYED and ENJOINED pending further Order of the Court. (emphasis added).

On January 27, the full Court entered another order, providing as follows:

AND NOW, this 27th day of January, 2022, [Respondent's] "Emergency Application to Stay Third-Party Inspection of Electronic Voting System Scheduled to Begin at 1:00 p.m. on January 14, 2022" is GRANTED. The single-Justice Order entered on January 14, 2022, staying the lower court's ruling and enjoining the proposed third-party inspection of Fulton County's electronic voting equipment, shall remain in effect pending the disposition of the above-captioned appeal....

Petitioners were left at this point with no voting machine system and a dilemma with what to do with the existing contract it had with Dominion. In the course of fulfilling its statutorily delegated duties to *purchase, preserve, store and maintain primary and election equipment* pursuant to 25 Pa. Stat. Ann. § 2642(c), the County had a separate inspection performed on the now defunct and decertified Dominion voting machines. The report was issued by Speckin Forensics, LLC, on September 15, 2022 (the Speckin Report).

On September 21, 2022, Fulton County sued Dominion for breach of contract and breach of warranty because the Speckin Report revealed that the Dominion

voting machines were not fit for their intended use and purpose. *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

In the breach of contract action, Fulton County alleges that it contracted with Dominion to provide “voting systems services, software licenses and related services,” to Fulton County for the conducting of elections in Fulton County. Fulton County addresses the findings in several forensics reports and independent analyses of Dominion voting machines to allege that the machines did not perform as promised to Fulton County in their written agreement.

Among the reports cited was the Speckin Report commissioned by Fulton County in July 2022, and received in September 2022, which detailed the deficiencies in and inadequacies of Dominion’s voting systems, equipment, hardware, software, and services. Specifically, Petitioners show that the “security measures necessary to harden and secure” the Dominion machines was not completed; showing the last update or security patch to have been performed in April 2019” (a full year-and-a-half *before* the November 2020 election).

Petitioners also discovered that external USB hard drives had been inserted in the machines on several occasions, and that there was no known list of approved external drives that could have been or were used or inserted into the machines. In



this regard, there was no way to determine whether and to what extent these unauthorized drives compromised the data or the voting system.

Petitioners also demonstrated that there had been “substantial changes” to the drives as seen with the inclusion of over 900 .dll files and links created since the date of installation of the Dominion software and these pathways constituted a security breach due to the introduction of an unauthorized “script” into the Dominion voting systems used in Fulton County. Petitioners further demonstrated that a “python script” had been installed onto the systems *after* the Secretary’s supposed “certification,” and not only should such a script have been added to the system, but “[t]his python script can exploit and create any number of vulnerabilities” including, external access to the system from foreign sources, data export of the tabulations, or introduction of other metrics not part of or allowed by the certification process.” Petitioners further discovered that each of the drives of the Dominion machines were “interconnected in a system to one another” and that this would be required to share data and counts between devices. This networking, allowing unauthorized access [to] any one device, and therefore allowed unauthorized access to any device connected to the network. Further, the Petitioners determined that an external IP address linked with Canada was found on the machines, which shows that at least one of the network devices was connected to an external device on an external network. This was the same device that the

post-certification python script was found on. The report also revealed that log files for the adjudication device showed an IP address of 172.102.16.22, which was from a location in Quebec, Canada. This was direct evidence of remote connections to a foreign country. Remarkably, Petitioners found that the machines and devices only had Windows Defender protection dating to July 2016 and that no other updates to this software had been made.

Petitioners' findings confirmed that many of the "conditions" in the certification report which were required to be met for certification were not met and were not present before, during and after the November 2020 election and up to the present. Among other findings, this constituted a direct violation of and failure of the conditions required for certification of the Dominion voting machines in the state of Pennsylvania for the 2020 election and beyond. Fulton County's allegations show that Dominion breached its agreement to provide reliable and secure voting systems services, software licenses and related services.

This is ongoing litigation by and between Intervenor Dominion and Fulton County respecting the performance of and adequacy of the defunct and now useless Dominion machines.

Because Fulton County had Speckin analyze the Dominion machines, the Secretary filed an "Application for an Order Holding [Petitioners] in Contempt and Imposing Sanctions" in the underlying appeal, 3 MAP 2022. Despite the pendency

of the Petitioners' petition for review of the Secretary's purported authority to (1) prohibit any examination of the voting machine system by any county (pursuant to Directive 1); and (2) its decision to decertify the Dominion voting machine systems being used by Petitioners, the Court appointed a special master to make an evidentiary record and to provide proposed findings of fact, conclusions of law, and sanctions to aid in this Court's resolution of the allegations at issue.

After an expedited evidentiary hearing in which Petitioners were forced to provide testimony and evidence, despite the ongoing underlying litigation by and between Fulton County and Dominion, who intervened in the proceedings, and over the objections of Petitioners' counsel on grounds that the decision to proceed with such a hearing prior to a decision by the special master on the legal question of whether the language of the Pennsylvania Supreme Court's orders had even been violated, the Pennsylvania Supreme Court issued its opinion and order, dismissing the underlying appeal, and finding Petitioners and their counsel in contempt of court and imposing sanctions.

This Court also ordered the impoundment of the Dominion voting machine systems, despite the breach of contract action in which Petitioners are suing Dominion for the failed voting machine system it provided to Fulton County prior to the 2020 election.

In this regard, the Court forced Petitioners to agree to surrender possession of evidence that could be critical to the claims in the breach of contract proceedings.

During the contempt proceedings, Petitioners argued that the subsequent inspection conducted in July 2022 did not violate the plain language of the Pennsylvania Supreme Court's stay orders. Petitioners further argued that they were authorized and required by Pennsylvania law, 25 Pa. Stat. Ann. § 2642, to inspect, examine and investigate the voting systems and voting machines so that they could make decisions about employing voting machines in future elections. Petitioners specifically argued that pursuant to Article I, section 4, clause 1 of the United States Constitution, the Pennsylvania General Assembly had mandated that they were to conduct inspections and make necessary preparations for upcoming elections. 24 Pa. Stat. Ann. § 2642(c), (d), and (i). They could not therefore be held in contempt for fulfilling this exclusive, delegated constitutional duty.

The Petitioners further argued that the contempt proceedings violated their rights to privileges and confidentialities because of the ongoing breach of contract suit against intervenor Dominion, based on Dominion's alleged failure to provide Petitioners with reliable voting equipment. See *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

The Court found Petitioners in contempt of its stay orders. The Court ruled that the language of the orders applied to future testing of the Petitioners' voting

systems and that in conducting the July 2022 examination, Petitioners had violated its orders. Regarding Petitioners' argument that they were not violating the language of the court's January orders, the court reasoned that the spirit of the order applied to any and all future testing. The court ignored Petitioners' argument that the constitutional delegation by the Pennsylvania General Assembly to the counties under Article I, section 4, clause 1 of the United States Constitution allowed it to perform additional inspections of voting machine systems.

The court ruled only on the argument regarding the scope of its January orders and found Petitioners had deliberately, willfully, and wrongfully violated those orders. The court ordered Petitioners Fulton County and Petitioners' attorney, Thomas Carroll to be jointly responsible for attorneys' fees incurred by the Secretary and Dominion. The court ordered commencement of the attorneys' fees assessment as to Fulton County as of December 17, 2021 and as of April 13, 2022 for Attorney Carroll.

The court also referred Attorney Carroll to Pennsylvania's Attorney Disciplinary Board for "examination of his conduct throughout the litigation" of the appeal of the court's stay order and the contempt proceedings. The court also ordered Petitioners to transfer the voting equipment to a neutral escrow agent pursuant to an agreement between the parties.

**REASONS FOR GRANTING THE APPLICATION**  
**FOR AN EMERGENCY STAY**

The Petitioners will suffer irreparable harm should tax funds be utilized to hold a hearing to place its election equipment in the custody of a third-party vendor which will result in the data on the equipment being deleted or destroyed. Such injury is imminent unless this Court grants the stay pending a decision on Petitioners' petition for a writ of certiorari before the United States Supreme Court in Case No. 23-96.

Benjamin R. Cotton cautioned in his August 24, 2023, Affidavit (**Attachment C**) that the election data can be modified remotely if the election machines/equipment is powered on. More specifically, Cotton states that Cellular Modems, WiFi Modems, and Network Interface Cards are installed on the Motherboard of the Dominion voting equipment and can automatically connect to remote locations when the machines are powered on. Furthermore, Cotton cautions that by simply powering on the election machines/equipment, the election machines/equipment will alter dates and time of files, overwrite log file entries, modify system configuration settings, and change data file contents due to the system automatically changing logs and performing automated processes like antivirus scans, scheduled tasks, and other operations.

Petitioners have demonstrated that Fulton County will suffer irreparable harm by holding costly hearings on third-party custodians when Fulton County believes it will win its appeal before the United States Supreme Court. The data on

the election equipment will be destroyed and deleted upon going into custody of a third party and the Fulton County tax funds to pay for the instant hearing before the special master as well as all fees associated with moving the equipment to a third party will result in irreparable harm. *Hollingsworth v. Perry*.

There is no prejudice to Respondents by having the Special Master to hold off on an evidentiary hearing which will, as described above, irreparably destroy the evidence relied upon by Petitioners, should they prevail on their petition for certiorari to the United States Supreme Court, Case No. 23-96.

Petitioners, in their petition for certiorari have presented the grounds upon which they reasonably believe they will prevail upon their appeal to this Court.

### **PRAYER FOR RELIEF**

Accordingly, Petitioners respectfully request an immediate Stay of the Special Master Hearing scheduled today August 28, 2023, until the appeal by Petitioners to the United States Supreme Court has been decided, as irreparable harm will occur unless said stay is granted. Petitioners filed this emergency application seeking an immediate ruling from the court today, August 28, 2023.

Respectfully submitted by:

/s/ Thomas J Carroll

Attorney ID: 53296

Attorney for Petitioners

LAW OFFICE OF THOMAS J CARROLL

224 King Street  
Pottstown, PA, 19464  
(610)419-6981  
tom@thomasjcarrolllaw.com

Date: August 28, 2023



**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Fulton, Fulton County Board	:	
of Elections, Stuart L. Ulsh, in his	:	
official capacity as County	:	
Commissioner of Fulton County and	:	No. 277 M.D. 2021
in his capacity as a resident, taxpayer	:	No. 3 MAP 2022
and elector in Fulton County, and Randy	:	
H. Bunch, in his official capacity as	:	
County Commissioner of Fulton County	:	
and in his capacity as a resident,	:	
taxpayer and elector of Fulton County,	:	
Petitioners/Appellees	:	
	:	
v.	:	
	:	
Secretary of the Commonwealth,	:	
Respondent/Appellant:	:	

**ORDER**

NOW, August 28, 2023, upon consideration of Petitioner/Appellant’s (collectively, Fulton County) Emergency Motion to Adjourn Proceedings (Motion) requesting an emergency stay of the scheduled August 28, 2023 evidentiary hearing, the Motion is DENIED and the Special Master hereby ORDERS as follows:

1. The evidentiary hearing for purposes of the Special Master’s appointment of a neutral third-party escrow agent currently fixed for Monday, August 28, 2023, at 9:00 a.m. in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, shall RECONVENE at 1:00 p.m. today, August 28, 2023, in the same place.
  
2. Attorney Thomas J. Carroll (Attorney Carroll) may attend and participate in the evidentiary hearing via WebEx Video Conferencing (WebEx). The Special Master notes that the Motion

does not contain any direct representation that Attorney Carroll's present medical conditions prevent his participation in the evidentiary hearing other than that Attorney Carroll "was prescribed . . . medication [with] warnings to not drive or operate machinery while taking it." Motion ¶ 3.

3. Attorney James M. Stein, who is presently counsel of record representing Fulton County, may attend the evidentiary hearing in person or remotely via WebEx.

4. The County may direct any attorney licensed to practice in the Commonwealth of Pennsylvania to enter an appearance in this matter and appear at the evidentiary hearing. Counsel unable to attend the evidentiary hearing in person may appear via WebEx. Counsel intending to appear via WebEx shall immediately provide their email address and telephone number to [CommCourtRemote@pacourts.us](mailto:CommCourtRemote@pacourts.us), [Bridget.Holbein@pacourts.us](mailto:Bridget.Holbein@pacourts.us) and [Paul.Ritchey@pacourts.us](mailto:Paul.Ritchey@pacourts.us).

5. Fulton County's attorney(s) chosen pursuant to Paragraph 2, 3, or 4 of this Order is directed to join the hearing 15 minutes before the starting time. To facilitate participation in the hearing, various WebEx applications are available for download at [pacourts.webex.com](http://pacourts.webex.com). Please see Protocol for WebEx Video Hearings, attached to this Order. In the event of technical difficulties, the attorney may contact the Court's IT staff at 717-255-1626. The Court will immediately send Attorney Stein and Attorney Carroll WebEx invitations in the event they participate in the hearing remotely.

6. The evidentiary hearing shall proceed at 1:00 p.m. as scheduled and, if no Pennsylvania counsel are able to attend on behalf of Fulton County, the Special Master will expect Attorney Russell M. Newman, who was admitted pro hac vice on August 24, 2023, to fully represent Fulton County during the hearing. *See* Pa.R.Civ.P. 1012.1(d)(2) ("Upon [pro hac vice admission] being granted, the sponsor. . . shall attend all proceedings before the court **unless excused by the court.**"). *See also* *Cty. of Fulton v. Sec. of Commonwealth*, 292 A.3d 974, 991 n.69 (Pa. 2023) (*Fulton County*

D).<sup>1</sup> Counsel admitted to practice in Pennsylvania may enter an appearance on behalf of Fulton County at any time during the evidentiary hearing.



**RENÉE COHN JUBELIRER**, President Judge of the Commonwealth Court of Pennsylvania Appointed as Special Master

Order Exit  
08/28/2023

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<sup>1</sup> In *Fulton County I*, the Supreme Court addressed a similar situation where Attorney Carroll filed a Motion to Adjourn Oral Argument two days before the September 14, 2022 argument scheduled before that Court, wherein Mr. Carroll “assert[ed] emergent personal reasons that allegedly prevented him from ‘prepar[ing] for oral argument ... and/or associat[ing] other counsel as a substitute this close to the time for the presentation of oral argument.’” *Fulton County I*, 292 A.2d at 991. In the accompanying footnote, the Supreme Court stated:

Attorney Carroll had not yet informed this Court that Attorney Lambert was his co-counsel, nor had he sought her admission pro hac vice below or in this Court. Although the rules governing pro hac vice representation direct that the sponsoring attorney must be in attendance at all court proceedings in connection with the representation, that **requirement is qualified by a carve-out** when sponsoring counsel is ‘excused by court.’ See Pa.R.Civ.P. 1012.1(d)(1).) This is not to say that we would have granted such a request. But, had Attorney Lambert been admitted pro hac vice, **it would have given Attorney Carroll a good-faith alternative to filing a disfavored, last-minute request for a continuance reflecting no contingency planning.**

*Id.*, at 991 n.69 (emphasis added). In the instant proceedings, the Special Master granted Attorney Newman admission pro hac vice four days prior to the scheduled hearing, which gives Attorney Carroll a good-faith alternative to filing “a disfavored, last minute request for a continuance....” *Id.*



## Protocol for WebEx Video Hearings

### **Protocol BEFORE the hearing:**

Twenty-four (24) hours before the scheduled hearing, the Court shall provide counsel, any pro se party, and the court reporter with the information for connecting to the video hearing, including the date and time of the hearing. This invitation will be sent by email.

It is the responsibility of counsel to provide the connection information to their clients and witnesses. It is the responsibility of any pro se party to provide the connection information to their witnesses.

It is the responsibility of all parties to provide the Court with their contact information. An email address will be required to join the video.

A witness list must be provided to the Court by the date set forth in the court's scheduling order, and otherwise no later than forty-eight (48) hours before the hearing, with a valid email address for each witness. The Court will provide the attorneys with a contact email to which the witness list should be sent. The witness list shall include the case caption and docket number and the full name of each prospective witness.

All participants must appear by video connection unless otherwise authorized by the Court.

Email invitations will be sent to participants at least 24 hours before the hearing. If a participant has not received the email invitation from the Court, please check your SPAM or Junk folder before contacting the Court.

All parties and witnesses must connect to the hearing or call into the video system at least 15 minutes before the scheduled start time.

### **Minimum Technology requirements:**

All counsel and pro se parties appearing before the Court must have one of the following:

A computer with a functioning web camera, microphone and speakers;

A video conferencing system that supports Session Initiation Protocol (SIP) calling;

A tablet device that supports Cisco WebEx with a functioning forward facing camera, microphone and speakers; or

An alternative device used to connect to Cisco WebEx in the past.

If you experience audio issues with your computer/tablet audio, the Court recommends that you have our system call you by using the option listed in 0 below.

The Court's IT Department will endeavor to contact counsel, any pro se party, and witnesses in advance of the hearing to test their connection to the WebEx platform.

### **Ground Rules and Video Conferencing Etiquette:**

When not speaking, please mute your microphone. This helps prevent background noise.

Earbuds or headphones are preferable to avoid feedback.

Be aware of your behavior. Because you are on a video conference, people can see what you are doing at all times and *WebEx video conferences are recorded*. Further, others may view the proceedings via public livestream web link that will be provided to the parties and posted to the Court's website in advance of the proceeding.

If connecting from a laptop, plug in the laptop wall power.

Follow all instructions in the video conference invitation and note important supplemental information, such as a backup phone number in case you are disconnected.

Please be respectful; speak slowly and only one at a time.

Try not to speak over other parties. There is a slight delay when using video technology.

The Court appointed crier will be on the call to open and close court and to swear-in witnesses if needed.

### **Technical Support**

**If you have any questions or need technical assistance, contact 717-255-1626.**

## Invitation from the Court:

Prior to your scheduled hearing, you will receive an email from the Court with connection instructions. Please make sure to monitor your SPAM or Junk folder so that you receive the message. It should come from @pacourts.us. Here is the information from a sample invitation.

**Commonwealth Court Legal Systems invites you to join this Webex meeting.**

Meeting number (access code): 613 778 564 ③  
Meeting password: Cy54FR39aBE

Wednesday, March 25, 2020  
8:00 am | (UTC-04:00) Eastern Time (US & Canada) | 10 mins

[Join meeting](#) ①

**Join by phone**  
Tap to call in from a mobile device (attendees only)  
[1-855-244-8681](#) Call-in toll-free number (US/Canada) ②  
[1-850-479-3207](#) Call-in toll number (US/Canada)  
[Toll-free calling restrictions](#)

**Join from a video system or application** ④  
Dial [613778564@pacourts.webex.com](tel:613778564@pacourts.webex.com)  
You can also dial 173.243.2.68 and enter your meeting number.

**Join using Microsoft Lync or Microsoft Skype for Business** ⑤  
Dial [613778564.pacourts@lync.webex.com](tel:613778564.pacourts@lync.webex.com)

In the invitation, there are multiple connection options:

WebEx: Click on the Green *Join Meeting* button. ①

Phone: Dial either of the numbers listed under *Join by phone*. ②

When prompted, enter the Meeting number (access code) listed near the top of the invitation. ③

Use the SIP dial in connection number provided for non-WebEx devices such as video conferencing systems. ④

Microsoft Lync/Skype for Business connection information is also provided. ⑤

## Controls while connected to WebEx:

Once connected to a meeting, if you move your mouse, the below control panel should appear. These are the normal controls, but some of them may be disabled which means they will not appear. The icons will be the same.



From left to right, the controls are:

Mute/unmute microphone

Turn on/off camera

Share your desktop

Recording control (Only available to the Court)

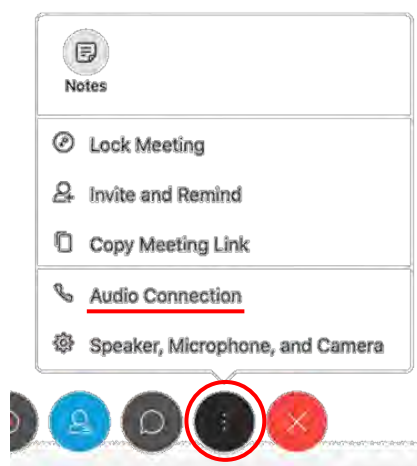
Open/Close the participant list

Chat windows

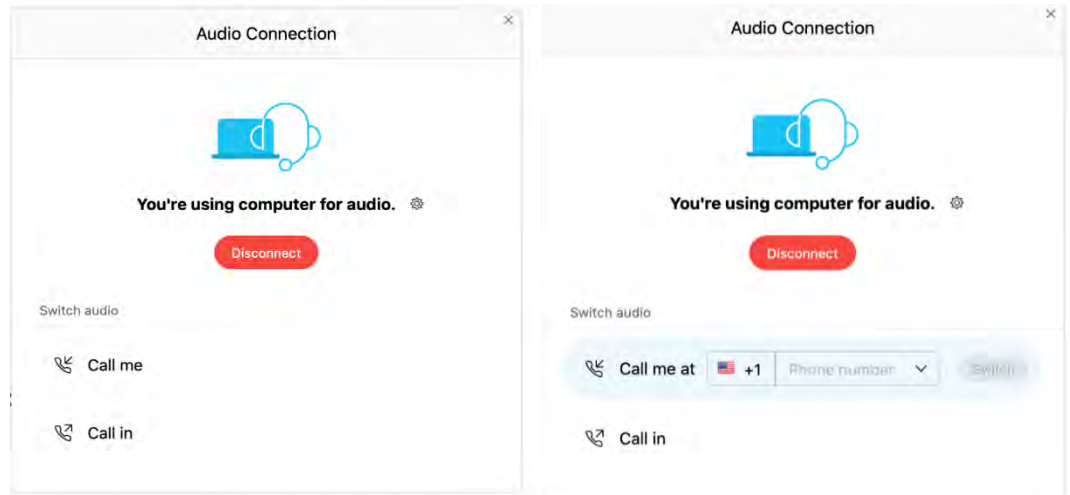
Options – has more controls available

End Meeting

Under the More Options button (7 above, the 3 dots icon). If you are having audio difficulties with your computer audio, you can have the system call you. Click on the 3 dots icon and then choose Audio Connection.



Click on the option “Call Me.” Enter the phone number that the system should call and press the switch button. When the call comes in, you will be prompted to press “1” to connect.



At the end of your call, press the red X to be disconnected.

### **Procedures regarding Exhibits:**

Exhibits should be pre-marked numerically: i.e., P-1, P-2, etc.; and R-1, R-2, etc.

Be aware of personal identifying or confidential information contained in exhibits used during a video hearing, and redact where appropriate consistent with the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*.

No later than the date on any order of the Court, or in the absence of a specific date, twenty-four (24) hours prior to the hearing, counsel and any pro se party shall upload all exhibits intended for use during the hearing to the link provided and should email the Court at [CommCourtRemote@pacourts.us](mailto:CommCourtRemote@pacourts.us) to confirm all exhibits have been successfully uploaded. Parties are directed to provide their witnesses with copies of the exhibits in advance of the hearing to which the witnesses can refer during their testimony.



# EXHIBIT H

**From:** [Howard Kleinhendler](#)  
**To:** [shawn.gallagher@bipc.com](mailto:shawn.gallagher@bipc.com); [Wiygul, Robert A.](#)  
**Cc:** [AttorneyLambert@protonmail.com](mailto:AttorneyLambert@protonmail.com)  
**Subject:** Fulton County v. Sec. of Comm of Pa (Supreme Court of United States No 23-96)  
**Date:** Monday, August 28, 2023 6:46:26 PM  
**Attachments:** [Amended Application for Emergency Stay.8.28.pdf](#)  
[Exhibits.A.B.C.D.pdf](#)  
[Exhibit E PA SCT Letter.pdf](#)  
[Ex.F.S.Ct.8.28..pdf](#)

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**[EXTERNAL EMAIL - This message originated outside Hangley Aronchick.]**

Counsel:

The attached was e-filed today in the Supreme Court.

Yours truly,

Howard Kleinhendler  
HOWARD KLEINHENDLER ESQUIRE  
369 Lexington Avenue, Rm 1201  
New York, New York 10017  
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Mobile (347) 840-2188  
[howard@kleinhendler.com](mailto:howard@kleinhendler.com)  
[www.kleinhendler.com](http://www.kleinhendler.com)

# EXHIBIT I

No. 23A\_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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COUNTY OF FULTON, PENNSYLVANIA, ET. AL.,  
Petitioner,

v.

SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA AND  
DOMINION VOTING SYSTEMS, INC.,  
Respondent,

---

ON PETITION FOR WRIT OF CERTIORARI TO  
THE PENNSYLVANIA SUPREME COURT

---

**AMENDED EMERGENCY APPLICATION FOR STAY; RELIEF REQUESTED  
PRIOR TO AUGUST 29, 2023**

---

To the Honorable Samuel A. Alito, Jr. Associate Justice of the Supreme Court of the  
United States and Circuit Justice for the Third Circuit

HOWARD KLEINHENDLER  
*Counsel of Record for Petitioner*  
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224 King Street  
Pottstown, PA, 19464  
(610)419-6981  
tom@thomasjcarrolllaw.com

August 28, 2023

## **PARTIES TO THE PROCEEDING**

Petitioners are County of Fulton, Pennsylvania, Fulton County Board of Elections, Stuart L. Ulsh, in his Official Capacity as County Commissioner, and in his capacity as a Resident, Taxpayer, and Elector; and Randy H. Bunch, in his Official Capacity as County Commissioner and in his capacity as a Resident, Taxpayer, and Elector; and Attorneys for the Petitioners, Thomas J. Carroll and Stefanie Lambert.

Respondent is Al Schmidt, the acting Secretary of the Commonwealth of Pennsylvania.

Intervenor/Respondent is Dominion Voting Systems, Inc.

## **RELATED PROCEEDINGS**

- Petitioner, Fulton County, Fulton County Board of Elections, Commissioners Stuart L. Ulsh and Randy H. Bunch, filed a petition for review against Respondent, Secretary of the Commonwealth of Pennsylvania in the Commonwealth Court of Pennsylvania on August 18, 2021, Case No. 277 MD 2021;
- Respondent, Secretary of the Commonwealth of Pennsylvania filed an Appeal of the Commonwealth Court's decision to the Supreme Court of Pennsylvania on January 3, 2022, Case No. 3 MAP 2022.
- Respondent, Dominion Voting Systems, Inc., filed a motion to intervene in the Commonwealth Court, which was denied on January 10, 2022, in Case No. 277 MD 2021, and appealed by Dominion on January 19, 2022, in Case No. 4 MAP

2022. The Supreme Court of Pennsylvania ultimately granted Dominion's motion on March 21, 2022.

- Contempt proceedings were initiated by Respondent, Secretary of the Commonwealth, on October 18, 2022;
- Although part of the same appeal in the Pennsylvania Supreme Court, Case No. 3 MAP 2022, a Special Master was appointed and issued a report to the Supreme Court of Pennsylvania, which report is dated November 18, 2022.

### **CORPORATE DISCLOSURE**

Petitioners Fulton County and the Fulton County Board of Elections are governmental entities and not a corporation pursuant to Rule 29.6.

Petitioners Stuart L. Ulsh and Randy H. Bunch are individuals acting in their official capacities as members of the Fulton County Board of Elections, and in their individual capacities as citizens of the Commonwealth of Pennsylvania and of the United States of America, and thus are not corporate parties pursuant to Rule 29.6.

Petitioners Thomas J. Carroll and Stefanie Lambert are attorneys for Petitioners and are individuals and thus are not corporate parties pursuant to Rule 29.6.

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Ex F Motion for Stay due to Medical Emergency

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## OPINIONS BELOW AND DENIAL OF MOTION FOR A STAY

On April 19, 2023, the Pennsylvania Supreme Court dismissed an appeal in an underlying case under Pennsylvania’s Election Code that had been brought by the Respondent Secretary of the Commonwealth and issued an order of contempt and other sanctions against Fulton County and its attorneys. (App. 1-107).

These decisions comprise the substantive rulings from which Petitioner seeks a writ of certiorari, which was docketed in this Court on August 2, 2023 as No. 23-96.

Petitioners seek, pursuant to Rule 23, an Emergency Stay of the proceedings below to prevent irreparable harm that will result from Fulton County tax funds being utilized to hold a hearing to place the election equipment (mothballed) and owned by Fulton County in the custody of a third party escrow agent where it will be “powered on” and data will be deleted. Order, attached as **Exhibit A**.

Specifically, on August 23, 2023, a Special Master was appointed to conduct an evidentiary hearing on August 28, 2023 to appoint a third-party escrow agent to take custody of certain voting machines. Exhibit A. The voting machines at issue will be switched on and necessary evidence of the asserted failures and other problems with the machines stored in memory will be erased. See Supporting Affidavit of Benjamin R. Cotton, attached as **Exhibit B**.

On August 23, 2023, the court below denied Petitioners’ motion for a stay of the August 28<sup>th</sup> hearing, ruling that: “the Special Master will proceed as directed by the Supreme Court of Pennsylvania unless otherwise directed by the Supreme Court of the United States.” See Order, attached as **Exhibit C**.

On August 28, 2023, Petitioner's filed an Emergency Application for Stay before the Pennsylvania Supreme Court, and the Emergency Application ignored as to the immediate request for a stay of proceedings with the Pennsylvania Supreme Court merely issuing a letter ordering opposing counsel's response to Emergency Application to Stay be filed *after* conclusion of the ongoing hearing that is the very request of the Emergency Application. The hearing is scheduled for conclusion on August 31, 2023 and the Response to Petitioner's Emergency Application is due on August 31, 2023. It is interpreted by Petitioner's that the Pennsylvania Supreme Court is refusing to provide a final order that could timely be provided to the United States Supreme Court and is effectively a denial of Petitioner's Emergency Application for Stay. **Exhibit E.**

Additionally, Petitioner's counsel, Thomas Carroll, has filed an Emergency Motion to Adjourn Proceedings due to medical emergency in which he fell down the stairs, has been diagnosed with a broken rib, has been diagnosed with an infection, and is on narcotic and antibiotic medication with medical orders not to return to work until August 30, 2023. Special Master also denied that request and is holding the hearing requiring Mr. Carroll to represent his clients from his bedroom.

**Exhibit F.**

Petitioner's are in the beginning stages of this hearing that Special Master is presiding over, and that the Pennsylvania Supreme Court has ordered, directed, and declined to timely grant an Emergency Stay. Therefore, Petitioner's Emergency Application for Stay before this Honorable Court is *not* moot.

## JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C.S. § 1254(1).

## STATEMENT

### *A. Introduction*

Congress has delegated authority to the individual states regarding time, place, *and manner*, for conducting national elections. U.S. Const. Art. I, section 4, clause 1. See also, *United States Term Limits v. Thornton*, 514 U.S. 779, 804-05, 115 S. Ct. 1842, 1855, 131 L.Ed.2d 881, 901 (1995) (“the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” Art. I, § 4, cl. 1.). Pursuant to this delegated authority, the Pennsylvania General Assembly re delegated authority to Pennsylvania’s counties, and particularly to county boards of elections, to conduct these elections. As part of that delegation, Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds*, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.

\*\*\*

(f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary *for the guidance of voting machine custodians, elections officers and electors.*

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

Without legislative authority, Respondent Secretary decertified Petitioners' voting machines. This was after Petitioners had the voting machines examined by a third-party subsequent to the 2020 general election.

Petitioners filed a petition for review of the Secretary's actions. The Secretary filed a motion to enjoin further testing of the voting machines, which the court denied. The Secretary filed an interlocutory appeal of that order.

Subsequent to the filing of the appeal, and in the process of determining how to fulfill its legislatively delegated authority concerning the provision of voting machines, Petitioners had to consider the viability of continuing to use Dominion voting machines to fulfill its statutory duties to conduct elections. Fulton County also had to consider the status of and legitimacy of its contract with Dominion Voting Systems ("Dominion"). In these regards, Fulton County had another company analyze the Dominion voting machines. Fulton County then sued Dominion for breach of contract and breach of warranty because the inspection that was performed revealed that the Dominion voting machines were not fit for their intended use and purpose.

The Secretary filed a motion to hold Petitioners in contempt for violating the Supreme Court’s order placing an injunction on the previously scheduled testing. The contempt proceedings resulted in the Supreme Court’s decision to hold Fulton County and Fulton County’s attorneys in contempt and to dismiss the Secretary’s underlying appeal of the Commonwealth Court’s denial of the Secretary’s application to enjoin further inspections.

Among the constitutional errors committed by the Pennsylvania Supreme Court, and central to the petition for review pending before this Court, was the court’s finding of contempt and award of sanctions where Petitioners were exercising their constitutionally delegated authority over their voting machines and systems. The dismissal deprived the citizens of the state of Pennsylvania, Fulton County, and the Secretary, of a fundamental decision regarding the constitutional delegation by the Pennsylvania legislature to the county boards of elections to conduct national elections. Principally, as Fulton County had challenged in its petition for review, the Secretary did not and could not usurp the powers of Fulton County over voting machines – authority to “purchase, preserve, store, and maintain” voting machines was statutorily delegated to Fulton County by virtue of the constitutional delegation to the Pennsylvania General Assembly under Article I, section 4 of the Constitution.

***B. Background***

On January 17, 2019, the Secretary (then Kathy Boockvar), certified the use of Dominion’s “Democracy Suite 5.5A” voting system in Pennsylvania elections

pursuant to 25 Pa. Stat. Ann. § 3031.5. According to the Secretary’s report, “[t]he Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as “professional consultants” to conduct the examination of Democracy Suite 5.5A. (App. 11-12). The United States Election Assistance Commission (EAC) provides for the accreditation of laboratories qualified to test voting systems to meet federal standards. While SLI is an EAC accredited testing laboratory, CCD does not appear on EAC’s directory of approved laboratories.

In April of 2019, Petitioners contracted with Dominion to purchase and begin using two Democracy Suite 5.5A voting systems. The Democracy Suite 5.5A system was used through the November 3, 2020 general election.

Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following authority:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.*

\*\*\*

(f) *To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.*

(g) *To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.*

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

In September of 2016, the Secretary issued to the counties “Guidance on Electronic Voting System Preparation and Security”. (App. 11). This guidance document contemplated and expected that the counties would use “third-party vendors” to conduct the necessary “*purchase, preserve, store and maintain primary and election equipment*” that was expressly delegated and mandated to the counties pursuant to 25 Pa. Stat. Ann. 2642. This included measures to ensure security, perform maintenance, and preparations of the voting machines systems in use by the counties. Details of the Secretary’s guidance included the procedures for third-party vendors to perform file transfers. Further, the Secretary’s guidance “applie[d] to any vendor that is providing technical support to the counties for any component of the system involved in the canvass of the election.” (App. 11). The Secretary’s guidance was updated on October 13, 2020 and again contemplated the use of outside vendors to perform election preparation and maintenance on the voting systems. (App. 11).

Pursuant to 25 Pa. Stat. Ann. 2642, Petitioners hired Wake Technology Services, Inc. (Wake TSI), a managed service provider specializing in data center, network, server and desktop systems design, and cybersecurity and management, to include voting systems technology. Petitioners requested Wake TSI to assist it in an investigation and assessment of Fulton County’s voting systems and processes that were utilized in the November 2020 general election. Wake TSI’s reviewed the

Dominion Democracy Suite 5.5A operating and application systems, file data, log files, ballot images, and related files. (App. 113).

Pursuant to the Secretary's 2016 and 2020 guidance, Wake TSI ensured that proper chain of custody of the equipment was maintained at all times through the presence of Fulton County's Election Director (Commissioners and other staff were also present), who was the sole individual to remove or replace ballots in the ballot carts.

Wake TSI issued its "Fulton County Election System Analysis," report (the Wake TSI Report) dated February 19, 2021. In its report, Wake TSI concluded that the 2020 General Election was well run and conducted, in a diligent and effective manner. (App. 7). This seemingly fulfilled Petitioners' duties as set forth in 25 P.S. § 2642(g).

In its report, however, Wake TSI also found several problems with the Democracy Suite 5.5A system. Among these were errors in the ballot scanning, a failure of the system to meet Commonwealth Certification requirements, non-certified database tools on the system, changes made to Dominion's entire election management system (EMS) three weeks before the 2020 election, and a lack of commonwealth logic and accuracy inspections L&A inspections of the Dominion Voting Systems. (App. 7).

Several months after the publication of the Wake TSI Report, on July 8, 2021, Respondent Secretary issued "Directive 1 of 2021," which provided as follows:



County Boards of Elections shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified electronic voting systems, or any components of such systems, including but not limited to: election management software and systems, tabulators, scanners; counters, automatic tabulating equipment, voting devices, servers, ballot marking devices, paper ballot or ballot card printers, portable memory media devices (thumb drives, flash drives and the like), and any other hardware, software or devices being used as part of the election management system. (App. 11).

Directive 1 also provided for the revocation of funding for counties whose machines are decertified under the Directive, stating “[t]he Commonwealth of Pennsylvania will not reimburse any cost of replacement voting equipment for which certification or use authority has been withdrawn pursuant to this directive.” (App. 11).

In February of 2020, the Pennsylvania Economic Development authority voted to approve a \$90 Million bond issuance to cover costs for new voting machines across the Commonwealth of Pennsylvania. Petitioners claimed that the Secretary had no authority to withhold such funding pursuant to Directive 1.

Following the issuance of Directive 1, and without the opportunity for a hearing or other due process, the Secretary issued a letter (constituting an adjudication or “order”) to Petitioners (addressed to the County Solicitor) dated July 20, 2021, stating:

As a result of the access granted to Wake TSI, Fulton County’s certified system has been compromised and neither Fulton County; the vendor, Dominion Voting Systems; nor the Department of State can verify that the impacted components of Fulton County’s leased voting system are safe to use in future elections. Due to these actions and after careful consideration ... I have no other choice but to decertify the use of Fulton County’s leased

Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

Respondent's July 20, 2021 letter further stated that, "based on our discussions and correspondence with Fulton County officials, it appears that the contents of the Democracy Suite 5.5A that were used during the 2020 November election were subjected to a post-election review by a third-party in violation of Pennsylvania's Election Code." (App. 11).

On August 18, 2021, Petitioners sought review of the Secretary's July 20, 2021 decertification of Petitioner's Dominion "Democracy Suite 5.5A voting systems. And amended petition was filed on September 17, 2021.

The Secretary claimed to have the authority to decertify Petitioners' voting machine system via the regulatory "Directive 1 of 2021". The Secretary further claimed to have authority to issue Directive 1 pursuant to the Pennsylvania Election Code, 25 Pa. Stat. Ann. § 3031.5(a). The statute provides in pertinent parts, as follows:

(a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government. The costs of the examination shall be paid by the person requesting the examination in an amount set by the Secretary of the Commonwealth. Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any reexamination, the person, persons, or corporation, requesting such reexamination, shall pay to the Treasurer of the Commonwealth a reexamination fee of four hundred fifty

dollars (\$ 450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system therefore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

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(c) No electronic voting system not so approved shall be used at any election, and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth. 25 Pa. Stat. Ann. § 3031.5(a) and (c).

The Secretary cited subsection (a) for the authority to decertify Petitioners' Dominion voting system even though that provision does not provide for any such authority. Remarkably, the Secretary did not cite subsection (c) when making the decision to decertify Petitioners' Dominion voting system, likely because any withdrawal of approval of such voting systems would mean that the entire system "shall not thereafter be used or purchased for use" in the state of Pennsylvania.

Despite the findings contained in Respondent's July 20 2021, letter, Wake TSI's analysis of Fulton County's election systems was conducted in a manner that was bi-partisan and transparent. Petitioners' analysis and investigation of its voting system with the assistance of Wake TSI was conducted in accordance with the requirements of the Pennsylvania Election Code as well as the then-current Guidance issued by the Respondent. Wake TSI's analysis and examination of the Fulton County system and machine was conducted at the Petitioners' administrative offices and at no point did any of the physical components of the

voting system leave the custody or control of the Fulton County Board of Elections or its employees. The Election Director for Fulton County, or an Election Board Commissioner, remained in the room with the ballots throughout the entire course of Wake TSI's review. According to Wake TSI, the Election Director was the only person removing and replacing ballots in the ballot carts. Petitioners' IT Support Technician, or an Election Commissioner, remained with the technical team during the assessment of the voting system. Contrary to the Secretary's assertion, Wake TSI asserts that it did not conduct a full technology forensic audit of the operating system or the EMS.

In the first count of their petition for review, Petitioners sought a declaratory judgment that the Secretary failed to reexamine the voting system prior to decertification as required by 25 Pa. Stat. Ann. § 3031.5(b). The Petitioners alleged further that the Secretary's decision to decertify Petitioners' Democracy Suite 5.5A voting system was arbitrary, capricious, and an error of law because she failed to comply with the mandatory provisions of the Election Code and exceeded her statutory authority.

In a second count for declaratory judgment, Petitioners alleged that they were authorized by law and by the Secretary's own guidance to use the assistance of a third-party vendor to analyze the security of their voting systems. Petitioners demonstrated that Pennsylvania law mandates that they inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and

uniformly conducted.” 25 P.S. § 2642(g). Under this count, Petitioners alleged that the Secretary exceeded her authority in prohibiting the Petitioners from using third-party vendors to conduct an examination of the components of electronic voting systems being used by counties.

In a third count, Petitioners alleged that the Secretary had usurped the power and authority delegated to Petitioners by the Pennsylvania Election Code. Petitioners demonstrated that the Secretary’s July 8, 2021 Directive 1 prohibited any county from using third-party vendors to assist in the inspection of state-certified electronic voting systems and system components. Citing 25 Pa. Stat. Ann. § 2642(g), Petitioners asserted that the Pennsylvania Election Code mandates that County Boards of Elections “inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.”

In its fourth and final count, Petitioners sought a declaratory judgment that the Secretary could not withhold funding for the purchase of new voting machines. Petitioners further alleged that by the Respondent’s unauthorized directive withholding funding, they would be adversely affected and were deprived of their due process rights.

Petitioners noted the Secretary’s actions were even more suspect because there was no demonstration that the voting systems used by Petitioners had ever been certified in the first instance, and in fact, the certification had been called into question by Wake TSI.

Neither the Secretary, or any agent acting on her behalf, ever physically examined or reexamined the Democracy Suite 5.5A voting systems of Fulton County, despite the clear mandate to do so prior to revoking a system's approval. 25 Pa. Stat. Ann. § 3031.5(b). In this regard the authority of the Secretary speaks to only "systems". *Id.* The provision provides that the Secretary "shall examine the system and make and file a report with the Pennsylvania Department of State, attested by her signature and the seal of her office, stating whether the system so reexamined can be safely used in elections." 25 P.S. § 3031.5(b). No such report or certification as to the system was made.

The Secretary filed Preliminary Objections demurring only to Count III. The Secretary emphasized that the General Assembly delegated to the Secretary the authority to examine, approve, and reexamine voting systems and to issue directives or instructions for electronic voting procedures. The Secretary also noted that the General Assembly tasked the Secretary with determining whether a county's EMS "can be safely used by voters at elections as provided" in the Election Code.

As the petition for review was pending, the Fulton County Board of Commissioners voted on a motion to allow the Pennsylvania Senate Intergovernmental Operations Committee ("Senate Committee") to examine the County's voting equipment. The County then indicated that it was going to enlist another entity to perform an inspection.

In the meantime, Senator Cris Dush, who had replaced Senator Doug Mastriano as Chair of the Pennsylvania Senate Committee, wrote the County seeking permission to collect the digital data from the election computers and hardware used by Petitioners in the November 2020 election as part of the Senate Committee's investigation of the Commonwealth's election system.

On December 14, 2020, the Secretary learned that Fulton County had voted the same day to permit the inspection to go forward. The inspection was scheduled for December 22 and was to be conducted by Envoy Sage, LLC.

On December 17, 2021, the Secretary sought a protective order from the Commonwealth Court barring that inspection and any other third-party inspection during the litigation. The court denied relief.

The Secretary appealed that ruling to the Pennsylvania Court, and a single justice entered a temporary order, to prevent the inspection and to preserve the status quo during review of the Secretary's appeal. The order stated:

IT IS FURTHER ORDERED that the inspection of Fulton County's electronic voting equipment *that is currently scheduled to begin at 1:00 p.m. on January 14, 2022*, is hereby STAYED and ENJOINED pending further Order of the Court. (emphasis added).

On January 27, the full Court entered another order, providing as follows:

AND NOW, this 27th day of January, 2022, [Respondent's] "Emergency Application to Stay Third-Party Inspection of Electronic Voting System Scheduled to Begin at 1:00 p.m. on January 14, 2022" is GRANTED. The single-Justice Order entered on January 14, 2022, staying the lower court's ruling and enjoining the proposed third-party inspection of Fulton County's electronic voting equipment, shall remain in effect pending the disposition of the above-captioned appeal....

Petitioners were left at this point with no voting machine system and a dilemma with what to do with the existing contract it had with Dominion. In the course of fulfilling its statutorily delegated duties to *purchase, preserve, store and maintain primary and election equipment* pursuant to 25 Pa. Stat. Ann. § 2642(c), the County had a separate inspection performed on the now defunct and decertified Dominion voting machines. The report was issued by Speckin Forensics, LLC, on September 15, 2022 (the Speckin Report).

On September 21, 2022, Fulton County sued Dominion for breach of contract and breach of warranty because the Speckin Report revealed that the Dominion voting machines were not fit for their intended use and purpose. *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

In the breach of contract action, Fulton County alleges that it contracted with Dominion to provide “voting systems services, software licenses and related services,” to Fulton County for the conducting of elections in Fulton County. Fulton County addresses the findings in several forensics reports and independent analyses of Dominion voting machines to allege that the machines did not perform as promised to Fulton County in their written agreement.

Among the reports cited was the Speckin Report commissioned by Fulton County in July 2022, and received in September 2022, which detailed the deficiencies in and inadequacies of Dominion’s voting systems, equipment, hardware, software, and



services. Specifically, Petitioners show that the “security measures necessary to harden and secure” the Dominion machines was not completed; showing the last update or security patch to have been performed in April 2019” (a full year-and-a-half *before* the November 2020 election). Petitioners also discovered that external USB hard drives had been inserted in the machines on several occasions, and that there was no known list of approved external drives that could have been or were used or inserted into the machines. In this regard, there was no way to determine whether and to what extent these unauthorized drives compromised the data or the voting system.

Petitioners also demonstrated that there had been “substantial changes” to the drives as seen with the inclusion of over 900 .dll files and links created since the date of installation of the Dominion software and these pathways constituted a security breach due to the introduction of an unauthorized “script” into the Dominion voting systems used in Fulton County. Petitioners further demonstrated that a “python script” had been installed onto the systems *after* the Secretary’s supposed “certification,” and not only should such a script have been added to the system, but “[t]his python script can exploit and create any number of vulnerabilities” including, external access to the system from foreign sources, data export of the tabulations, or introduction of other metrics not part of or allowed by the certification process.” Petitioners further discovered that each of the drives of the Dominion machines were “interconnected in a system to one another” and that this would be required to share data and counts between devices. This networking,

allowing unauthorized access [to] any one device, and therefore allowed unauthorized access to any device connected to the network. Further, the Petitioners determined that an external IP address linked with Canada was found on the machines, which shows that at least one of the network devices was connected to an external device on an external network. This was the same device that the post-certification python script was found on. The report also revealed that log files for the adjudication device showed an IP address of 172.102.16.22, which was from a location in Quebec, Canada. This was direct evidence of remote connections to a foreign country. Remarkably, Petitioners found that the machines and devices only had Windows Defender protection dating to July 2016 and that no other updates to this software had been made.

Petitioners' findings confirmed that many of the "conditions" in the certification report which were required to be met for certification were not met and were not present before, during and after the November 2020 election and up to the present. Among other findings, this constituted a direct violation of and failure of the conditions required for certification of the Dominion voting machines in the state of Pennsylvania for the 2020 election and beyond. Fulton County's allegations show that Dominion breached its agreement to provide reliable and secure voting systems services, software licenses and related services.

This is ongoing litigation by and between Intervenor Dominion and Fulton County respecting the performance of and adequacy of the defunct and now useless Dominion machines.

Because Fulton County had Speckin analyze the Dominion machines, the Secretary filed an “Application for an Order Holding [Petitioners] in Contempt and Imposing Sanctions” in the underlying appeal, 3 MAP 2022. Despite the pendency of the Petitioners’ petition for review of the Secretary’s purported authority to (1) prohibit any examination of the voting machine system by any county (pursuant to Directive 1); and (2) its decision to decertify the Dominion voting machine systems being used by Petitioners, the Court appointed a special master to make an evidentiary record and to provide proposed findings of fact, conclusions of law, and sanctions to aid in this Court's resolution of the allegations at issue.

After an expedited evidentiary hearing<sup>1</sup> in which Petitioners were forced to provide testimony and evidence, despite the ongoing underlying litigation by and between Fulton County and Dominion, who intervened in the proceedings, and over the objections of Petitioners’ counsel on grounds that the decision to proceed with such a hearing prior to a decision by the special master on the legal question of whether the language of the Pennsylvania Supreme Court’s orders had even been violated, the Pennsylvania Supreme Court issued its opinion and order, dismissing

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<sup>1</sup> Expedited is an understatement. The Secretary filed the application for contempt on October 18, 2022 and the court ordered that Petitioners’ response be filed by October 20, 2022. The court then appointed the Special Master on October 21, 2022 and she issued an extremely expedited scheduling order for Petitioners to litigate with Dominion’s attorneys and those of the State of Pennsylvania. The scheduling order, which the Special Master issued on October 24, 2022, including a full round of discovery, and the scheduling of depositions was to take place before the first scheduled hearing on November 9. Additional days of hearings occurred on November 10 and November 14, 2022.

the underlying appeal, and finding Petitioners and their counsel in contempt of court and imposing sanctions.

The court also ordered the impoundment of the Dominion voting machine systems, despite the breach of contract action in which Petitioners are suing Dominion for the failed voting machine system it provided to Fulton County prior to the 2020 election.

In this regard, the court exceeded the scope of its contempt powers by forcing Petitioners to agree to surrender possession of evidence that could be critical to the claims in the breach of contract proceedings.

During the contempt proceedings, Petitioners argued that the subsequent inspection conducted in July 2022 did not violate the plain language of the Pennsylvania Supreme Court's stay orders. Petitioners further argued that they were authorized and required by Pennsylvania law, 25 Pa. Stat. Ann. § 2642, to inspect, examine and investigate the voting systems and voting machines so that they could make decisions about employing voting machines in future elections. Petitioners specifically argued that pursuant to Article I, section 4, clause 1 of the United States Constitution, the Pennsylvania General Assembly had mandated that they were to conduct inspections and make necessary preparations for upcoming elections. 24 Pa. Stat. Ann. § 2642(c), (d), and (i). They could not therefore be held in contempt for fulfilling this exclusive, delegated constitutional duty.

The Petitioners further argued that the contempt proceedings violated their rights to privileges and confidentialities because of the ongoing breach of contract suit against intervenor Dominion, based on Dominion's alleged failure to provide Petitioners with reliable voting equipment. See *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

The Court found Petitioners in contempt of its stay orders. The Court ruled that the language of the orders applied to future testing of the Petitioners' voting systems and that in conducting the July 2022 examination, Petitioners had violated its orders. Regarding Petitioners' argument that they were not violating the language of the court's January orders, the court reasoned that the spirit of the order applied to any and all future testing. The court ignored Petitioners' argument that the constitutional delegation by the Pennsylvania General Assembly to the counties under Article I, section 4, clause 1 of the United States Constitution allowed it to perform additional inspections of voting machine systems.

The court ruled only on the argument regarding the scope of its January orders and found Petitioners had deliberately, willfully, and wrongfully violated those orders. The court ordered Petitioners Fulton County and Petitioners' attorney, Thomas Carroll to be jointly responsible for attorneys' fees incurred by the Secretary and Dominion. The court ordered commencement of the attorneys' fees assessment as to Fulton County as of December 17, 2021 and as of April 13, 2022 for Attorney Carroll.

The court also referred Attorney Carroll to Pennsylvania’s Attorney Disciplinary Board for “examination of his conduct throughout the litigation” of the appeal of the court’s stay order and the contempt proceedings. The court also ordered Petitioners to transfer the voting equipment to a neutral escrow agent pursuant to an agreement between the parties.

**REASONS FOR GRANTING THE APPLICATION  
FOR AN EMERGENCY STAY**

The Petitioners will suffer irreparable harm should tax funds be utilized to hold a hearing to place its election equipment in the custody of a third-party vendor which will result in the data on the equipment being deleted or destroyed.

Benjamin R. Cotton cautioned in his August 24, 2023, Affidavit (Exhibit B) that the election data can be modified remotely if the election machines/equipment is powered on. More specifically, Cotton states that Cellular Modems, WiFi Modems, and Network Interface Cards are installed on the Motherboard of the Dominion voting equipment and can automatically connect to remote locations when the machines are powered on. Furthermore, Cotton cautions that by simply powering on the election machines/equipment, the election machines/equipment will alter dates and time of files, overwrite log file entries, modify system configuration settings, and change data file contents due to the system automatically changing logs and performing automated processes like antivirus scans, scheduled tasks, and other operations. See Cotton Aff. Exhibit B. See also Transcript, **Exhibit D**.

Petitioners have demonstrated that Fulton County will suffer irreparable harm by holding costly hearings on third-party custodians when Fulton County

believes it will win its appeal before the United States Supreme Court. The data on the election equipment will be destroyed and deleted upon going into custody of a third party and the Fulton County tax funds to pay for the instant hearing before the special master as well as all fees associated with moving the equipment to a third party will result in irreparable harm as suggested by the Court in *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

There is no prejudice to Respondents by having the Special Master to hold off on an evidentiary hearing which will, as described above, irreparably destroy the evidence relied upon by Petitioners, should they prevail on their petition for certiorari in this Court.

Petitioners, in their petition for certiorari, have presented the grounds upon which they reasonably believe they will prevail upon their appeal to this Court.

**PRAYER FOR RELIEF**

Accordingly, Petitioners respectfully request, pursuant to Rule 23, an immediate Stay of the Special Master Hearing scheduled for August 28, 2023, until the appeal by Petitioners to this Court has been decided.

Respectfully submitted,

/s/ Howard Kleinhendler  
Howard Kleinhendler  
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August 25, 2023





# **EXHIBIT J**

**IN THE SUPREME COURT OF PENNSYLVANIA**

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COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE  
COMMONWEALTH,

Respondent/Appellant,

and

DOMINION VOTING SYSTEMS, INC.

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No.: 277 M.D. 2021

No.: 3 MAP 2022

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**RESPONDENT APPELLEE FULTON COUNTY’S  
EMERGENCY APPLICATION FOR RECONSIDERATION REGARDING  
ORDER ON FULTON COUNTY’S EMERGENCY APPLICATION FOR A  
STAY UPON SPECIAL MASTER’S DENIAL OF SAME**

---

Comes now Petitioners, Fulton County, by and through undersigned counsel,  
and for its application for reconsideration of this Court’s order providing  
Respondents the ability to respond to Fulton County’s August 28, 2023 Emergency  
Application to Stay Proceedings on the last day of the proceedings concerning  
which Fulton County seeks a stay, states as follows.

On August 28, 2023, Petitioners, Fulton County, filed an emergency application to stay the proceedings being held before the Special Master pursuant to Rule 3315 (review of Special Master's Order Denying Stay).

Fulton County filed this emergency application seeking an immediate ruling from the court granting or denying the stay as the proceedings are to continue on Wednesday, August 30, 2023 and Thursday, August 31, 2023. Fulton County specifically asked for a ruling from the court to be issued on August 28, 2023.

Instead, the Court provided Respondents time to respond until Thursday, August 31, 2023 at 10:00 a.m. This schedule would then require this Court to issue an order at some time subsequent to the Respondents' responses, and thus, during the last day of the proceedings concerning which Fulton County has sought an emergency stay.

The Court's order giving Respondents this long to respond effectively nullifies any of the relief sought by Fulton County and therefore, the irreparable harm sought to be avoided by Fulton County would likely come to pass before this Court would act on Fulton County's emergency application to prevent such harm.

Therefore, Fulton County files this application for reconsideration specifically asking the Court to issue an order by 4:00 p.m. Eastern Standard Time, Tuesday, August 29, 2023, GRANTING or DENYING this application for reconsideration of Fulton County's specific request that this Court issue a ruling on Monday, August

28, 2023, GRANTING or DENYING its Emergency Application to Stay the Proceedings before the Special Master.

**PRAYER FOR RELIEF**

Accordingly, Fulton County herein respectfully request an order to issue today, by 4:00 p.m. Eastern Standard Time, Tuesday, August 29, 2023, GRANTING or DENYING reconsideration of the Court's decision to allow Respondents until Thursday, August 31, 2023 to respond to Fulton County's August 28, 2023 Emergency Application for an Immediate Stay of the Special Master's proceedings being held on August 28, 30, and 31, 2023. Unless the Court grants or denies said application, irreparable harm will occur because any relief Fulton County could possibly seek will not be attainable under the Court's current scheduling order.

Respectfully submitted by:

/s/ Thomas J Carroll

Attorney ID: 53296

Attorney for Petitioners

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Date: August 29, 2023

# **EXHIBIT K**

No. \_\_-\_\_\_\_

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**In the Supreme Court of the United States**

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COUNTY OF FULTON, PENNSYLVANIA, ET. AL.,

*Petitioners,*

v.

SECRETARY OF THE COMMONWEALTH OF  
PENNSYLVANIA AND DOMINION VOTING  
SYSTEMS, INC.,

*Respondents,*

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
PENNSYLVANIA SUPREME COURT

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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Did the Pennsylvania Supreme Court err in holding Petitioners, County Board of Elections, in contempt for conducting an inspection of voting machines in assessing its contractual relationship with Dominion Voting Systems (Dominion), where under Article I, section 4 of the United States Constitution, the Pennsylvania General Assembly delegated the exclusive power to manage procedures regarding elections to County Boards of Elections?
2. Did the Pennsylvania Supreme Court err in sanctioning the Petitioners and their attorneys for having conducted an inspection of Dominion voting machines where the Pennsylvania General Assembly has delegated its plenary constitutional authority pursuant to Article I, section 4 of the Constitution to appoint experts and conduct inspections on voting machines to the county boards of elections, and pursuant to that authority Petitioners had such an inspection performed for the purposes of fulfilling its delegated responsibilities under the Constitution?

## **PARTIES TO THE PROCEEDING**

Petitioners are, County of Fulton, Fulton County Board of Elections, Stuart L. Ulsh, in his Official Capacity as County Commissioner, and in his capacity as a Resident, Taxpayer, and Elector; and Randy H. Bunch, in his Official Capacity as County Commissioner and in his capacity as a Resident, Taxpayer, and Elector; and Attorneys for the Petitioners, Thomas J. Carroll and Stefanie Lambert.

Respondent is Al Schmidt, the acting Secretary of the Commonwealth of Pennsylvania.

Intervenor/Respondent is Dominion Voting Systems, Inc.

## **CORPORATE DISCLOSURE**

Petitioners Fulton County and the Fulton County Board of Elections are governmental entities and not a corporation pursuant to Rule 29.6.

Petitioners Stuart L. Ulsh and Randy H. Bunch are individuals acting in their official capacities as members of the Fulton County Board of Elections, and in their individual capacities as citizens of the Commonwealth of Pennsylvania and of the United States of America, and thus are not corporate parties pursuant to Rule 29.6.

Petitioners Thomas J. Carroll and Stefanie Lambert are attorneys for Petitioners, and are individuals and thus are not corporate parties pursuant to Rule 29.6.



## **RELATED PROCEEDINGS**

Prior proceedings relative to this petition are:

- Petitioner, Fulton County, Fulton County Board of Elections, Commissioners Stuart L. Ulsh and Randy H. Bunch, filed a petition for review against Respondent, Secretary of the Commonwealth of Pennsylvania in the Commonwealth Court of Pennsylvania on August 18, 2021, Case No. 277 MD 2021;
- Respondent, Secretary of the Commonwealth of Pennsylvania filed an Appeal of the Commonwealth Court's decision to the Supreme Court of Pennsylvania on January 3, 2022, Case No. 3 MAP 2022.
- Respondent, Dominion Voting Systems, Inc., filed a motion to intervene in the Commonwealth Court, which was denied on January 10, 2022, in Case No. 277 MD 2021, and appealed by Dominion on January 19, 2022, in Case No. 4 MAP 2022. The Supreme Court of Pennsylvania ultimately granted Dominion's motion on March 21, 2022.
- Contempt proceedings were initiated by Respondent, Secretary of the Commonwealth, on October 18, 2022;
- Although part of the same appeal in the Pennsylvania Supreme Court, Case No. 3 MAP 2022, a Special Master was appointed and issued a report to the Supreme Court of

Pennsylvania, which report is dated November 18, 2022.

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APPENDIX

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## PETITION FOR WRIT OF CERTIORARI

Petitioners, Fulton County and the Fulton County Board of Elections and Thomas Carrol, Attorney for Fulton County and Stefanie Lambert, Attorney for Fulton County, petitions for a Writ of Certiorari to the Pennsylvania Supreme Court, from its opinion and order dated April 19, 2023. (App. 1-107).

## OPINIONS BELOW

On April 19, 2023, the Pennsylvania Supreme Court dismissed an appeal in an underlying case under Pennsylvania's Election Code that had been brought by the Respondent Secretary of the Commonwealth and issued an order of contempt and other sanctions against Fulton County and its attorneys. (App. 1-107).

These decisions comprise the substantive rulings from which Petitioner seeks a writ of certiorari.

## JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C.S. § 1254(1).

## STATEMENT OF THE CASE

### *A. Introduction*

Congress has delegated authority to the individual states regarding time, place, *and manner*, for conducting national elections. U.S. Const. Art. I, section 4, clause 1. See also, *United States Term*

*Limits v. Thornton*, 514 U.S. 779, 804-05, 115 S. Ct. 1842, 1855, 131 L.Ed.2d 881, 901 (1995) (“the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” Art. I, § 4, cl. 1.). Pursuant to this delegated authority, the Pennsylvania General Assembly re delegated authority to Pennsylvania’s counties, and particularly to county boards of elections, to conduct these elections. As part of that delegation, Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

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(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.*

\*\*\*

(f) *To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.*



(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

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(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

Without legislative authority, Respondent Secretary decertified Petitioners' voting machines. This was after, Petitioners had the voting machines examined by a third-party subsequent to the 2020 election.

Petitioners filed a petition for review of the Secretary's actions. The Secretary filed a motion to enjoin further testing of the voting machines, which the court denied. The Secretary filed an interlocutory appeal of that order.

Subsequent to the filing of the appeal, and in the process of determining how to fulfill its legislatively delegated authority concerning the provision of voting machines, Petitioners had to consider the viability of continuing to use Dominion voting machines to fulfill its statutory duties to conduct elections. Fulton County also had to consider the status of and legitimacy of its contract with Dominion. In these

regards, Fulton County had another company analyze the Dominion voting machines. Fulton County then sued Dominion for breach of contract and breach of warranty because the inspection that was performed revealed that the Dominion voting machines were not fit for their intended use and purpose.

The Secretary filed a motion to hold Petitioners in contempt for violating the Supreme Court's order placing an injunction on the previously scheduled testing. The contempt proceedings resulted in the Supreme Court's decision to hold Fulton County and Fulton County's attorneys in contempt and to dismiss the Secretary's underlying appeal of the Commonwealth Court's denial of the Secretary's application to enjoin further inspections.

Among the constitutional errors committed by the Pennsylvania Supreme Court, and central to this petition for review, was the court's finding of contempt and award of sanctions where Petitioners were exercising their constitutionally delegated authority over their voting machines and systems. The dismissal deprived the citizens of the state of Pennsylvania, Fulton County, and the Secretary, of a fundamental decision regarding the constitutional delegation by the Pennsylvania legislature to the county boards of elections to conduct national elections. Principally, as Fulton County had challenged in its petition for review, the Secretary did not and could not usurp the powers of Fulton County over voting machines – authority to “purchase, preserve, store, and maintain” voting machines was statutorily delegated to Fulton County by virtue of the constitutional delegation to the Pennsylvania General

Assembly under Article I, section 4 of the Constitution.

***B. Background***

On January 17, 2019, the Secretary (then Kathy Boockvar), certified the use of Dominion’s “Democracy Suite 5.5A” voting system in Pennsylvania elections pursuant to 25 Pa. Stat. Ann. § 3031.5. According to the Secretary’s report, “[t]he Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as “professional consultants” to conduct the examination of Democracy Suite 5.5A. (App. 11-12). The United States Election Assistance Commission (EAC) provides for the accreditation of laboratories qualified to test voting systems to meet federal standards. While SLI is an EAC accredited testing laboratory, CCD does not appear on EAC’s directory of approved laboratories.

In April of 2019, Petitioners contracted with Dominion to purchase and begin using two Democracy Suite 5.5A voting systems. The Democracy Suite 5.5A system was used through the November 3, 2020 general election.

Section 2642 of the Pennsylvania Election Code, delegates to County Boards of Elections the following authority:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the

duties imposed upon them by this act, which shall include the following:

\*\*\*

(c) *To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.*

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(f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary *for the guidance of voting machine custodians, elections officers and electors.*

(g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney. 25 Pa. Stat. Ann. § 2642.

In September of 2016, the Secretary issued to the counties “Guidance on Electronic Voting System Preparation and Security”. (App. 11). This guidance document contemplated and expected that the

counties would use “third-party vendors” to conduct the necessary “*purchase, preserve, store and maintain primary and election equipment*” that was expressly delegated and mandated to the counties pursuant to 25 Pa. Stat. Ann. 2642. This included measures to ensure security, perform maintenance, and preparations of the voting machines systems in use by the counties. Details of the Secretary’s guidance included the procedures for third-party vendors to perform file transfers. Further, the Secretary’s guidance “applie[d] to any vendor that is providing technical support to the counties for any component of the system involved in the canvass of the election.” (App. 11). The Secretary’s guidance was updated on October 13, 2020 and again contemplated the use of outside vendors to perform election preparation and maintenance on the voting systems. (App. 11).

Pursuant to 25 Pa. Stat. Ann. 2642, Petitioners hired Wake Technology Services, Inc. (Wake TSI), a managed service provider specializing in data center, network, server and desktop systems design, and cybersecurity and management, to include voting systems technology. Petitioners requested Wake TSI to assist it in an investigation and assessment of Fulton County’s voting systems and processes that were utilized in the November 2020 general election. Wake TSI’s reviewed the Dominion Democracy Suite 5.5A operating and application systems, file data, log files, ballot images, and related files. (App. 113).

Pursuant to the Secretary’s 2016 and 2020 guidance, Wake TSI ensured that proper chain of custody of the equipment was maintained at all times through the presence of Fulton County’s Election

Director (Commissioners and other staff were also present), who was the sole individual to remove or replace ballots in the ballot carts.

Wake TSI issued its “Fulton County Election System Analysis,” report (the Wake TSI Report) dated February 19, 2021. In its report, Wake TSI concluded that the 2020 General Election was well run and conducted, in a diligent and effective manner. (App. 7). This seemingly fulfilled Petitioners’ duties as set forth in 25 P.S. § 2642(g).

In its report, however, Wake TSI also found several problems with the Democracy Suite 5.5A system. Among these were errors in the ballot scanning, a failure of the system to meet Commonwealth Certification requirements, non-certified database tools on the system, changes made to Dominion’s entire election management system (EMS) three weeks before the 2020 election, and a lack of commonwealth logic and accuracy inspections L&A inspections of the Dominion Voting Systems. (App. 7).

Several months after the publication of the Wake TSI Report, on July 8, 2021, Respondent Secretary issued “Directive 1 of 2021,” which provided as follows:

County Boards of Elections shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified electronic voting systems, or any components of such systems, including but not limited to: election management software and systems,

tabulators, scanners; counters, automatic tabulating equipment, voting devices, servers, ballot marking devices, paper ballot or ballot card printers, portable memory media devices (thumb drives, flash drives and the like), and any other hardware, software or devices being used as part of the election management system. (App. 11).

Directive 1 also provided for the revocation of funding for counties whose machines are decertified under the Directive stating “[t]he Commonwealth of Pennsylvania will not reimburse any cost of replacement voting equipment for which certification or use authority has been withdrawn pursuant to this directive.” (App. 11).

In February of 2020, the Pennsylvania Economic Development authority voted to approve a \$90 Million bond issuance to cover costs for new voting machines across the Commonwealth of Pennsylvania. Petitioners claimed that the Secretary had no authority to withhold such funding pursuant to Directive 1.

Following the issuance of Directive 1, and without the opportunity for a hearing or other due process, the Secretary issued a letter (constituting an adjudication or “order”) to Petitioners (addressed to the County Solicitor) dated July 20, 2021, stating:

As a result of the access granted to Wake TSI, Fulton County’s certified system has been compromised and neither Fulton County; the vendor, Dominion Voting Systems; nor the

Department of State can verify that the impacted components of Fulton County's leased voting system are safe to use in future elections. Due to these actions and after careful consideration ... I have no other choice but to decertify the use of Fulton County's leased Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

Respondent's July 20, 2021 letter further stated that, "based on our discussions and correspondence with Fulton County officials, it appears that the contents of the Democracy Suite 5.5A that were used during the 2020 November election were subjected to a post-election review by a third-party in violation of Pennsylvania's Election Code." (App. 11).

On August 18, 2021, Petitioners sought review of the Secretary's July 20, 2021 decertification of Petitioner's Dominion "Democracy Suite 5.5A voting systems. And amended petition was filed on September 17, 2021.

The Secretary claimed to have the authority to decertify Petitioners' voting machine system via the regulatory "Directive 1 of 2021". The Secretary further claimed to have authority to issue Directive 1 pursuant to the Pennsylvania Election Code, 25 Pa. Stat. Ann. § 3031.5(a). The statute provides in pertinent parts, as follows:

- (a) Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic



voting system, may request the Secretary of the Commonwealth to examine such system if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government. The costs of the examination shall be paid by the person requesting the examination in an amount set by the Secretary of the Commonwealth. Any ten or more persons, being qualified registered electors of this Commonwealth, may, at any time, request the Secretary of the Commonwealth to reexamine any electronic voting system theretofore examined and approved by him. Before any reexamination, the person, persons, or corporation, requesting such reexamination, shall pay to the Treasurer of the Commonwealth a reexamination fee of four hundred fifty dollars (\$ 450). The Secretary of the Commonwealth may, at any time, in his discretion, reexamine any such system therefore examined and approved by him. The Secretary of the Commonwealth may issue directives or instructions for implementation of electronic voting procedures and for the operation of electronic voting systems.

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(c) No electronic voting system not so approved shall be used at any election, and if, upon the reexamination of any such system previously approved, it shall appear that the system so reexamined can no longer be used

safely by voters at elections as provided in this act or does not meet the requirements hereinafter set forth, the approval of that system shall forthwith be revoked by the Secretary of the Commonwealth, and that system shall not thereafter be used or purchased for use in this Commonwealth. 25 Pa. Stat. Ann. § 3031.5(a) and (c).

The Secretary cited subsection (a) for the authority to decertify Petitioners' Dominion voting system even though that provision does not provide for any such authority. Remarkably, the Secretary did not cite subsection (c) when making the decision to decertify Petitioners' Dominion voting system, likely because any withdrawal of approval of such voting systems would mean that the entire system "shall not thereafter be used or purchased for use" in the state of Pennsylvania.

Despite the findings contained in Respondent's July 20 2021, letter, Wake TSI's analysis of Fulton County's election systems was conducted in a manner that was bi-partisan and transparent. Petitioners' analysis and investigation of its voting system with the assistance of Wake TSI was conducted in accordance with the requirements of the Pennsylvania Election Code as well as the then-current Guidance issued by the Respondent. Wake TSI's analysis and examination of the Fulton County system and machine was conducted at the Petitioners' administrative offices and at no point did any of the physical components of the voting system leave the custody or control of the Fulton County Board of Elections or its employees. The Election Director for

Fulton County, or an Election Board Commissioner, remained in the room with the ballots throughout the entire course of Wake TSI's review. According to Wake TSI, the Election Director was the only person removing and replacing ballots in the ballot carts. Petitioners' IT Support Technician, or an Election Commissioner, remained with the technical team during the assessment of the voting system. Contrary to the Secretary's assertion, Wake TSI asserts that it did not conduct a full technology forensic audit of the operating system or the EMS.

In the first count of their petition for review, Petitioners sought a declaratory judgment that the Secretary failed to reexamine the voting system prior to decertification as required by 25 Pa. Stat. Ann. § 3031.5(b). The Petitioners alleged further that the Secretary's decision to decertify Petitioners' Democracy Suite 5.5A voting system was arbitrary, capricious, and an error of law because she failed to comply with the mandatory provisions of the Election Code and exceeded her statutory authority.

In a second count for declaratory judgment, Petitioners alleged that they were authorized by law and by the Secretary's own guidance to use the assistance of a third-party vendor to analyze the security of their voting systems. Petitioners demonstrated that Pennsylvania law mandates that they inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted." 25 P.S. § 2642(g). Under this count, Petitioners alleged that the Secretary

exceeded her authority in prohibiting the Petitioners from using third-party vendors to conduct an examination of the components of electronic voting systems being used by counties.

In a third count, Petitioners alleged that the Secretary had usurped the power and authority delegated to Petitioners by the Pennsylvania Election Code. Petitioners demonstrated that the Secretary's July 8, 2021 Directive 1 prohibited any county from using third-party vendors to assist in the inspection of state-certified electronic voting systems and system components. Citing 25 Pa. Stat. Ann. § 2642(g), Petitioners asserted that the Pennsylvania Election Code mandates that County Boards of Elections "inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted."

In its fourth and final count, Petitioners sought a declaratory judgment that the Secretary could not withhold funding for the purchase of new voting machines. Petitioners further alleged that by the Respondent's unauthorized directive withholding funding, they would be adversely affected and were deprived of their due process rights.

Petitioners noted the Secretary's actions were even more suspect because there was no demonstration that the voting systems used by Petitioners had ever been certified in the first instance, and in fact, the certification had been called into question by Wake TSI.

Neither the Secretary, or any agent acting on her behalf, ever physically examined or reexamined the Democracy Suite 5.5A voting systems of Fulton County, despite the clear mandate to do so prior to revoking a system's approval. 25 Pa. Stat. Ann. § 3031.5(b). In this regard the authority of the Secretary speaks to only "systems". *Id.* The provision provides that the Secretary "shall examine the system and make and file a report with the Pennsylvania Department of State, attested by her signature and the seal of her office, stating whether the system so reexamined can be safely used in elections." 25 P.S. § 3031.5(b). No such report or certification as to the system was made.

The Secretary filed Preliminary Objections demurring only to Count III. The Secretary emphasized that the General Assembly delegated to the Secretary the authority to examine, approve, and reexamine voting systems and to issue directives or instructions for electronic voting procedures. The Secretary also noted that the General Assembly tasked the Secretary with determining whether a county's EMS "can be safely used by voters at elections as provided" in the Election Code.

As the petition for review was pending, the Fulton County Board of Commissioners voted on a motion to allow the Pennsylvania Senate Intergovernmental Operations Committee ("Senate Committee") to examine the County's voting equipment. The County then indicated that it was going to enlist another entity to perform an inspection.

In the meantime, Senator Cris Dush, who had replaced Senator Doug Mastriano as Chair of the Pennsylvania Senate Committee, wrote the County seeking permission to collect the digital data from the election computers and hardware used by Petitioners in the November 2020 election as part of the Senate Committee's investigation of the Commonwealth's election system.

On December 14, 2020, the Secretary learned that Fulton County had voted the same day to permit the inspection to go forward. The inspection was scheduled for December 22 and was to be conducted by Envoy Sage, LLC.

On December 17, 2021, the Secretary sought a protective order from the Commonwealth Court barring that inspection and any other third-party inspection during the litigation. The court denied relief.

The Secretary appealed that ruling to the Pennsylvania Court, and a single justice entered a temporary order, to prevent the inspection and to preserve the status quo during review of the Secretary's appeal. The order stated:

IT IS FURTHER ORDERED that the inspection of Fulton County's electronic voting equipment *that is currently scheduled to begin at 1:00 p.m. on January 14, 2022*, is hereby STAYED and ENJOINED pending further Order of the Court. (emphasis added).

On January 27, the full Court entered another order, providing as follows:

AND NOW, this 27th day of January, 2022, [Respondent's] "Emergency Application to Stay Third-Party Inspection of Electronic Voting System Scheduled to Begin at 1:00 p.m. on January 14, 2022" is GRANTED. The single-Justice Order entered on January 14, 2022, staying the lower court's ruling and enjoining the proposed third-party inspection of Fulton County's electronic voting equipment, shall remain in effect pending the disposition of the above-captioned appeal....

Petitioners were left at this point with no voting machine system and a dilemma with what to do with the existing contract it had with Dominion. In the course of fulfilling its statutorily delegated duties to *purchase, preserve, store and maintain primary and election equipment* pursuant to 25 Pa. Stat. Ann. § 2642(c), the County had a separate inspection performed on the now defunct and decertified Dominion voting machines. The report was issued by Speckin Forensics, LLC, on September 15, 2022 (the Speckin Report).

On September 21, 2022, Fulton County sued Dominion for breach of contract and breach of warranty because the Speckin Report revealed that the Dominion voting machines were not fit for their intended use and purpose. *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

In the breach of contract action, Fulton County alleges that it contracted with Dominion to provide “voting systems services, software licenses and related services,” to Fulton County for the conducting of elections in Fulton County. Fulton County addresses the findings in several forensics reports and independent analyses of Dominion voting machines to allege that the machines did not perform as promised to Fulton County in their written agreement.

Among the reports cited was the Speckin Report commissioned by Fulton County in July 2022, and received in September 2022, which detailed the deficiencies in and inadequacies of Dominion’s voting systems, equipment, hardware, software, and services. Specifically, Petitioners show that the “security measures necessary to harden and secure” the Dominion machines was not completed; showing the last update or security patch to have been performed in April 2019” (a full year-and-a-half *before* the November 2020 election). Petitioners also discovered that external USB hard drives had been inserted in the machines on several occasions, and that there was no known list of approved external drives that could have been or were used or inserted into the machines. In this regard, there was no way to determine whether and to what extent these unauthorized drives compromised the data or the voting system.

Petitioners also demonstrated that there had been “substantial changes” to the drives as seen with the inclusion of over 900 .dll files and links created since the date of installation of the Dominion software and these pathways constituted a security breach due to



the introduction of an unauthorized “script” into the Dominion voting systems used in Fulton County. Petitioners further demonstrated that a “python script” had been installed onto the systems *after* the Secretary’s supposed “certification,” and not only should such a script have been added to the system, but “[t]his python script can exploit and create any number of vulnerabilities” including, external access to the system from foreign sources, data export of the tabulations, or introduction of other metrics not part of or allowed by the certification process.” Petitioners further discovered that each of the drives of the Dominion machines were “interconnected in a system to one another” and that this would be required to share data and counts between devices. This networking, allowing unauthorized access [to] any one device, and therefore allowed unauthorized access to any device connected to the network. Further, the Petitioners determined that an external IP address linked with Canada was found on the machines, which shows that at least one of the network devices was connected to an external device on an external network. This was the same device that the post-certification python script was found on. The report also revealed that log files for the adjudication device showed an IP address of 172.102.16.22, which was from a location in Quebec, Canada. This was direct evidence of remote connections to a foreign country. Remarkably, Petitioners found that the machines and devices only had Windows Defender protection dating to July 2016 and that no other updates to this software had been made.

Petitioners’ findings confirmed that many of the “conditions” in the certification report which were

required to be met for certification were not met and were not present before, during and after the November 2020 election and up to the present. Among other findings, this constituted a direct violation of and failure of the conditions required for certification of the Dominion voting machines in the state of Pennsylvania for the 2020 election and beyond. Fulton County's allegations show that Dominion breached its agreement to provide reliable and secure voting systems services, software licenses and related services.

This is ongoing litigation by and between Intervenor Dominion and Fulton County respecting the performance of and adequacy of the defunct and now useless Dominion machines.

Because Fulton County had Speckin analyze the Dominion machines, the Secretary filed an "Application for an Order Holding [Petitioners] in Contempt and Imposing Sanctions" in the underlying appeal, 3 MAP 2022. Despite the pendency of the Petitioners' petition for review of the Secretary's purported authority to (1) prohibit any examination of the voting machine system by any county (pursuant to Directive 1); and (2) its decision to decertify the Dominion voting machine systems being used by Petitioners, the Court appointed a special master to make an evidentiary record and to provide proposed findings of fact, conclusions of law, and sanctions to aid in this Court's resolution of the allegations at issue.

After an expedited evidentiary hearing<sup>1</sup> in which Petitioners were forced to provide testimony and evidence, despite the ongoing underlying litigation by and between Fulton County and Dominion, who intervened in the proceedings, and over the objections of Petitioners' counsel on grounds that the decision to proceed with such a hearing prior to a decision by the special master on the legal question of whether the language of the Pennsylvania Supreme Court's orders had even been violated, the Pennsylvania Supreme Court issued its opinion and order, dismissing the underlying appeal, and finding Petitioners and their counsel in contempt of court and imposing sanctions.

The court also ordered the impoundment of the Dominion voting machine systems, despite the breach of contract action in which Petitioners are suing Dominion for the failed voting machine system it provided to Fulton County prior to the 2020 election.

In this regard, the court exceeded the scope of its contempt powers by forcing Petitioners to agree to surrender possession of evidence that could be critical to the claims in the breach of contract proceedings.

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<sup>1</sup> Expedited is an understatement. The Secretary filed the application for contempt on October 18, 2022 and the court ordered that Petitioners' response be filed by October 20, 2022. The court then appointed the Special Master on October 21, 2022 and she issued an extremely expedited scheduling order for Petitioners to litigate with Dominion's attorneys and those of the State of Pennsylvania. The scheduling order, which the Special Master issued on October 24, 2022, including a full round of discovery, and the scheduling of depositions was to take place before the first scheduled hearing on November 9. Additional days of hearings occurred on November 10 and November 14, 2022.

During the contempt proceedings, Petitioners argued that the subsequent inspection conducted in July 2022 did not violate the plain language of the Pennsylvania Supreme Court's stay orders.

Petitioners further argued that they were authorized and required by Pennsylvania law, 25 Pa. Stat. Ann. § 2642, to inspect, examine and investigate the voting systems and voting machines so that they could make decisions about employing voting machines in future elections. Petitioners specifically argued that pursuant to Article I, section 4, clause 1 of the United States Constitution, the Pennsylvania General Assembly had mandated that they were to conduct inspections and make necessary preparations for upcoming elections. 24 Pa. Stat. Ann. § 2642(c), (d), and (i). They could not therefore be held in contempt for fulfilling this exclusive, delegated constitutional duty.

The Petitioners further argued that the contempt proceedings violated their rights to privileges and confidentialities because of the ongoing breach of contract suit against intervenor Dominion, based on Dominion's alleged failure to provide Petitioners with reliable voting equipment. See *Fulton County v. Dominion Voting Systems, Inc. and U.S. Dominion, Inc.*, Case No. 1:22-cv-01639 (M.D. Penn.).

The Court found Petitioners in contempt of its stay orders. The Court ruled that the language of the orders applied to future testing of the Petitioners' voting systems and that in conducting the July 2022 examination, Petitioners had violated its orders.

Regarding Petitioners' argument that they were not violating the language of the court's January orders, the court reasoned that the spirit of the order applied to any and all future testing. The court ignored Petitioners' argument that the constitutional delegation by the Pennsylvania General Assembly to the counties under Article I, section 4, clause 1 of the United States Constitution allowed it to perform additional inspections of voting machine systems.

The court ruled only on the argument regarding the scope of its January orders and found Petitioners had deliberately, willfully, and wrongfully violated those orders. The court ordered Petitioners Fulton County and Petitioners' attorney, Thomas Carroll to be jointly responsible for attorneys' fees incurred by the Secretary and Dominion. The court ordered commencement of the attorneys' fees assessment as to Fulton County as of December 17, 2021 and as of April 13, 2022 for Attorney Carroll.

The court also referred Attorney Carroll to Pennsylvania's Attorney Disciplinary Board for "examination of his conduct throughout the litigation" of the appeal of the court's stay order and the contempt proceedings. The court also ordered Petitioners to transfer the voting equipment to a neutral escrow agent pursuant to an agreement between the parties.

### **REASONS FOR GRANTING THE PETITION**

1. The Pennsylvania Supreme Court's finding of contempt violates the United States Constitution's Elections Clause because Fulton County was fulfilling

an exclusively delegated authority under Article I, section 4, clause 1. The Elections Clause delegates authority to the state legislatures regarding “time, manner, and place” for conducting national elections. U.S. Const. Art. I, sec. 4, cl. 1. Under this clause, “the Legislature” is a representative body that, when it prescribes election regulations, may be required to do so within the ordinary lawmaking process, “but *may not be cut out of that process.*” *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 841, 135 S. Ct. 2652, 2687, 192 L.Ed.2d 704, 747 (2015) (emphasis added) (Roberts, J., dissenting). It is a “grant of authority to issue procedural regulations....” *Cook v. Gralike*, 531 U.S. 510, 527, 121 S. Ct. 1029, 1040, 149 L.Ed.2d 44, 59 (2001). Its “substantive scope is broad; “Times, Places, and Manner...are comprehensive words, which embrace authority to provide a complete code for congressional elections.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8-9, 133 S. Ct. 2247, 2253, 186 L.Ed.2d 239, 250 (2013). “[I]t invests the States with responsibility for the mechanics of congressional elections.” *Id.*

The Elections Clause, therefore, authorizes state legislatures to redelegate these “mechanics” to local governmental entities for purposes of fulfilling the constitutional role of the state to manage the time, place, and manner. *Id.* The procedures concerning the conducting of a national election in state counties is a function of the manner in which elections are held pursuant to the authority delegated to the states via the Elections Clause. Likewise, the procedures and regulatory authority delegated to counties to ensure that the manner in which votes are both cast and

tabulated is similarly within the sole province of the state legislature's plenary powers over such matters.

As such, no other authority, and here, particularly, a single elected official running an administrative agency, can usurp or otherwise limit the legislature's grant to the counties to perform those necessary functions of the manner in which elections are conducted. *Ariz. State Legis., supra*. This of course would include the authority provided to the counties to manage, examine, and inspect the electronic systems used for voting in national elections. To allow a secretary of state to circumvent the "time, place, and manner" of the conducting of national elections in a manner contrary to a statutory grant of authority, and worse, in opposition to an express grant provided by the legislature to the county would be a direct violation of and in in contravention of the Elections Clause. Yet, the latter is exactly what has occurred in this case.

The county, not the Secretary, is mandated to "purchase, preserve, store, *and maintain*, primary and election equipment of *all kinds*." 25 Pa. Stat. Ann. § 2642(c). Through this provision, the county, not the Secretary, is delegated authority to maintain equipment. Even the Secretary's earlier guidance from 2016 and 2019 explicitly acknowledged this.

The county, not the Secretary, is further delegated sole authority to "make and issue" rules, regulations, and instructions, "*as they may deem necessary* for the guidance of *voting machine custodians, elections officers, and electors*." *Id.*, § 2642(f).

Further, the county, not the Secretary, shall “inspect *systematically and thoroughly* the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.” *Id.*, § 2642(g) (emphasis supplied).

Finally, the county, not the Secretary, is delegated sole authority “[t]o investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney.” *Id.*, § 2642(i).

When Petitioners contracted with Wake TSI to conduct the inspection of its election machines after the November 2020 elections, it was directly fulfilling all of these aforementioned mandated roles that the Pennsylvania General Assembly, pursuant to its plenary powers under the Elections Clause, had delegated to its board of elections. See *Inter Tribal Council of Ariz., Inc.*, 570 U.S. at 8-9. Those duties and functions cannot be taken from the legislature (and here, from the county as delegate) by the Secretary of the Commonwealth. *Ariz. State Legis.*, 576 U.S. at 841. Likewise, when the County undertook investigation of the defunct Dominion voting machine systems in July of 2022 to assess its contractual relationship with Dominion and its future obligation to provide voting machines to its constituents by hiring Speckin Forensics, LLC, (Speckin) it was then exercising its exclusively delegated constitutional authority.

Here, through the issuance of Directive 1 and by prohibiting Petitioners from hiring third-party



vendors to inspect, maintain, and investigate voting machine systems, and in decertifying Petitioner's systems, the Secretary cut out the General Assembly's plenary authority by encroaching upon and exercising those powers reserved to and delegated to Petitioners. Directive 1 purports to "preserve, store, and maintain" election equipment. This is a function of the Petitioners, not the Secretary. See 25 Pa. Stat. Ann. § 2642(c). The Secretary's Directive 1 prohibits "physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified electronic voting systems." It is a function of Petitioners, not the Secretary, to "inspect, systematically and thoroughly" the conduct of elections" and "to investigate election frauds, irregularities, and violations" of the Election Code. See 25 Pa. Stat. Ann. § 2642((g) and (i). Likewise, the Pennsylvania Supreme Court's finding of contempt usurps the County's continuing constitutional duties with respect to election voting machine systems. This is especially true because Petitioners have an ongoing breach of contract claim against Dominion in which they have alleged that the machines are defective, unsecure, and not fit for their intended use and purpose.

Respondent's citation to 25 Pa. Stat. Ann. § 3031.5(a) as ostensibly providing the Secretary with these powers is a non-starter. It only authorizes the Secretary to examine voting machines systems *prior to* their certification and use in the counties. At best, it allows the Secretary to issue "directives and instructions for *implementation*" of the use of electronic voting machines introduced into counties. Nowhere in that provision is "Time, Place, and

Manner” of the actual conducting of elections delegated to the Secretary.

Subsection (c), which Respondent wisely avoided in the pleadings below, further demonstrates that it is only applicable to primary approval to allow the use of a particular vendors’ voting machines systems. And, indeed, where a system fails to meet the preliminary approval process, as the Dominion systems did here (before and after the 2020 election), the Secretary is *required* to disallow use of the entire system in the state of Pennsylvania upon reexamination. See 25 Pa. Stat. Ann. § 3031.5(a) and (c).

These provisions nowhere delegate to the Secretary the manner in which electronic election machines systems are to be stored, preserved, inspected, maintained, and investigated when employed by the counties in the conducting of elections. The latter is a sole function of the state legislature under Article I, section 4, clause 1, and that function was delegated by the Pennsylvania General Assembly to Petitioners. This power may not be usurped by Respondent. *Ariz. State Legis.*, 576 U.S. at 841.

The Pennsylvania Supreme Court ignored the Petitioners’ constitutional argument made in its defense in the contempt proceedings. The County argued it had an independent duty and obligation, and an exclusive constitutional authority, to perform ongoing inspections, maintenance, and investigation of voting machine systems in considering its relationship with Dominion and future obligations to conduct elections. This exclusive constitutional

authority served as the basis for Petitioners' defense that it was not violating the court's stay orders. Clearly, if the court had addressed this argument, it would have had to address the constitutional question.

The significance of this case cannot be understated, because it provides an example of the multiple instances in the many states in which unelected or undelegated officials are taking regulatory control over all aspects of "Time, Place, and Manner" of elections with zero delegated authority from the state legislature, and therefore in contravention of the Elections Clause. This allows carte blanche reformation of the mechanism established by the Constitution for the proper conducting of elections. It also allows manipulation of the rules, regulations, and methods by which votes are cast and tabulated. Finally, it removes oversight powers from the counties, which powers are explicitly delegated to the counties by the state legislatures, again, under the latter's plenary authority over Time, Place and Manner of conducting elections.

In ignoring Petitioners' constitutional arguments, the Pennsylvania Supreme Court left this question largely unanswered. Further, in a now familiar habit, the court once again exceeded its authority and went beyond the scope of its own contempt proceeding to order the sequestration of the Dominion voting machines, despite the pending breach of contract action by Petitioners against Dominion. While the lower court ostensibly ruled that Petitioners could conduct further inspections, the constitutional legitimacy of Directive 1 and the Secretary's

subsequent action in decertifying the county's voting systems, and simultaneously prohibiting any funding to purchase new systems, have been left unanswered. In this posture, Directive 1 is in effect and ostensibly controlling in Pennsylvania to this day, even though it places the sole authority over all aspects of voting machine integrity and use during elections in the hands of the Secretary, who has not been delegated this authority by the Pennsylvania General Assembly as required by the Constitution.

2. The basis for the Supreme Court of Pennsylvania's contempt against Petitioners ignored their argument that they were mandated by law to perform the functions of inspecting voting machines and performing the investigations required to ensure that they complied with Pennsylvania's Election Code. The Court found that the Petitioners violated its order enjoining the inspection of voting machines, but it ignored the argument that by law the Petitioners had a continuing duty to its constituency.

Both the Secretary and County Boards of Elections and their "members, took an oath to uphold the constitutions of the United States and Pennsylvania and the law." *Chapman v. Berks Cty. Bd. of Elections*, 2022 Pa. Commw. Unpub. LEXIS 390, at \*31 (Cmwlth. Aug. 19, 2022). The Election Code protects the constitutional rights of all citizens to free and fair elections and the Legislature has delegated that exclusive responsibility to the county boards of elections. *Id.*

Petitioners' act of conducting an inspection of defunct and no longer serviceable voting machines to

determine future actions and to provide its citizenry with functioning election equipment was in keeping with its constitutional and statutory duties and a delegated responsibility and the exclusive function of a county board of elections. *In re Petition for Agenda Initiative*, 206 A.3d 617, 624 (Pa. Cmwlth. 2019). The exercise of such a duty cannot serve as the basis for contempt where there must be a finding of wrongful intent. “In civil contempt cases, the complaining party has the burden of proving non-compliance with the court order by a preponderance of the evidence.” *Stahl v. Redcay*, 2006 PA Super 55, ¶ 15, 897 A.2d 478, 489 (2006), citing *Mrozek v. James*, 2001 PA Super 199, ¶ 8, 780 A.2d 670, 673 (2001).

“To be punished for contempt, a party must not only have violated a court order, but that order must have been ‘definite, clear, and specific – leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct.’” *Id.* “The order forming the basis for contempt must be strictly construed.” *Id.* Therefore, “[a]ny ambiguities or omissions in the order must be construed in favor of the defendant.” *Id.* (emphasis added). In such cases, a contradictory order, or “an order whose specific terms have not been violated will not serve as the basis for a finding of contempt.” *Id.*

The Pennsylvania General Assembly has delegated exclusive authority to county election boards to perform several functions related to purchasing, maintenance, inspection and investigation of voting equipment. The inspection of election machines is a mandated obligation on the part of a county board of elections. The election

boards are charged with the duty and responsibilities of providing functional election equipment to protect the voting rights of their respective citizens.

Petitioners cannot be held in contempt for its delegated measures to protect the constitutionally guaranteed rights of its citizens and to ensure that the elections it carries out as required by law are safe and secure, so that citizens can have faith in the reliability and outcome of future elections. The Pennsylvania Supreme Court's January Orders did not prohibit Fulton County from conducting such lawful inspection of defunct and decertified voting machines that had already been decommissioned and were never going to be used again. They could not have prohibited the exercise of lawfully delegated and exclusive powers.

The United States Constitution provides that the State Legislatures have the primary authority to establish Time, Manner and Place, for the conducting of elections. U.S. Const., Art. I, § 4, cl. 1. The Constitution gives state legislatures exclusive authority to enact those rules concerning the conducting of elections. See U.S. Const. Art. I, sec. 4, cl. 1; U.S. Const. Art. I, sec. 1, cl. 2; U.S. Const., amend. X. Pursuant thereto, the Pennsylvania General Assembly has delegated this exclusive authority to the County Board of Elections to, *inter alia*, "purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections;" "[t]o appoint their own employees, voting machine custodians, and machine inspectors;" and "[t]o investigate election frauds, irregularities, and

violations of this act....” 25 Pa. Stat. Ann. § 2642(c), (d), and (i) (emphasis added).

“The Pennsylvania Constitution reserves the power to provide, by general law, the use and choice of voting machines to the General Assembly.” “[T]he General Assembly has enacted the Election Code which delegates said power to the County’s Board of Elections.” “[T]he Election Code is the final authority on voting machines in this Commonwealth. Thus, the Elections Board has the exclusive control over election equipment.” *In re Petition for Agenda Initiative*, 206 A.3d 617, 624 (Pa. Cmwlth. 2019).

The courts are instructed to “constru[e] the Election Code to ascertain the General Assembly’s intent, which is the object of all interpretation and construction of statutes, Section 1921(a) of the Statutory Construction Act of 1972 (SCA), 1 Pa. C.S. § 1921(a).” *Chapman v. Berks Cty. Bd. of Elections*, 2022 Pa. Commw. Unpub. LEXIS 390, at \*44 (Cmwlth. Aug. 19, 2022). “[T]he clearest indication of legislative intent is a statute’s plain language, and if the words are clear and free from ambiguity, the letter should not be disregarded under the pretext of pursuing its spirit. 1 Pa. C. S. § 1921(b).” *Id.* at \*46.

To effectuate the Pennsylvania General Assembly’s constitutional delegation of exclusive authority over the conducting of elections and the operation of voting machines and equipment, the plain language of the election code requires liberally construction to effectuate the purposes of the Election Code. *Id.*

Section 2643 of the Election Code, 25 Pa. Stat. § 2643 provides:

- (a) All actions of a county board shall be decided by a majority vote of all the members, except as may be otherwise provided herein.
- (b) Each county board may appoint ... such other employees and assistants as, from time to time, the board may deem necessary to carry out the provisions of this act.

This latter provision does not require a vote of the Petitioners to hire experts to conduct inspection, maintenance, and/or investigations upon voting machine systems. In furtherance of the precise authority delegated to counties under the Election Code, 25 Pa. Stat. § 2642 provides, in relevant part, as follows:

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

\*\*\*

- (c) To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.



(d) To appoint their own employees, voting machine custodians, and machine inspectors.

\*\*\*

(i) To investigate election frauds, irregularities and violations of this act.... 25 Pa. Stat. Ann. § 2642 (c), (d), and (i).

It is a well-settled rule of statutory construction that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the [Legislature]...” 1 Pa. C.S. § 1921(a). The Courts have long held that the Pennsylvania Election Code must be construed liberally “so as not to deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice.” *Nomination Petition of Ross*, 411 Pa. 45, 190 A.2d 719, 720 (Pa. 1963); accord *In re Nomination Petition of Vodvarka*, 636 Pa. 16, 140 A.3d 639, 641 (Pa. 2016); *In re Nomination Petition of Paulmier*, 594 Pa. 433, 937 A.2d 364, 371 (Pa. 2007); *In re Nomination in re Grimaud*, 167 A.3d 305 (Pa. Cmwlth. 2017).

Governmental bodies delegated with broad and exclusive powers by the General Assembly “must be given deference in the administration and interpretation of its own statutory authority.” See, e.g., *Reich v. Berks Cty. Intermediate Unit No. 14*, 861 A.2d 1005, 1012 (Pa. Cmwlth. 2004). As § 2643 clearly gives Fulton County the authority “to appoint such other employees and assistants as, from time to time, the board may deem necessary to carry out the provisions” of the Election Code. 25 Pa. Stat. § 2643(b). Section 2642 explicitly provides that a county

board of elections may “appoint their own employees, voting machine custodians, and machine inspectors.”

Fulton County was conducting a lawful and authorized act when it had the defunct Dominion machines inspected and analyzed. The Secretary argued below that the decision to conduct the inspection was required to be put to a vote. However, while § 2643(a) states “[a]ll actions of a county board shall be decided by a majority vote” it then says “except as may be otherwise provided herein”. Subsection (b) then specifically excepts from this mandatory provision that a board of elections “...may appoint...such other employees and assistants as, from time to time, the board may deem necessary to carry out the provisions of this act.” In furtherance of this, subsection (d) of § 2642 then specifies that a board of elections may “appoint their own employees, voting machine custodians, and machine inspectors.

A plain reading of these provisions in para materia leads to no other conclusion than that a county board of elections is empowered to appoint and hire voting machine inspectors to continue to perform its constitutional and statutory duties, which includes the continuing obligation to ensure that there will be sufficient and reliable voting equipment to conduct subsequent elections. *Chapman v. Berks Cty. Bd. of Elections*, 2022 Pa. Commw. Unpub. LEXIS 390, at \*44 (Cmwlth. Aug. 19, 2022). Under the requisite liberal construction of the Election Code accorded by Pennsylvania courts, there can be no other reading because to do so would result in unconstitutional limitations on the constitutional authority delegated

to Pennsylvania counties. See *Nomination Petition of Ross, supra*.

Moreover, when so construed “to effectuate the purposes of the Election Code” see *Chapman, supra*, and the intent of the General Assembly to delegate full and exclusive authority to a county board of elections in the conducting of elections, see *Petition for Agenda Initiative*, 206 A.3d at 624, Fulton County and its members could not have been committing an intentionally wrongful act because they were performing their exclusive and authorized functions under the County board of elections provisions and within the election code.

This is especially true when directing a body that is given delegated and exclusive authority of a deliberative and discretionary nature. “Where a person or body is clothed with judicial, deliberative, or discretionary powers, and he or it has exercised such powers according to his or its discretion, mandamus will not lie to compel a revision or modification of the decision resulting from the exercise of such discretion, though, in fact, the decision may have been wrong.” *Citizens Comm. to Recall Rizzo v. Bd. of Elections*, 470 Pa. 1, 12, 367 A.2d 232, 237 (1976). Determining whether “shall” is mandatory or directory is the purpose behind the provision and whether compliance is required in order to fulfill that purpose.

One does not have to speculate in the instant case, because not only is the “shall” used in “shall” vote devolved to a deliberative body with exclusive and discretionary authority to conduct voting machine inspections and to hire its own machine inspectors to

do so, but subsection (b) of § 2643 explicitly excepts such hiring decisions from the “shall” vote requirement.

Finally, Petitioners’ decision to sue Dominion came from the results of the inspection performed by Speckin, and that decision was put to a vote and a majority of the Fulton County members voted on that decision. While the Secretary made much about spoliation, this was a red herring because none of the claims in the underlying litigation concern the extent to which the machines were or were not compromised. The only question that remains there is the Secretary’s constitutional authority to have decertified Fulton County’s voting machines and penalize it by ordering a withholding of funding so that it could purchase additional voting machine systems. The latter is as much an usurpation of Petitioners exclusively delegated constitutional authority to ensure efficient and proper conducting of elections.

Moreover, the Secretary claimed that third-party inspections would compromise other the security of voting systems used in other Pennsylvania counties. However, the specific Dominion voting machines upon which Fulton County employed its own machine inspectors had been decertified and were no longer in use. There was no threat to the security of other voting systems.

The issues in the underlying suit are purely concerning the legal question of who, among the Secretary and the County Board of Elections, had authority to perform the acts of having the Dominion machines inspected in the first place. The actual

integrity of the machines, and the extent to which they were inspected and/or compromised by the Wake TSI inspection or the one conducted by Speckin is not at issue in the underlying litigation.

### **CONCLUSION AND RELIEF REQUESTED**

Petitioners respectfully request the Court to grant their petition, or to summarily reverse the decision of the Pennsylvania Supreme Court, *in toto*, and to order the Pennsylvania Supreme Court to remove the sanctions awarded, including the impoundment of the Dominion voting machines pending disposition of the underlying legal issues.

Respectfully submitted by:

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Dated: July 17, 2023

\*Admission to the Supreme Court pending.

# **EXHIBIT L**

08:53:46 8-28-2023

09:02:17 JUDGE JUBELIRER:

09:05:11 COURT CRIER HOLLAND: All rise.

09:05:13 Commonwealth Court is now in session. The Honorable.

09:05:13 PRESIDENT JUDGE JUBELIRER: Good morning

09:05:14 everybody and welcome to Commonwealth Court. If nobody

09:05:21 said anything yet I'm going to remind you that I would

09:05:28 appreciate any --- now I'm muted and I hope all of you

09:05:40 mute any of your electronics as well. So thank you

09:05:47 very much. As you know, we are here today in the case

09:05:57 of county of Fulton, et al. versus secretary of the

09:06:01 Commonwealth 277 MD 2021 and and really the focus of

09:06:18 this hearing is to determine a neutral escrow agent

09:06:28 pursuant to the Supreme Court's decision and order to

09:06:37 whom the voting equipment can be transferred.

09:06:40 Preliminary to the testimony that we would be hearing

09:06:45 we first have a motion to strike that was filed by the

09:06:53 secretary with regard to an affidavit that had been

09:06:57 submitted. I don't know if there is any other

09:07:00 housekeeping matters that we would need to do first. I

09:07:06 see one attorney not 2 here.

09:07:10 ATTORNEY NEWMAN: Yes, Your Honor, Mr.

09:07:12 Tomorrow Carol filed emergency Motion to adjourn the

09:07:15 proceedings. He fell down the stairs. He went to the

09:07:20 Urgent Care facility, they could not treat him, they



13:59:38 1 Q. Based on your understanding of the  
13:59:40 2 Pennsylvania Supreme Court's April 2023 order in this  
13:59:44 3 mere is it necessary in your opinion to perform any  
13:59:48 4 kind of forensic analysis of the voting equipment at  
13:59:51 5 issue in connection with the Court ordered /EPL  
13:59:55 6 poundment of that equipment?

13:59:57 7 A. It is not.

13:59:58 8 Q. Based on your understanding of the  
14:00:00 9 Pennsylvania Supreme Court's order is it necessary for  
14:00:04 10 the voting equipment at issue to ever being powered on  
14:00:08 11 during or in connection with the period of its Court  
14:00:13 12 Ordered /EPL poundment?

14:00:15 13 A. It does not.

14:00:16 14 Q. I would like to even though we are not going  
14:00:18 15 to go depth in your background highlight certain  
14:00:24 16 aspects of your past experience that may be  
14:00:25 17 particularly relevant before the special Masters in  
14:00:28 18 this here and can I start by asking you to look at the  
14:00:31 19 Exhibit binder that should be in front of you and turn  
14:00:33 20 to tab 5. Do you have that in front of you?

14:01:01 21 A. I do.

14:01:01 22 Q. If you could take a look at this document  
14:01:03 23 and tell me if you recognize it?

14:01:05 24 A. Yes, I do.

14:01:06 25 Q. What is this document?

16:55:25 1 question but for the record do you know who it was who  
16:55:27 2 first suggested?

16:55:28 3 ATTORNEY CARROLL: Can you hear me  
16:55:29 4 Stephanie.

16:55:36 5 ATTORNEY WIYGUL: Shall I continue, Your  
16:55:37 6 Honor.

16:55:37 7 PRESIDENT JUDGE JUBELIRER: Yes please.

16:55:37 8 BY ATTORNEY PIPER :

16:55:40 9 Q. Do you know who it was who first suggested  
16:55:43 10 that Fulton county should propose serve wrist dynamic  
16:55:48 11 solutions to serve as the escrow agent in this matter?

16:55:52 12 A. What is that.

16:55:52 13 Q. I think I know the answer to the question  
16:55:54 14 but I need to ask it for the record. Do you know who  
16:55:57 15 it was the person who first suggested that Fulton  
16:56:02 16 county should propose serve wrist dynamics solutions to  
16:56:08 17 serve as the escrow agent in this matter?

16:56:12 18 A. No, because I don't remember hearing that  
16:56:14 19 name before today.

16:56:17 20 Q. Thank you. Do you know how the Fulton  
16:56:25 21 county Commissioners or board of elections as a body  
16:56:30 22 was introduced to serve wrist dynamic solutions?

16:56:36 23 A. Like I said I haven't heard of that name of  
16:56:39 24 that company until today.

16:56:40 25 Q. So to your knowledge, the County or the

16:59:04 1 A. No.

16:59:05 2 Q. Do you know what serve wrist proposes to  
16:59:09 3 charge to perform the escrow services called for by the  
16:59:13 4 Pennsylvania Supreme Court's order?

16:59:15 5 A. No.

16:59:16 6 Q. Do you know whether any third party has  
16:59:20 7 agreed to pay or to reimburse Fulton county for the  
16:59:24 8 cost for serve wrist to provide any escrow services in  
16:59:28 9 this case?

16:59:29 10 A. No.

16:59:31 11 Q. Are you aware of any discussions by anyone  
16:59:35 12 about the possibility that a third party could pay or  
16:59:39 13 reimburse Fulton county for the cost for /SURB /RAS to  
16:59:45 14 provide any escrow services in this case?

16:59:47 15 A. No.

16:59:48 16 ATTORNEY WIYGUL: If I could just have a  
16:59:49 17 moment, Your Honor.

16:59:50 18 PRESIDENT JUDGE JUBELIRER: While we  
16:59:51 19 have a moment I didn't want to interrupt earlier, but  
16:59:55 20 Attorney Carroll we heard earlier you call someone  
17:00:03 21 there Stephanie and I wonder if you could give us the  
17:00:07 22 identity of that person? Attorney Carroll? Can you  
17:00:40 23 hear me, Attorney Carroll.

17:00:43 24 ATTORNEY CARROLL: Okay I'm sorry I'm  
17:00:45 25 sorry I'm sorry what I was saying here is that you ---

17:00:53 1 I have repeatedly asked you that I am dealing with ---

17:00:58 2 PRESIDENT JUDGE JUBELIRER: I understand

17:00:59 3 I asked you a question.

17:01:01 4 ATTORNEY CARROLL: Hold on hold on

17:01:03 5 please.

17:01:03 6 PRESIDENT JUDGE JUBELIRER: I was asking

17:01:04 7 who Stephanie was because we heard you speaking to

17:01:06 8 Stephanie.

17:01:17 9 ATTORNEY CARROLL: I'm sorry I'm having

17:01:19 10 difficulties here. Yes, I was not talking to Stephanie

17:01:22 11 she is not here, I was dealing with the fact that I am

17:01:26 12 dealing with a lot of stress here in terms of time and

17:01:30 13 if we could navigate this system remotely while I'm

17:01:33 14 dealing with the issues of what this narcotic has done

17:01:38 15 to me and I've said out loud and my mother's is here I

17:01:43 16 believe can you here what they are saying about

17:01:47 17 Stephanie that is what I said out loud.

17:01:49 18 PRESIDENT JUDGE JUBELIRER: Thank you

17:01:49 19 for that.

17:01:50 20 ATTORNEY CARROLL: I thought I was muted

17:01:52 21 I was actually just venting she heard that I can't

17:01:55 22 believe they are going after Stephanie.

17:01:58 23 PRESIDENT JUDGE JUBELIRER: Thank you

17:01:58 24 for clarifying thank you for that. Okay you may

17:02:02 25 proceed.

# **EXHIBIT M**



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# Pa. County Loses Bid To Delay Voting Machine Custody Case

By [Matthew Santoni](#) · [Listen to article](#)

Law360 (August 28, 2023, 7:26 PM EDT) -- A Pennsylvania county in hot water for allowing an unauthorized inspection of its voting machines lost its last-minute bid to delay a hearing on who should take custody of the equipment, though testimony about qualifications for the proposed "escrow agents" proceeded haltingly Monday.

The [Supreme Court of Pennsylvania](#) had [ordered in April](#) that Fulton County's voting machines be held by a neutral third party while the county and state litigate whether they could still be used after multiple inspections following the 2020 election, but a hearing on appointing that third party was delayed several hours when Fulton County's lead attorney said he was hampered by medication for a recent injury.

"On August 26, 2023, counsel for petitioners went to an urgent care facility, as he was experiencing severe right upper quadrant abdominal pain. ... Counsel for petitioner continues to be in significant pain as a result of both the broken rib and the infection and as a result of the pain and the taking of the prescribed medications cannot be available for the hearing pursuant to doctor's orders," said the [emergency motion](#) filed Monday morning by Thomas J. Carroll, the independent attorney representing the central Pennsylvania county.

Commonwealth Court President Judge Renee Cohn Jubelirer, sitting as the Supreme Court's "special master" in the case, [denied the request for a delay](#), noting that she had admitted Tennessee attorney Russell A. Newman to represent the county, and either Carroll or another attorney could participate in the hearing remotely to assist him.

Newman initially argued Monday morning that he could not proceed without the presence of an in-state, sponsoring attorney. Robert Wiygul of [Hangley Aronchick Segal Pudlin & Schiller](#), representing the secretary of the commonwealth, noted that one of his witnesses would not be available if the hearing were delayed to another day.

"Both sides are facing prejudice if a witness is unavailable," Judge Cohn Jubelirer said. "The emergency motion was not filed until this morning, instead of over the weekend, when it would have been more timely for people to make arrangements."

The court was considering an escrow agent because the Supreme Court of Pennsylvania's April ruling had held Fulton County and Carroll in contempt for delaying the underlying lawsuit and violating a court order prohibiting third-party inspections of the Dominion Voting Systems machines the county used in 2020, when Donald Trump won the county with 6,824 votes to President Joe Biden's 1,085.

After an initial inspection by Wake Technology Services, Pennsylvania's then-secretary of the commonwealth had ordered the machines be "decertified" because the inspection had allegedly violated the state's chain of custody and could have compromised the machines' security.

Fulton County sued and [initially won its case](#) in the Commonwealth Court, but while the state's appeal was pending before the state Supreme Court, the county indicated it might allow a second inspection by a different company [suggested by the state Senate](#). The state got a court order in January 2022 barring that company from inspecting the machines, but the county allowed another company, Speckin Forensics LLC, to conduct its own inspection.

Because of the extra inspection and allegations that Carroll had unduly delayed proceedings before Judge Cohn



Jubelirer, the Supreme Court ordered that the county and Carroll pay legal bills for the state and Dominion, which had joined the suit as an intervenor, and pay for someone else to keep the voting equipment. Fulton County appealed the state justices' ruling to the [U.S. Supreme Court](#), but without a stay, Judge Cohn Jubelirer said Aug. 23 that the hearing Monday would proceed. Newman said Carroll's injury — a fall down some stairs — occurred soon after.

Resuming Monday afternoon, the county asked several times to pause the hearing or the suit pending its appeal to the U.S. Supreme Court or its appeal to the state Supreme Court of the judge's Aug. 23 order, but Judge Cohn Jubelirer said the hearing would go on until justices from one court or the other granted a stay.

Testimony from election security expert witness Ryan Macias of RSM Election Solutions LLC focused on how the federal [Election Assistance Commission](#), which Macias had previously worked for, inspected and accredited "voting system test laboratories" including Pro V&V Inc., the Huntsville, Alabama, company that the state and Dominion had proposed as the escrow agent for Fulton County's voting machines.

Macias said VSTLs had to meet standards set by the EAC in areas such as not having conflicts of interest with the companies whose voting systems they evaluate, and having policies to prevent hiring of employees with past convictions for fraud. Pro V&V, he said, was "very qualified," detailing the security it had and the separate, climate-controlled areas the company kept for holding and testing different voting equipment and digital storage media.

"They have the equipment and the things you are looking for to maintain the chain of custody," Macias said. Maintaining its EAC accreditation through audits in 2018 and 2021 was "good business" for Pro V&V as one of only two accredited labs in the United States, he testified.

Macias contrasted that with the county's proposed escrow agent, private security company Cerberus Dynamic Solutions, which he said did not have similar accreditation.

On cross-examination, Newman pressed him on why accreditation was necessary for the machines to be held securely and in a controlled climate, or who would transport the machines to Pro V&V's facility if it were appointed. He asked if a local facility would be more convenient, though Macias said the court's order was for the voting machines to be kept secure until the court released them.

Carroll had raised additional objections to the testimony of Fulton County Commissioner Paula Shives because she was technically his client when she had spoken to Wiygul about being unable to testify outside of Monday's scheduled hearing. Judge Cohn Jubelirer overruled him, as Wiygul said they only discussed her schedule and availability.

Shives said the commissioners — who also act as the county's board of elections — had not voted on choosing Cerberus, but Carroll objected again when Wiygul started suggesting that Cerberus had been proposed by Carroll's former co-counsel, Michigan attorney Stefanie Lambert. Lambert, Wiygul noted, had been [charged Aug. 3](#) in her home state over alleged conspiracy to improperly possess voting equipment there, but Shives said she hadn't heard the particulars.

At one point, Carroll could be heard over his remote connection saying something like, "Can you hear this, Stefanie?" but upon questioning from the judge, said he was telling someone else with him, "Can you hear what they're saying about Stefanie?"

After detouring to take Shives' testimony so she could be excused before her availability ran out, Newman finished his cross-examination of Macias; during Wiygul's redirect, Macias noted the possibility that an untrained custodian might accidentally damage the machines. Judge Cohn Jubelirer said the hearing would continue Wednesday morning.

Fulton County is represented by James M. Stein of [Dick Stein Schemel Wine & Frey LLP](#), Russell A. Newman

of the Newman Law Firm, and Thomas J. Carroll.

The Pennsylvania secretary of the commonwealth is represented by Michael J. Fischer and Jacob B. Boyer of the [Pennsylvania Attorney General's Office](#), Robert Andrew Wiygul, John B. Hill and Eitan Gavriel Kagedan of Hangley Aronchick Segal Pudlin & Schiller, and Joe H. Tucker Jr., Jessica Ann Rickabaugh and Dimitrios Mavroudis of the [Tucker Law Group](#).

The case is County of Fulton et al. v. Secretary of the Commonwealth, case number 277 MD 2021, in the Commonwealth Court of Pennsylvania.

--Editing by Patrick Reagan.

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