

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	:	

BEFORE: **HONORABLE RENÉE COHN JUBELIRER,**
 President Judge of the Commonwealth Court
 Appointed as Special Master

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER**

FILED: September 15, 2023

This matter returns to the undersigned, in her continued role as Special Master,¹ for purposes of appointing “a neutral third-party escrow agent to take and retain possession of the voting equipment” at issue in this case. *County of Fulton v. Sec’y of the Commonwealth*, 292 A.3d 974, 1020 (Pa. 2023) (*Fulton I*).

¹ *County of Fulton v. Sec’y of the Commonwealth* (Pa., No. 3 MAP 2022, filed 10/21/2022).

I. INTRODUCTION

A detailed background and procedural history of this matter is recounted fully in *Fulton I* and is incorporated by reference herein. By way of brief summary, this case initiated on August 18, 2022, when the County of Fulton, Fulton County Board of Elections, and Fulton County Commissioners Stuart L. Ulsh and Randy H. Bunch, (collectively, Fulton County or County) filed a Petition for Review in the Commonwealth Court’s original jurisdiction against the Secretary of the Commonwealth (Secretary), challenging the Secretary’s decertification of Voting Equipment² manufactured by Dominion Voting Systems, Inc. (Dominion) and used by the County in the 2020 General Election.³ The Secretary decertified the Voting Equipment in Fulton County’s possession after the County permitted a third-party consultant known as Wake TSI, Inc. to inspect the Voting Equipment in December 2020. Fulton County’s five-count Petition for Review raises various questions involving, *inter alia*, the division of authority between the Secretary and county boards of elections as it relates to the certification and inspection of voting equipment under the Pennsylvania Election Code.⁴

In December 2021, and January 2022, while the County’s Petition for Review remained pending, the Secretary filed two applications indicating that he learned that Fulton County planned to move forward with another third-party inspection of the

² As used herein, the term “Voting Equipment” refers to all electronic voting equipment manufactured by Dominion Voting Systems, Inc. (Dominion) and used by or in possession of the County, which Voting Equipment is described in the April 1, 2019 Voting System and Managed Services Agreement between Dominion and the County. (*See* Sec’y Ex. 34.01 (Voting System and Managed Services Agreement, previously admitted during contempt proceeding as Sec’y Ex. 12.01).)

³ *See generally* *County of Fulton v. Sec’y of the Commonwealth*, 276 A.3d 846 (Pa. Cmwlth. 2022) (describing the underlying Petition for Review and overruling preliminary objections to same).

⁴ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2601-3591.

Voting Equipment and asking the Commonwealth Court for a protective order to enjoin the same. The Secretary asserted that a protective order was necessary, as an additional inspection would irreparably spoliage key evidence central to the claims set forth in the County's Petition for Review. By order dated January 14, 2022, the Commonwealth Court denied the Secretary's request for a protective order, which the Secretary immediately appealed to the Pennsylvania Supreme Court. Ancillary to that appeal, the Secretary moved for an emergency stay of the Commonwealth Court's January 14, 2022 order, which was granted by a Single-Justice Order that same day, and thereafter confirmed by the full Supreme Court on January 27, 2022 (collectively, Injunction Order).

Several months later, on October 18, 2022, the Secretary filed an application in the Supreme Court requesting an order holding Fulton County in contempt and imposing sanctions, alleging that the County violated the Supreme Court's Injunction Order by allowing another third party known as Speckin Forensics, LLC to inspect the Voting Equipment on July 13 and 14, 2022, nearly six months after the Injunction Order was issued.

By order dated October 21, 2022, the Pennsylvania Supreme Court appointed the undersigned to serve as Special Master to prepare a report and recommendation concerning the Secretary's request for contempt and sanctions. On November 18, 2022, following a multi-day hearing, the Special Master submitted her report and recommendations to the Pennsylvania Supreme Court. On April 19, 2023, the Supreme Court issued an opinion and order adjudicating Fulton County in contempt, imposing sanctions, and ordering impoundment of the Voting Equipment with a neutral third-party escrow agent until further order of Commonwealth Court.

Fulton I, 292 A.3d at 1020. Regarding impoundment, the Supreme Court stated as follows:

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.

Id.

Through this opinion and order, the Special Master discharges her duty to appoint a neutral third-party escrow agent to take and retain possession of the Voting Equipment until further court order.

II. PROCEDURAL HISTORY

A. Attempts to Agree on a Neutral Third-Party Escrow Agent

In accordance with the directives in *Fulton I*, the Special Master issued an order dated April 28, 2023, directing the parties to, *inter alia*, file a joint report advising of the status of the parties' negotiations to select a neutral third-party escrow agent no later than May 30, 2023.

The parties complied, and the Special Master received a joint status report on May 30, 2023. (Parties' First Joint Status Report, filed 5/30/2023.) Therein, the parties reported that by letter dated May 23, 2023, the Secretary and Dominion⁵ had advised Fulton County of their joint proposal of Pro V&V, an entity accredited by the United States Election Assistance Commission (EAC) as a Voting System Test Laboratory (VSTL), to be appointed as the escrow agent in this matter. The status report further indicated that on May 30, 2023, the day the joint status report was due,

⁵ Dominion has successfully intervened as a party in this matter. *See Fulton I*, 292 A.3d at 985 n.50.

Fulton County had replied to the Secretary and Dominion by letter, noting a number of concerns with the appointment of Pro V&V, and offering an alternative choice, Auld & Associates Investigations. As the parties had not had the opportunity to discuss Fulton County's May 30, 2023 letter, they jointly sought an extension to submit a further status report no later than June 14, 2023. By order dated June 2, 2023, the Special Master granted the parties additional time to confer and directed a further joint status report no later than June 14, 2023.

On June 14, 2023, the parties again advised the Special Master that they had not yet agreed on an appropriate escrow agent and asked for another two-week extension to continue discussions. (Parties' Second Joint Status Report, filed 6/14/2023.) The Special Master agreed and ordered a subsequent status report no later than June 28, 2023.

The parties timely filed their third joint status report indicating that again, they were unable to agree on an escrow agent. (Parties' Third Joint Status Report, filed 6/28/2023.) The parties jointly proposed that on or before July 19, 2023, they file either (a) a joint status report indicating they reached an agreement on the escrow agent, or (b) separate requests to appoint each party's escrow agent of choice, in the event no agreement could be reached. The Special Master agreed and ordered a joint status report or separate proposals no later than July 19, 2023.

On July 18, 2023, the Secretary filed an application seeking a two-day extension of the July 19, 2023 deadline, noting that it had recently identified another entity, Insurance Evidence Solutions (IES), that could potentially serve as an alternative to Pro V&V, and requesting additional time for the parties to confer. The filing stated that Dominion agreed to the two-day extension, but Fulton County requested nine days to consider IES as an alternative proposal. The Special Master

agreed to grant the parties nine additional days to discuss the possibility of IES serving as escrow agent, and ordered either a joint status report indicating agreement, or separate proposals, no later than July 28, 2023. On July 28, 2023, the Special Master received separate applications from the parties proposing their preferred third-party escrow agent.

The Secretary and Dominion jointly proposed that the Special Master select Pro V&V.⁶ Fulton County proposed an entity called Cerberus Dynamic Solutions (Cerberus). The County requested an evidentiary hearing on the appointment of an escrow agent.

The Special Master notes that the Supreme Court’s remand of the impoundment issue did not expressly contemplate an evidentiary hearing, but rather directed negotiations by the parties and for the Special Master “to appoint a neutral agent if the parties cannot agree on one.” *Fulton I*, 292 A.3d at 1020; *accord id.* at 1012 (entrusting “exclusive authority to end or modify the impoundment to the judge presiding over the underlying Petition for Review after the impoundment is **completed** under the supervision of the Special Master” (emphasis added)). Although the Special Master could have appointed an escrow agent without taking additional evidence, the Special Master, in her discretion and in the interest of procedural fairness, indulged the County’s request for a hearing.

B. Scheduling of Evidentiary Hearing; Prehearing Filings

Following review of the parties’ separate proposals, the Special Master issued an order scheduling an evidentiary hearing for purposes of the Special Master’s appointment of a neutral third-party escrow agent for Monday, August 28, 2023. In

⁶ In the Secretary’s July 28, 2023 proposal recommending the Special Master appoint Pro V&V, he clarified that IES had withdrawn itself from consideration to serve as escrow agent in this matter. (*See Secy’s Application to Appoint Escrow Agent*, filed 7/28/2023, at 2 n.1.)

order to most efficiently and expeditiously appoint an escrow agent to take control of the Voting Equipment, the scheduling order specifically set forth the following pre-hearing deadlines:

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**.

(Special Master's Order, 8/3/2023 ¶¶ 2-5 (emphasis in original).)

The parties timely filed their witness and exhibit lists on August 14, 2023,⁷ and various prehearing applications by August 18, 2023. Among the timely filed applications were Fulton County's "Motion to Appear Pro Hac Vice, Consent to

⁷ While Fulton County's witness list is timestamped as filed at 12:31 a.m. on August 15, 2023, the Special Master excused Fulton County's de minimis untimeliness and so considered the witness list timely filed. (See Special Master's Memorandum & Order on Secretary's Motion in Limine No. 1 (To Exclude the Witness Testimony Proffered by Petitioners and Preclude Vexatious, Obdurate, Dilatory, and Bad-Faith Litigation Conduct), 8/24/2023 ¶ 1.)

Designation, and Request to Electronically Receive Notice of Electronic Filing”, and Fulton County’s Motion to Stay Proceedings, which are discussed in turn.^{8,9}

Thomas J. Carroll (Attorney Carroll), counsel for Fulton County, timely filed a motion seeking the admission of Russell A. Newman, Esq. (Attorney Newman), a member of the Tennessee State Bar, to appear before the Special Master in these proceedings *pro hac vice*. Due to technical defects, the Special Master denied the motion without prejudice for the County to file an amended motion for admission *pro hac vice* that conformed to the Pennsylvania Rules of Civil Procedure. (Special Master’s Order, 8/21/2023.) The following day, Attorney Carroll filed an amended motion for Attorney Newman’s admission, which was met by technical and substantive objections from the Secretary and Dominion. The Special Master again denied the amended motion without prejudice on the basis of continued technical

⁸ The Special Master also received the following pre-hearing applications:

a. Secretary’s Application for Permission for Michael Walker to Testify Remotely Via Videoconference at the Evidentiary Hearing Scheduled for August 28, 2023; granted by order dated 8/23/2023.

b. Dominion’s Objection to Fulton County’s Witness List; denied by memorandum and order dated 8/24/2023.

c. Secretary’s Motion in Limine No. 1 (to Exclude the Witness Testimony Proffered by Petitioners and Preclude Vexatious Obdurate, Dilatory, and Bad-Faith Litigation Conduct); granted in part and denied in part by memorandum and order dated 8/24/2023.

d. Secretary’s Motion in Limine No. 2 (to Qualify Ryan Macias as an Expert in Election Technology and Security); granted by order dated 8/23/2023.

e. Secretary’s Motion in Limine No. 3 (to Admit Certain Government Records into Evidence); granted by order dated 8/23/2023.

f. Fulton County’s Objection to Dominion’s Witness List; granted in part and denied in part without prejudice by memorandum and order dated 8/24/2023.

⁹ Following review of the parties’ filings, the Special Master scheduled a pre-hearing telephone conference for Wednesday, August 23, 2023, at 1:00 p.m., for the limited purpose of “discussing the necessity, if any, of a third-party escrow agent’s expertise and experience specific to election security, as opposed to expertise and experience specific to the security of physical evidence held in the normal course of litigation.” (Special Master’s Orders, 8/21/2023, 8/22/2023.) During the pre-hearing conference, the Secretary explained his intention to establish the need for such expertise through testimony at the hearing.

defects and indicated that she would consider the Secretary and Dominion’s substantive objections to Attorney Newman’s proposed admission in the event a conforming second amended motion was filed. (Special Master’s Order, 8/22/2023.) On August 23, 2023, the Special Master received a technically conforming second amended motion seeking Attorney Newman’s admission.

The Secretary and Dominion objected to Attorney Newman’s admission, citing Pennsylvania Rule of Civil Procedure 1012.1(e), which grants a court discretion to deny admission of counsel *pro hac vice* upon a finding of good cause. Pa.R.Civ.P. 1012.1(e). The rule explains that good cause exists when “the admission may be detrimental to the prompt, fair and efficient administration of justice,” or “the admission may be detrimental to legitimate interests of the parties to the proceedings other than the client whom the candidate proposes to represent[.]” *Id.* The Secretary and Dominion questioned whether Attorney Newman’s admission would promote the prompt, fair, and efficient administration of justice in the instant proceedings, given his past litigation history as it relates to Dominion.¹⁰ Dominion also raised questions surrounding Attorney Carroll’s fitness to provide the supervision required of a sponsoring attorney contemplated in Rule 1012.1(d). After thoughtful consideration of both substantive arguments, the Special Master declined to find that good cause existed to deny Attorney Newman *pro hac vice* admission under the Pennsylvania Rules of Civil Procedure. The Special Master nevertheless clarified that “Attorney Carroll [] shall continue to be responsible as counsel of record for the conduct of this matter on behalf of Fulton County[,]” and that she “expects, and will require, Attorney Carroll to vigorously fulfill his duties as

¹⁰ (See Dominion’s Objection to Motion to Appear Pro Hac Vice of Russell A. Newman ¶ 6 (explaining Attorney Newman’s involvement in a past defamation case filed against Dominion).)

sponsor, and Attorney Newman to abide by the rules of this Court.” (Special Master’s Order, 8/24/2023 at 1 n.1, 2 ¶ 4.)

Fulton County also filed a timely prehearing application in the nature of a Motion to Stay Proceedings.¹¹ In the motion, Fulton County averred that it had filed a Petition for Writ of Certiorari in the United States Supreme Court (No. 23-96) on May 27, 2023, which challenged, *inter alia*, the Supreme Court’s decision in *Fulton I* to impound the Voting Equipment with a third-party escrow agent. Fulton County asked the Special Master to stay the upcoming impoundment proceedings in order to give the United States Supreme Court the opportunity to rule on the petition. By order dated August 23, 2023, the Special Master denied the County’s request to stay, noting that Fulton County failed to cite any procedural rule or authority to support its request for stay.¹² The Special Master advised that she would “proceed as directed by the Supreme Court of Pennsylvania, unless otherwise directed by the Supreme Court of the United States.” (Special Master’s Order, 8/23/2023.)

C. Evidentiary Hearing

The Special Master conducted a three-day evidentiary hearing, which convened at 9:00 a.m.¹³ on August 28, 2023. The County immediately requested an adjournment. Attorney Newman, appearing solo on behalf of the County, advised the Special Master that Attorney Carroll had filed an emergency motion to adjourn proceedings due to an alleged injury. Attorney Newman orally explained that over

¹¹ The Motion to Stay Proceedings was Fulton County’s **first** request to delay the impoundment proceedings.

¹² Absent from the County’s Motion to Stay Proceedings was any explanation as to why this request was filed 15 days after the Special Master scheduled the impoundment hearing. (Special Master’s Order, 8/3/2023.)

¹³ In an effort to receive witness testimony expeditiously, the Special Master rescheduled the evidentiary hearing to begin at 9:00 a.m., as opposed to 10:00 a.m., on August 28, 2023. (*See* Special Master’s 8/23/2023 Order ¶ 1.)

the weekend, Attorney Carroll “fell down the stairs,” went to an urgent care facility, and was instructed to go to the emergency room where he was diagnosed with a broken rib and prescribed narcotic medication, “which prevents him from being able to drive.” (8/28 Tr. at 8-9, 15.) The Secretary opposed the last-minute request to adjourn and asked the Special Master to proceed with the hearing as scheduled, noting (1) the presence of noticed and subpoenaed witnesses in the courtroom; (2) the County’s “long history” of attempting to delay prior proceedings before the Special Master and the Supreme Court in this matter; (3) the existence of alternative counsel to appear on behalf of the County, specifically James Stein, Esq. (Attorney Stein), who remains counsel of record in this matter; and (4) the Special Master’s admission of Attorney Newman *pro hac vice* on behalf of the County. (*Id.* at 10-15.)

In response, Attorney Newman insisted that Attorney Carroll’s absence necessitated an adjournment, as the law requires a local sponsoring attorney to be present at all proceedings. (*Id.* at 15.) Attorney Newman also cited concerns that, without Attorney Carroll, his clients would be deprived of their counsel of choice. (*Id.* at 17.) The Special Master reviewed Fulton County’s “Emergency Motion to Adjourn Proceedings,” timestamped as filed at 8:01 a.m. on August 28, 2023, 59 minutes before the start of the impoundment proceedings.¹⁴ The filing did not reference a fall down the stairs, but provided that on August 26, 2023, two days before the scheduled hearing, Attorney Carroll went to an urgent care facility complaining of severe right upper quadrant abdominal pain, and was sent to the emergency room, where he was diagnosed with a broken rib and infection and prescribed opioid medication and an antibiotic. (Fulton County’s Emergency

¹⁴ The Emergency Motion to Adjourn Proceedings was Fulton County’s **second** request to delay the impoundment proceedings.

Motion to Adjourn Proceedings ¶¶ 1-3.) The opioid medication contained warnings not to drive or operate machinery. (*Id.* ¶ 3.) In the filing, Attorney Carroll stated that he continued to be in significant pain and could not be available for the impoundment hearing, attaching in support a redacted after-visit summary from the emergency room and a doctor’s note advising that he may return to work on Wednesday, August 30, 2023. (*Id.* ¶ 5, Exs. A, B.) The Emergency Motion to Adjourn Proceedings did not contain any indication of why Attorney Carroll waited until 59 minutes before the start of the evidentiary hearing to advise the Special Master and the other parties of his condition.

The Special Master heard brief oral argument on the issue of whether a *pro hac vice* attorney may proceed in a Pennsylvania court without the presence of the sponsoring attorney. Citing Pennsylvania Bar Admission Rule 301,¹⁵ Attorney Newman argued that an attorney admitted *pro hac vice* is not authorized to act as attorney of record in the case. (8/28 Tr. at 21-23); Pa. B.A.R. 301. He also argued, more generally, that Fulton County is entitled to have Attorney Carroll, their attorney of choice who is more familiar with the proceedings, present. (8/28 Tr. at 24-25.)

The Secretary responded that Pennsylvania Rule of Civil Procedure 1012.1(d)(1)¹⁶ more specifically addresses the issue at hand and allows a court to

¹⁵ Rule 301(a) provides, in relevant part:

An attorney, barrister or advocate who is qualified to practice in the courts of another state or of a foreign jurisdiction may be specially admitted to the bar of this Commonwealth for purposes limited to a particular case. An attorney, barrister or advocate admitted *pro hac vice* in a case shall not thereby be authorized to act as attorney of record in the case.

Pa. B.A.R. 301(a).

¹⁶ Rule 1012.1(d)(1) provides, in relevant part:

excuse the attendance of a sponsoring attorney at court proceedings. (8/28 Tr. at 25-26); Pa.R.Civ.P. 1012.1(d)(1). The Secretary also noted that the Supreme Court’s decision in *Fulton I* referenced this precise rule in connection with a similar scenario where Attorney Carroll sought to delay proceedings before that Court. (8/28 Tr. at 27-32); *Fulton I*, 292 A.3d at 991 n.69.¹⁷

The Special Master issued an order denying Fulton County’s First Emergency Motion to Adjourn. (Special Master’s Order, 8/28/2023.) Therein, the Special Master excused Attorney Carroll’s physical presence in the courtroom in accordance with the carve-out in Pennsylvania Rule of Civil Procedure 1012.1(d)(1). (*Id.*)

The sponsor shall enter an appearance as attorney of record in the action on behalf of the party whom the candidate seeks to represent. Upon the motion being granted, the sponsor shall remain the attorney of record for that party, and shall sign and serve, or be served with as the case may be, all notices, orders, pleadings or other papers filed in the action, and shall attend all proceedings before the court unless excused by the court. . . .

Pa.R.Civ.P. 1012.1(d)(1).

¹⁷ As noted by counsel for the Secretary, the Supreme Court in *Fulton I* addressed a similar situation where Attorney Carroll filed a Motion to Adjourn Oral Argument two days before it was scheduled. In that motion, Attorney 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 I*, 292 A.3d at 991. In the accompanying footnote, the Supreme Court stated:

Attorney Carroll had not yet informed this Court that Attorney [Stefanie] 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). Thus, the Supreme Court contemplated the possibility of *pro hac vice* counsel appearing without sponsoring counsel in situations like the one *sub judice*.

Nevertheless, the Special Master continued the hearing to 1:00 p.m. on that same day to allow Attorney Newman time to prepare and to select one of the following options: (1) for Attorney Carroll to appear via WebEx in order to accommodate his driving restriction; (2) for Attorney Stein to appear in person or via WebEx; or (3) for any other attorney licensed to practice in the Commonwealth of Pennsylvania to enter an appearance and appear as counsel before the Special Master. (*Id.*)

Fulton County chose the first option, and Attorney Carroll appeared remotely, audio only, via WebEx when the hearing reconvened at 1:00 p.m.¹⁸ Immediately, Attorney Newman orally moved the Special Master for a stay of the proceedings¹⁹ “to permit the Petitioners to appeal [the Special Master’s Order denying the First Emergency Motion] to the Pennsylvania Supreme Court.”²⁰ (8/28 Tr. at 43-44.) The Special Master denied Attorney Newman’s oral request from the bench, and the Secretary proceeded with his first witness at approximately 1:56 p.m., nearly five hours after the hearing was originally scheduled to begin.²¹ (*Id.* at 45-46.)

¹⁸ At the outset of the hearing and continuing throughout, Attorney Carroll regularly interjected in his remote capacity to advise the Special Master that the medication he was taking affected his ability to focus and prevented him from “functioning at a level that would be appropriate [] to represent clients.” (8/28 Tr. at 40, 41.) The Special Master notes that she proceeded with the hearing over these objections in order to carry out her duty to appoint an escrow agent as directed by the Pennsylvania Supreme Court in *Fulton I*, **and only after offering several options, including the appearance of other counsel of record**, to the County. (*See* Special Master’s 8/28/2023 Order; 8/23 Tr. at 41.)

Moreover, the Special Master notes that while Attorney Carroll purported to be suffering from side effects of his medication, he actively participated in the hearing, (*see generally*, 8/28 Tr.), took a call from “another attorney on another case” due to a filing deadline, (*id.* at 197), and managed to file a 27-page “Emergency Application for a Stay Upon Special Master’s Denial of Same” in the Pennsylvania Supreme Court by 3:40 p.m. *See infra* pp. 15-16, n.23. For these reasons, the Special Master is satisfied that Fulton County was not effectively deprived of their right counsel, but rather chose Attorney Carroll to represent them despite his medical condition.

¹⁹ Attorney Newman’s oral request for stay was Fulton County’s **third** request to delay the impoundment proceedings.

²⁰ To date, Fulton County has not filed an appeal of the Special Master’s August 28, 2023 Order.

²¹ The testimony and evidence presented at the hearing are summarized in Part III, *infra*.

As the Secretary’s presentation of witnesses continued, during the testimony of Commissioner Paula Shives, Attorney Carroll remotely interrupted the proceedings, saying “[c]an you hear me Ste[f]anie?” (*Id.* at 237.) When the Special Master later asked Attorney Carroll to identify the person to whom he was speaking, Attorney Carroll responded that he asked his mother, who was in the same room, “can you hear what they’re saying about Ste[f]anie.” (*Id.* at 243.) He further explained that he thought his remote connection was muted and he “was actually just venting.” (*Id.*)

At 3:40 p.m. Fulton County filed an “Emergency Application for a Stay Upon Special Master’s Denial of Same” in the Pennsylvania Supreme Court, renewing its request for stay that the Special Master denied by order dated August 23, 2023.²² Therein, the County sought an emergency stay of the impoundment proceedings, which were, at the time of the filing, underway. Notably, the County did not base its renewed request for stay on Attorney Carroll’s medical condition, but rather alleged it would 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.” (Emergency Application for a Stay Upon Special Master’s Denial of Same at 25.) The County asked the Pennsylvania Supreme Court to stay the evidentiary hearing pending a decision from the United States Supreme Court on Fulton County’s Petition for Writ

²² The Emergency Application for a Stay Upon Special Master’s Denial of Same was Fulton County’s **fourth** request to delay the impoundment proceedings, and the first that was directed to the Pennsylvania Supreme Court.

of Certiorari challenging the Pennsylvania Supreme Court’s decision in *Fulton I*. (*Id.*)²³

On August 29, 2023, the day prior to the scheduled second hearing day, Fulton County filed an “Emergency Application for Reconsideration Regarding Emergency Application for Stay”²⁴ asking the Pennsylvania Supreme Court for an immediate ruling on its August 28, 2023 emergency application, asserting that relief ignored is the equivalent of relief denied.

The Pennsylvania Supreme Court did not act, and the hearing reconvened on Wednesday, August 30, 2023, at 9:00 a.m. at which Attorney Carroll appeared in person. Near the conclusion of this second day, for purposes of scheduling, the Special Master asked Fulton County to identify the witnesses it planned to call on the final day of the hearing. Attorney Newman responded that it planned to call Joseph J. Sabia and Benjamin Cotton, but also indicated that the County “ha[d] some people from the EAC who have been subpoenaed as well as the Dominion [Chief Executive Officer (CEO)]” (8/30 Tr. at 458.)²⁵ This proffer prompted

²³ While Fulton County styled the filing to the Pennsylvania Supreme Court as an “emergency” the Special Master emphasizes that the filing did not reference Attorney Carroll’s medical condition, but instead repeated the same argument for stay that the Special Master denied by order issued August 23, 2023, *i.e.*, that the County will suffer harm if the impoundment hearing proceeds before the United States Supreme Court has the opportunity to rule on the County’s Petition for Writ of Certiorari.

It is unclear why this request was made on an emergency basis, when the County filed for certiorari in the United States Supreme Court on May 27, 2023, knew that an impoundment hearing was proceeding as of August 3, 2023, and was previously denied a stay on this requested basis on August 23, 2023.

²⁴ The Emergency Application for Reconsideration Regarding Emergency Application for Stay was Fulton County’s **fifth** request to delay the impoundment proceedings, and the second that was directed to the Pennsylvania Supreme Court.

²⁵ On August 18, 2023, Dominion filed an Objection to Fulton County’s Witness List seeking to strike the identification of, and preclude all testimony by, John Poulos, Founding President and CEO of Dominion. The filing noted that Fulton County had not served a notice to attend on counsel for Dominion requiring Mr. Poulos to appear, but asked the Court to quash any

objections from the Secretary and Dominion regarding whether the County had properly served notices to appear and/or subpoenas on the EAC witnesses and Dominion's CEO in accordance with the Special Master's August 25, 2023 service deadline and in conformance with the service requirements set forth in the Pennsylvania Rules of Civil Procedure. The Special Master asked Fulton County's counsel to provide proof of timely and proper service of said notices to attend and subpoenas, but Attorney Carroll, citing his health situation, advised he did not have that information with him and could only address that issue the following morning. (*Id.* at 463.) Accordingly, the Special Master advised the parties that the witness issue would be dealt with preliminarily the following day. (*Id.* at 464-65.)

The third and final day of the hearing convened on August 31, 2023, at 9:00 a.m., and began with an oral motion to continue proceedings from Attorney Newman, representing that his wife had gone into labor.²⁶ (8/31 Tr. at 8.) Attorney Newman maintained that a continuance was necessary as he had prepared to conduct direct examination of the County's witnesses scheduled to testify that day and Attorney Carroll was not prepared to do the same in his absence.²⁷ (*Id.* at 9.)

future notice that is properly served. By memorandum and order dated August 24, 2023, the Special Master denied Dominion's request without prejudice for Dominion to challenge any properly served notice to attend by appropriate motion. (*See* Special Master's Memorandum & Order, 8/24/2023.) On August 25, 2023, Dominion filed a separate Application to Quash, averring that no notice to attend had yet been served on counsel for Dominion and requesting quashal of "any Notice to Attend" that might be served on Dominion after the close of business on August 25, 2023, regarding Mr. Poulos's "participation in the August 28 hearing." Dominion Application to Quash at 1 & Wherefore Clause. At the end of the evidentiary hearing, the Special Master observed that no notice to attend had apparently been served on Dominion, and no motion to compel compliance with such notice was ever filed. (*See* 8/31 Tr. at 342-43; *infra* n.33.) Accordingly, the Special Master will dismiss Dominion's Application to Quash as moot.

²⁶ Attorney Newman's oral request for continuance was Fulton County's **sixth** request to delay the impoundment proceedings.

²⁷ In response, the Secretary noted, first, that it was learning of Attorney Newman's wife's labor simultaneously with the Special Master, and second, that on the first day of the hearing,

Alternatively, Attorney Newman proposed he leave the courtroom and conduct direct examination of the County's witnesses via video. (*Id.*) He also clarified that while he had a flight home scheduled for the following morning, September 1, 2023, he had not yet made any immediate travel arrangements. (*Id.* at 15-17.)

After congratulating Attorney Newman and considering the prejudice of adjourning the hearing on its final day, the Special Master provided the County with four options: (1) for Attorney Newman to continue until required to leave, at which point Attorney Carroll could proceed on behalf of the County; (2) for Attorney Stein, who remained counsel of record for the County, to appear and assist Attorney Carroll in Attorney Newman's absence; (3) for Attorney Newman to appear remotely, if possible, during his travel home; or (4) for the County to rest in the event it did not feel comfortable continuing with the hearing. (*Id.* at 18-19.)

The County chose to proceed with Attorney Newman. At this same time, the County sought permission for Attorney Carroll to leave the courtroom for additional time to prepare his argument on whether the County had properly served a notice to attend on Dominion's CEO, and subpoenas on the EAC witnesses. The Special Master granted the request and excused Attorney Carroll from the Courtroom. Attorney Carroll never ultimately argued the issue, as Attorney Newman orally requested permission for Attorney Carroll to be excused mid-morning to seek medical attention, which the Special Master granted. (*Id.* at 100.) The Special Master later discovered that around the same time Attorney Carroll had been excused due to his purportedly worsening medical condition, he filed "Fulton County's Second Emergency Motion for Reconsideration Regarding Order on Fulton

Attorney Newman asserted he could not proceed sans Attorney Carroll. Now, Fulton County's counsel was offering the "diametrical representation[]" that Attorney Carroll could not proceed sans Attorney Newman. (8/31 Tr. at 10.)

County’s Emergency Motion” in the Pennsylvania Supreme Court. (8/31 Tr. at 170-71.)²⁸

Later that afternoon, following the cross-examination of the County’s witness, Mr. Sabia, Attorney Newman again requested a stay of proceedings “to substitute escrow agents.” (*Id.* at 288.)²⁹ The Special Master denied the oral request for stay, and the hearing proceeded.

At the conclusion of the hearing, the Special Master read into the record an order from the Pennsylvania Supreme Court issued that afternoon, which provided as follows:

AND NOW, this 31st day of August, 2023, County of Fulton’s Emergency Application for a Stay Upon Special Master’s Denial of Same; Emergency Application for Reconsideration Regarding Order on Fulton County’s Emergency Application for a Stay Upon Special Master’s Denial of Same; and 2nd Emergency Motion for Reconsideration Regarding Order on Fulton County’s Emergency Motion for a Stay Upon Special Master’s Denial of Same are DENIED.

(*Id.* at 349-50 (quoting *County of Fulton v. Secretary of the Commonwealth*, (Pa., No. 3 MAP 2022, filed 8/31/2023).) Before adjourning, the Special Master granted

²⁸ The Second Emergency Motion for Reconsideration Regarding Order on Fulton County’s Emergency Motion was Fulton County’s **seventh** request to delay the impoundment proceedings, and the third that was directed to the Pennsylvania Supreme Court.

²⁹ Attorney Newman’s oral request for stay was Fulton County’s **eighth** request to delay the impoundment proceedings.

the County's request to file a closing statement on or before Tuesday, September 5, 2023.^{30, 31}

On September 5, 2023, Fulton County filed "Closing Arguments and Objections" reasserting its position that Pro V&V would be unfit to serve as escrow agent while continuing to promote its proposed agent, Cerberus. The County also represented that it had subpoenaed Dominion's CEO and the EAC witnesses, but that they refused to appear. (Closing Arguments and Objections at 6-7.) Though the County did not provide evidence that it had in fact subpoenaed Dominion's CEO,³² the County attached a letter from the EAC indicating that the EAC had received subpoenas via mail on Monday, August 28, 2023, but that the EAC would not comply with said subpoenas as they were improperly served. (*Id.*, Unmarked Ex. (EAC E-mail).) In its conclusion, the County stated:

without the compelled testimony, Fulton County will be deprived of its rights to substantive and procedural due process because it will be deprived of the right to examine these witnesses, whose testimony bears directly on the propriety of having the conflicted party, Pro V&V take control and custody of the Dominion Voting Machines.

³⁰ This request was granted largely in response to Attorney Newman's statement that he needed to discuss whether his clients continued to propose Cerberus as an appropriate escrow agent following the cross-examination of Mr. Sabia. *See infra* pp. 42-43. The Special Master also permitted the other parties to file closing statements, but clarified they were under no obligation to do so.

³¹ The Special Master notes, finally, that the County filed an application for stay in the United States Supreme Court on August 31, 2023. (No. 23-96, filed 8/31/2023.) The United States Supreme Court denied Fulton County's application for stay on September 12, 2023. (*Id.*, filed 9/12/2023.)

³² The County baldly asserts that "Dominion alleges they did not receive service. But they did receive the subpoena." (Closing Arguments and Objections at 7.)

(*Id.* at 9.) Notably, the County never filed a request or moved orally for the Special Master to compel Dominion’s CEO or the EAC witnesses to appear,³³ and failed to adduce any evidence that those witnesses had been properly served with subpoenas.

D. Regarding County’s Dilatory Conduct

Before summarizing the testimony and documentary evidence adduced at the hearing, the Special Master must address her deep concerns regarding the County’s attorneys’ continuous pattern of dilatory conduct throughout the impoundment proceedings. As detailed above, the County moved, either orally or in writing, to delay the impoundment proceedings no fewer than **eight** times. These repeated requests, which were regularly accompanied by varying and sometimes conflicting justifications, required the Special Master to take numerous recesses, delayed witness testimonies, and impaired the overall expediency and efficiency of the proceedings.

Unfortunately, this conduct is not novel to the impoundment proceedings, but has remained consistent in this litigation since the undersigned’s appointment as Special Master. The Special Master finds this continued behavior particularly disconcerting, as the Pennsylvania Supreme Court sanctioned the County and Attorney Carroll for a nearly identical pattern of behavior that took place during the contempt proceedings before the Special Master in November 2022. *See Fulton I*, 292 A.3d at 979 (“Fulton County and its various attorneys have engaged in a sustained, deliberate pattern of dilatory, obdurate, and vexatious conduct and have

³³ On the final day of the hearing, Attorney Newman orally advised that it had “come to [his] attention that a motion to compel has been filed against Dominion and the Secretary to produce their witnesses.” (8/31 Tr. at 341.) Attorney Newman did not present a copy of the alleged motion and admitted he had not seen it, citing his lack of access to the Court’s electronic filing system; he clarified that it was “[his] understanding that a motion to compel was filed.” (*Id.* at 324.) No motion to compel was ever docketed.

acted in bad faith throughout these sanction proceedings. Taken as a whole, this behavior prompts us to sanction both the County and Attorney Carroll.”). Notwithstanding the Supreme Court’s lengthy admonishment of Attorney Carroll’s behavior and the imposition of joint and several responsibility for the opposing parties’ counsel fees during the period for which Attorney Carroll shared responsibility for the misconduct, *see Fulton I*, 292 A.3d at 1013-19, the County, led again by Attorney Carroll, has persisted in such behavior.

In the face of this unyielding litigation conduct, the Special Master continually sought to provide the County with procedural fairness and the opportunity to be heard by providing the County’s attorneys with numerous options in order to proceed with its case through the conclusion of the hearing. These options ranged from permitting last-minute remote appearances, to allowing the County to call on alternative counsel of record, and even retaining new counsel. Because of these accommodations, and despite the County’s attorneys’ conduct, the impoundment hearing proceeded mostly as scheduled, and the Special Master is satisfied that the evidence of record enables her to discharge her duty to appoint a neutral third-party escrow agent. The Special Master, however, is left with no choice but to explicitly admonish Attorney Carroll for his continued bad-faith litigation conduct and warn Attorney Newman that he proceeds under the sponsorship of Attorney Carroll in these proceedings at his own peril.

III. TESTIMONY AND EVIDENCE

Ryan Macias

The Secretary first presented the testimony of Ryan Macias, whom the Secretary offered and qualified as an expert in the fields of election technology and

security.³⁴ Mr. Macias is the owner and founder of RSM Election Solutions LLC. (8/28 Tr. at 85.) Mr. Macias served as Senior Election Technology Analyst for the California Secretary of State from 2006 to 2016, in which role he assisted with the development and promulgation of regulations governing the certification of companies authorized to hold voting equipment in escrow. (Ex. 1 appended to Sec’y Ex. 5 (Mr. Macias’s Curriculum Vitae); 8/28 Tr. at 94-97.) Mr. Macias has also held positions with the EAC, including as its Acting Director of Testing and Certification. (Mr. Macias’s Curriculum Vitae at 1-2.) He explained that a VSTL is an entity accredited by the EAC to test voting systems against EAC standards. (8/28 Tr. at 90-91.) Mr. Macias participated in producing the VSTL Program Manual, which contains the standards applicable to the EAC’s accreditation of VSTLs. (*Id.* at 93; *see also* Sec’y Ex. 11 (VSTL Program Manual, version 2.0, May 31, 2015).)

Mr. Macias described the process by which the EAC accredits and monitors VSTLs. An applying entity must first obtain accreditation from the International Organization for Standardization (ISO) and the National Institute of Standards and Technology (NIST) regarding laboratory testing and calibration generally, which are not specific to election technology. (8/28 Tr. at 104-06.) Then, the entity applies for accreditation by the EAC. (*Id.*) Because VSTLs take possession of and test voting equipment on behalf of manufacturers, the applicable EAC standards specifically require impartiality. (*Id.* at 113-14). The EAC’s VSTL program standards prohibit financial conflicts of interest (both for the entity as a whole and for its employees) and perceived conflicts of interest; they also prohibit VSTLs from employing felons or those convicted of offenses involving fraud, misrepresentation,

³⁴ (*See* Special Master’s 8/23/23 Order (granting the Secretary’s Motion in Limine No. 2 to qualify Mr. Macias as an expert and admit his prior testimony offered in the November 2022 contempt hearing); *see also* Sec’y Ex. 5 (July 28, 2023 Affidavit of Ryan Macias).)

or deception. (*Id.* at 116-17; Sec’y Ex. 11 (VSTL Program Manual) §§ 2.5-2.8, 2.19.). VSTLs are also accredited for technical competence and the environmental controls of their facilities. (8/28 Tr. at 108.)

Mr. Macias further explained that the ISO, NIST, and the EAC periodically audit accredited entities, including through unannounced site visits, to ensure continued compliance with the accreditation standards. (*Id.* at 106-09, 118-19.) Mr. Macias opined that Pro V&V’s EAC accreditation for impartiality directly bears on its candidacy as a neutral escrow agent as ordered by the Supreme Court. (*Id.* at 113-14.) He stated that businesses not formally accredited would not be subject to ongoing monitoring for impartiality as VSTLs are. (*Id.* at 115.)

Mr. Macias testified that Pro V&V is one of two EAC-accredited VSTLs and was first accredited in 2015. (*Id.* at 100; *see also* Sec’y Exs. 2 & 7 (Pro V&V Certificates of Accreditation, U.S. Election Assistance Comm’n, issued Feb. 1, 2021, and Dec. 21, 2022, respectively.) During his time as an EAC official, Mr. Macias conducted audits of Pro V&V, including on-site inspections of its facility, to ensure its compliance with the EAC’s accreditation requirements. (8/28 Tr. at 98-99.)

Mr. Macias had reviewed the Supreme Court’s opinion in *Fulton I* requiring impoundment of the Voting Equipment. (*Id.* at 85.) In his expert opinion, Pro V&V is “very qualified” to serve as the escrow agent for several reasons. (*Id.* at 120-25.) First, Pro V&V’s business requires that it remain accredited and audited for impartiality; it thus has a strong business interest in avoiding any violation of impartiality standards that would jeopardize its accreditation. (*See id.* at 125-26.) Second, Pro V&V has the technical capability to ensure proper environmental storage conditions for the Voting Equipment, including appropriate temperature and

humidity levels that prevent corrosion or loss of data. (*Id.* at 129-34.) Third, Mr. Macias opined, Pro V&V has experience in maintaining and documenting the chain of custody of electronic voting equipment. (*Id.* at 134-36.) This requires specialized knowledge regarding various seals, locks, and serial numbers present on the Voting Equipment, which are designed to prevent or detect tampering; Pro V&V has the requisite specialized knowledge to understand and properly address those protective measures. (*Id.* at 136-38.) In order to establish a baseline condition of the Voting Equipment for purposes of recording a chain of custody during escrow, Pro V&V would perform an initial inventory of the Voting Equipment and its locks and seals, determining which seals, if any, are missing or have been broken. (*Id.*) The relevant locks and seals are analog devices, so the Voting Equipment would not need to be powered on, plugged in, or connected to any external electronic devices during the initial inventory or the remainder of the court-ordered impoundment. (*Id.* at 86-87, 137-38.)

Regarding Pro V&V's cost estimate for the escrow, Mr. Macias explained that that Voting Equipment would require a room about 10 or 12 feet square for storage. (*Id.* at 150.) Based on his prior experience with storage prices for much smaller pieces of voting equipment, Mr. Macias opined that Pro V&V's monthly storage cost estimate was reasonable and significantly below what he would expect given the size of the Voting Equipment. (*Id.* at 147-50.)

Finally, Mr. Macias stated that he was not familiar with Cerberus until the County proposed it as an escrow agent. (*Id.* at 150-51.) Mr. Macias had reviewed Cerberus's website and all other information the County filed in support of its proposal, and he opined that Cerberus is not qualified to serve as escrow agent. (*Id.* at 151-53.) Mr. Macias explained that Cerberus's experience appears not to relate

to election technology, and he noted that the Voting Equipment is designated as critical infrastructure technology by the U.S. Department of Homeland Security, which in his opinion requires that any escrow agent have specialized expertise with election technology. (*Id.* at 153-59.)

On cross-examination, Mr. Macias conceded that if a VSTL or its employees had a financial interest in a voting system manufacturer, that would create a conflict of interest that could undermine the VSTL's independence. (*Id.* at 181-82.) He elaborated that VSTLs are monitored for impartiality to ensure they uniformly apply the EAC's voting system standards to manufacturers, without favoring a manufacturer's interests. (*Id.* at 251-52.) He acknowledged that Pro V&V's facility is located in Alabama, and that storage closer to Pennsylvania would be more convenient, but only if the Voting Equipment required access on an ongoing basis during the impoundment. (*Id.* at 188, 191-92.)

Mr. Macias also explained that Pro V&V's EAC accreditation was originally issued on February 24, 2015, and that that accreditation remains effective until revoked by a vote of the EAC pursuant to Section 231 of the Help America Vote Act of 2002 (HAVA), 52 U.S.C § 20971(c)(2).³⁵ (*Id.* at 257-62.) However, Mr. Macias acknowledged that Section 3.6.1.3 of the 2015 VSTL Program Manual states that EAC accreditations expire after a two-year period, and that a previously issued certificate of accreditation for Pro V&V indicated that it was effective only until February 24, 2017, two years from the date of issuance. (8/28 Tr. at 257-69; *see also* Sec'y Ex. 2 at 2.) Mr. Macias described this conflict between HAVA and the VSTL Program Manual as an "administrative error." (8/28 Tr. at 266-69). He

³⁵ It states, in relevant part: "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the [EAC]." 52 U.S.C. § 20971(c)(2).

explained that the EAC later clarified that the manual's imposition of a two-year effective period was inconsistent with HAVA, and the EAC considered Pro V&V to have always been accredited and in good standing with the EAC since its initial accreditation in 2015. (*Id.* at 262, 275, 289-92.)

On redirect examination, Mr. Macias opined that the impoundment would require the ongoing presence of persons nearby the secure location containing the Voting Equipment, in order to detect and prevent unauthorized access to the Voting Equipment. (*Id.* at 320-22.) Maintenance of the chain of custody for the Voting Equipment during impoundment would require the escrow agent to have experience handling voting technology, so that it could monitor whether tamper-evident seals on the Voting Equipment remained intact; however, securing the room containing the Voting Equipment and monitoring access to that room could obviate the need for any access to the Voting Equipment other than by order of Court. (*Id.* at 323-25.)

Eldon Martin

The Secretary next³⁶ presented the testimony of Eldon Martin, a Senior IT Support Technician for Elect IT Solutions, which provides IT services to the County under contract. (8/30 Tr. at 13-17.) Mr. Martin was employed by the County as its Director of Technology from 2008 to 2014; upon leaving County employment and continuing to the present, he served essentially the same functions for the County under its contract with his employer. (*Id.*) He has performed technical work on the County's voting machines, including employee training and logic and accuracy testing. (*Id.* at 17-18.) In providing election-related IT services to the County, Mr.

³⁶ The Secretary presented the testimony of Fulton County Commissioner Paula J. Shives on August 29, 2023, during a break in the cross-examination of Mr. Macias, prior to Mr. Martin's testimony that began on August 30, 2023, in order to accommodate Commissioner Shive's schedule. Commissioner Shives's testimony is summarized *infra* along with that of the other Commissioners, who testified on August 30, 2023.

Martin has communicated with the Commissioners, Director of Elections Patti Hess, other County employees and employees of his firm, voting system manufacturers, and personnel from the Pennsylvania Department of State. (*Id.* at 21-30.)

Mr. Martin testified that he was not informed of the July 2022 inspection of the Voting Equipment by Speckin Forensics when it occurred; he first became aware of it several months prior to testifying while reading a news article. (*Id.* at 41-43.) He testified that he did not become aware of the Supreme Court's order requiring impoundment of the Voting Equipment until the evidentiary hearing began on August 28, 2023. (*Id.* at 63-64.) He stated he is not familiar with Cerberus or Mr. Sabia, its owner, and that he had no communications with County personnel regarding Cerberus or Mr. Sabia until August 29, 2023, the day before Mr. Martin's testimony. (*Id.* at 49-57.) During that conversation on August 29, he discussed the storage requirements of the Voting Equipment with Ms. Hess and another employee of his firm. (*Id.*) Based on that conversation, Mr. Martin stated his belief that neither Ms. Hess nor Mr. Martin's coworker knew the identity of the entity the County had proposed as escrow agent prior to the commencement of the August 28, 2023 evidentiary hearing. (*Id.* at 62-63.)

Mr. Martin stated he did not know who first suggested Cerberus, or whether the Commissioners had discussed Cerberus. (*Id.* at 64-66.) He testified that, based on his past experiences working with the County's voting machines, it would be possible that he would have a role in transferring the Voting Equipment to an escrow agent, but no county personnel had communicated with him about that role. (*Id.* at 66-67.) Mr. Martin searched his email records for documents responsive to the Secretary's subpoena but found none. (*Id.* at 48-49.)

Robert Walker

The Secretary next presented the testimony of Robert Walker, Pro V&V's Program Manager.³⁷ (8/30 Tr. at 82-83.) Mr. Walker oversees all of Pro V&V's projects and engineers, was primarily responsible for its proposal to provide the impoundment services at issue here, and had reviewed the Supreme Court's opinion requiring impoundment. (*Id.* at 83-92.) Mr. Walker testified that, if Pro V&V were appointed as escrow agent, he would oversee the escrow services, and Pro V&V would never power on, or connect external devices to, the Voting Equipment. (*Id.* at 92-93.)

Mr. Walker stated that he is familiar with the Voting Equipment, which consists of 15 Image Case X ballot-marking device components, 2 Image Cast Central components, and 3 Election Management System components. (*Id.* at 93-95.) He had reviewed the agreement between Dominion and the County that identifies the Voting Equipment, which was admitted into evidence. (*Id.* at 96-97; *see* Sec'y Ex. 34.01.)

Mr. Walker explained that, if Pro V&V were selected, two Pro V&V employees would drive to Fulton County to collect the Voting Equipment, record the serial numbers and photograph it, securely package it, and then drive it directly to Pro V&V's sole facility in Huntsville, Alabama, without making other stops. (8/30 Tr. at 97-98.) Pro V&V is familiar with the location of the various seals, locks, and serial numbers on the Voting Equipment, as well as the packaging requirements to transport it safely. (*Id.* at 103-04.) Pro V&V would store the Voting Equipment in a secure laboratory at its facility, within a single, dedicated room that would

³⁷ Mr. Walker testified remotely via WebEx video conference. *See* Special Master's 8/23/23 Order (granting Secretary's application requesting leave to present Mr. Walker's testimony remotely).

contain no other items. (*Id.* at 104-05.) The building is secured with badge-access doors, interior and exterior security cameras, and interior locked doors to the laboratories within the facility. (*Id.* at 105-06.) The facility's HVAC system is designed to monitor and maintain precise control over the temperature and humidity in each room. (*Id.* at 106-07.) Pro V&V could limit access to the secure room containing the Voting Equipment to a single Pro V&V employee; at least one employee would need access in case of a security breach, act of God, water leak, fire, or battery leak from the Voting Equipment itself. (*Id.* at 108-112.)

Mr. Walker testified that Pro V&V would maintain the chain of custody for the Voting Equipment using a digital record that could be shared with the parties and the Court, as well as a backup physical copy. (*Id.* at 112-14.) He stated that, if the Court were to order any further testing of the Voting Equipment, Pro V&V has the capability to host such testing at its facility without the need to move the Voting Equipment. (*Id.* at 114-15.)

Regarding impartiality, Mr. Walker stated that NIST and the EAC audit Pro V&V for impartiality in order to minimize conflicts of interest. (*Id.* at 116-17.) If a problem occurs during testing, Pro V&V informs the manufacturer and includes the problem in its report, but it does not assist the manufacturer. (*Id.*) Mr. Walker confirmed that Pro V&V is periodically audited by NIST and the EAC for impartiality. (*Id.* at 116-17.)

Regarding cost, Mr. Walker stated that Pro V&V would charge \$6,640 for pickup of the Voting Equipment, which includes the employees' time traveling to and from Fulton County. (*Id.* at 118-19.) The same charge would apply when Pro V&V returns the Voting Equipment to Fulton County once the impoundment ends. (*Id.*) Pro V&V would charge a storage fee of \$850 per month. (*Id.* at 120.; *see also*

Sec’y Ex. 43 (Pro V&V’s charges for escrow services).) Pro V&V will continue to honor those cost estimates, which were disclosed during the parties’ negotiations in May 2023 and have remained unchanged. (*See* 8/30 Tr. at 120; Secretary’s Application to Appoint Escrow Agent, filed July 28, 2023, Ex. 1.; Sec’y Ex. 43.)

On cross-examination, Mr. Walker described Pro V&V’s facility as comprising 11 separate laboratories within a single building, each laboratory being independently locked. (8/30 Tr. at 133-34.) Pro V&V leases the real property for its facility from Pro Cog LLC, a distinct corporate entity owned by several Pro V&V employees or officers including Mr. Walker. (*Id.* at 129-32.) Pro V&V has 12 employees, whom Mr. Walker identified by name. (*Id.* at 135, 139-40.) Mr. Walker stated that employees of Dominion have been present in Pro V&V’s facility and accessed electronic voting machines therein, though not during an active test on the machines. (*Id.* at 140-43.) Mr. Walker conceded that manufacturers’ employees—including employees of Dominion—are permitted to access voting machines to address errors during testing at Pro V&V’s facility, provided that testing is halted during their access. (*Id.* at 148-51.) Pro V&V sometimes contacts a manufacturer when its machine fails a test to allow its employees to correct the error, which is permitted per Pro V&V’s testing protocols. (*Id.* at 153-55.)

Mr. Walker conceded that Clay Parikh performed security testing on voting machines within Pro V&V’s facility a single time in 2015 or 2016. (*Id.* at 144-48.) At the time of the testing, Mr. Parikh worked for a “temp agency” and was not a Pro V&V employee. (*Id.* at 146.) The entity that employed Mr. Parikh at the time was not accredited by the EAC. (*Id.* at 261.)

Mr. Walker explained that voting equipment manufacturers, such as Dominion, contract with and pay VSTLs for testing; the VSTL submits a testing

report and recommendation to the EAC regarding certification of the equipment. (*Id.* at 178-80, 182-87.) The price of the contract varies with the size and complexity of the voting system being tested. (*Id.* at 186-87.) Pro V&V currently has a testing contract with Dominion and has had other recent contracts with Dominion. (*Id.* at 189-90.) Mr. Walker identified six different election manufacturers with which Pro V&V does business regarding EAC certification, but he was not familiar enough with Pro V&V's finances to estimate the amount of revenue Pro V&V derives from its contracts with Dominion specifically.³⁸ (*Id.* at 232, 227-30, 237-38.) None of Pro V&V's employees has previously been employed by Dominion. (*Id.* at 256.)

Mr. Walker acknowledged that the VSTL Program Manual provides that EAC accreditation is valid for a period of two years only, but explained Pro V&V's belief that it retained continued good standing with the EAC notwithstanding the manual's language, such that its accreditation has never lapsed. (*Id.* at 292-96.)

On redirect examination, Mr. Walker testified that it would be possible to install a security camera within the room where the Voting Equipment would be kept, and store the physical key to that room in a lockbox to which only a single Pro V&V employee would have access. (*Id.* at 305-07.) He stated that all activities by Dominion employees at Pro V&V's facility were conducted in accordance with EAC policies. (*Id.* at 307.) He also stated that the amount that manufacturers pay Pro V&V pursuant to testing contracts does not depend upon the results of the testing or on whether Pro V&V recommends certification to the EAC. (*Id.* at 308-09.)

³⁸ The Special Master sustained a joint objection by Dominion and the Secretary to questions asking Mr. Walker to estimate the amount of revenue Pro V&V derives from its contracts with Dominion, on the basis that Mr. Walker testified he lacks a foundation to answer those questions. (8/30 Tr. at 227-30.)

Patricia Hess

The Secretary presented the testimony of Patricia K. Hess, Election Director for the County. (8/30 Tr. at 318.) Ms. Hess stated that, as the person responsible for running the County's elections, she is aware of the location of the Voting Equipment at all times, and oversees logic and accuracy testing and poll worker training regarding the Voting Equipment. (*Id.* at 319.) Ms. Hess testified that the Voting Equipment has been stored in several different rooms since the 2020 General Election and is now contained in a locked storage room. (*Id.* at 328-32.) Ms. Hess produced the following documents in accordance with the subpoena the Secretary served on her,³⁹ which documents the Special Master admitted into evidence: a "Sign in Sheet to Locked Room" recording who had access to the room in which the Voting Equipment was stored (Sec'y Ex. 47); a portion of a ledger titled "Voting Equipment," which Ms. Hess explained she created to make notes regarding access to the Voting Equipment (Sec'y Ex. 48); and a signed document regarding access to the Voting Equipment that was planned for January 14, 2022 (Sec'y Ex. 49). (*See* 8/30 Tr. at 338-59.)

Ms. Hess has served as the County's Director of Elections since 2020. (*Id.* at 361.) She had not reviewed the *Fulton I* decision and only became aware of it through reading the *Fulton County News*. (*Id.* at 367-68.) She had never heard of Speckin Forensics (which unlawfully inspected the Voting Equipment in July 2022) until it was mentioned during the instant impoundment hearing, (*id.* at 359-60), and also had never heard of Cerberus or Mr. Sabia prior to the hearing. (*Id.* at 361.) She previously discussed the impoundment proceedings with Mr. Martin, but they did not discuss Cerberus because they did not know of it. (*Id.* at 366-67.) Ms. Hess

³⁹ The Special Master notes that the County did not file any motion to quash or for a protective order in response to the subpoena served on Ms. Hess.

testified she has not had any other communications regarding the impoundment arrangement. (*Id.* at 369.) No County officials or personnel had informed Ms. Hess as to whether she would be involved in the transfer of the Voting Equipment to the appointed escrow agent. (*Id.* at 370-71.)

Commissioner Shives

The Secretary also presented the testimony of the three Fulton County Commissioners, beginning with Commissioner Paula J. Shives.⁴⁰ She testified that, to her knowledge, Michigan Attorney Stefanie Lambert (Attorney Lambert)⁴¹ was still representing the County in this matter. (8/28 Tr. at 222.) Commissioner Shives was aware that Attorney Lambert had been recently indicted but did not know the

⁴⁰ At the outset Commissioner Shives's testimony, counsel for the County stated that it appeared Commissioner Shives had communicated directly with counsel for the Secretary, and counsel for the County insisted they must speak with Commissioner Shives prior to her testimony regarding those communications. (8/28 Tr. at 170-71, 194-95, 199-201.) Counsel for the Secretary responded that Commissioner Shives had approached him in the courtroom regarding her availability to testify on later dates, which he communicated to the Special Master. (*Id.* at 195.) Upon the Special Master's inquiry, Commissioner Shives stated she felt no need to speak to Attorney Carroll before testifying, and that Attorney Carroll "has not acted as he is my attorney before." (*Id.* at 203.) Later, Commissioner Shives testified that she was not under the impression that Attorney Newman represented her in either a personal or official capacity, and that to her knowledge the Commissioners had not voted to retain Attorney Newman. (*Id.* at 210.) The Special Master notes that the "risk of a conflict between Attorney Carroll and his clients" appears to persist since the November 2022 contempt proceeding, despite the Supreme Court's exhortation to Attorney Carroll to address the conflict with his clients, and with Commissioner Shives in particular. *Fulton I*, 292 A.3d at 1001 n.105.

⁴¹ As the Special Master noted in the November 18, 2022 Report and Recommendations to our Supreme Court, Attorney Lambert also uses the last name Junttila. See *Fulton I*, 292 A.3d at 1051-52. The Special Master's Findings of Fact Nos. 79-81 indicated that Attorney Lambert was sanctioned by a federal court in Michigan and was subject to disciplinary grievances in Michigan. The Special Master notes that the United States Court of Appeals for the Sixth Circuit has since reversed the sanctions that were imposed on Attorney Lambert. *King v. Whitmer*, 71 F.4th 511, 531 (6th Cir. 2023). Further, at least one of the formal disciplinary actions against Attorney Lambert was dismissed with prejudice. *Grievance Administrator v. Junttila* (Mich. Att'y Discipline Bd., No. 23-31-GA, dated Aug. 14, 2023).

nature of the charges. (*Id.* at 225-26.)⁴² She was not familiar with Cerberus or Mr. Sabia and did not recall the Commissioners having discussed them at any meeting. (*Id.* at 227-28.) Commissioner Shives testified that the County received correspondence “from the state” regarding a potential escrow agent, which the Commissioners discussed during a meeting, but did not recall the name of the entity discussed or the Commissioners making any decision regarding the escrow agent at that meeting. (*Id.* at 230-32.) That meeting occurred on or about May 30, 2023, and Commissioner Shives did not recall any subsequent discussion among the Commissioners regarding escrow agents. (*Id.* at 232-33.)

Commissioner Shives did not know who first suggested Cerberus to the County or the other Commissioners as a potential escrow agent. (*Id.* at 237-38.) She was not familiar with any of the details of Cerberus’s proposed service as agent, including location, security capability, or price. (*Id.* at 240-42.) Commissioner Shives did not know whether any third party had agreed to reimburse the County for the costs of Cerberus acting as escrow agent. (*Id.* at 241.)

Commissioner Ulsh

The Secretary also presented the testimony of County Commissioner Stuart L. Ulsh. (8/30 Tr. at 378-79.) Commissioner Ulsh confirmed that Attorney Lambert has represented the County in election-related matters, that she was present during the hearings held in November 2022, and that the County had not terminated its

⁴² Counsel for the Secretary questioned Commissioner Shives, Commissioner Ulsh, and Mr. Sabia on their knowledge surrounding Attorney Lambert’s criminal indictment in Michigan. *See infra* pp. 36, 40. The Special Master specifically notes that like all criminal defendants, Attorney Lambert is presumed innocent until proven guilty of the charges in the indictment. *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895) (“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”)).

attorney-client relationship with her since November 2022. (*Id.* at 386-95.) Commissioner Ulsh stated that he was not aware that Attorney Lambert had been criminally indicted in Michigan on felony charges relating to unlawful access to voting machines and damage to voting machines. (*Id.* at 396-97.) He stated that the Commissioners did not vote on whether to engage Attorney Newman as counsel.⁴³ (*Id.* at 401.) Commissioner Ulsh testified he first became aware of Cerberus and Mr. Sabia during discussions with his attorneys, including Attorney Lambert, about potential escrow agents. (*Id.* at 406-07.) He was not aware of any discussion by any County Commissioner or official regarding the impoundment order or potential escrow agents, other than the discussion he personally had with counsel. (*Id.* at 408-09.)

When asked what due diligence he or other County officials engaged in to determine whether to recommend Cerberus as escrow agent, Commissioner Ulsh testified that he “just talked to [his] attorneys” and that “[he] personally . . . didn’t research a lot about it, just what [he] talked about with [his] attorney.” (*Id.* at 414-15.) Commissioner Ulsh was not aware of any discussions regarding third-party payment for Cerberus’s services as escrow agent. (*Id.* at 421-22.) When asked whether his office requires him to spend public money wisely, Commissioner Ulsh stated he “do[esn’t] know what wisely means,” but he conceded that he generally would consider the cost of a service before spending public funds on it. (*Id.* at 425-26.) He stated, however, that he did not know how much Cerberus’s service would cost, explaining that he “didn’t have a reason to ask. We didn’t get that far yet.” (*Id.* at 426.) He also testified that he was not aware the County’s attorneys had filed

⁴³ In response to further questions posed to Commissioner Ulsh regarding the retention of counsel, Attorney Newman represented that Attorney Lambert made the decision to hire Attorney Newman. (*Id.* at 405.)

proposals recommending Cerberus because he “didn’t think it would move that fast.” (*Id.*) When asked why he never interviewed Mr. Sabia to determine whether he could serve as escrow agent, Commissioner Ulsh testified that he “d[idn’t] think this is going to be [his] decision.” (*Id.* at 427.) He also stated the County had not considered other potential escrow agents. (*Id.* at 432.)

On cross-examination, however, Commissioner Ulsh stated that the County had considered one other potential agent besides Cerberus, though he could not recall its name. (*Id.* at 435-37.) He confirmed that he agreed to propose Cerberus. (*Id.* at 433-34.)

Commissioner Bunch

Finally, the Secretary presented the testimony of County Commissioner Randy H. Bunch, who stated that his testimony would be substantially similar to that of Commissioner Ulsh.⁴⁴ (8/30 Tr. at 439-42.) He confirmed that the County’s attorneys recommended that the County propose Cerberus, and that the Commissioners did not independently investigate Cerberus beyond discussions with counsel. (*Id.* at 447-48.) Commissioner Bunch conceded that he did not consider any scope of work or fee schedule. (*Id.* at 452.) When asked whether the Commissioners had considered the cost of the escrow services in making a proposal, Commissioner Bunch simply stated: “We don’t know who the Court is going to pick.” (*Id.* at 453.)

Joseph Sabia

In support of its proposal, the County presented the testimony of Joseph J. Sabia, Jr., part owner and Chief Financial Officer of Cerberus. (8/31 Tr. at 24, 190-

⁴⁴ Commissioner Bunch identified one question on which his answer would differ, but the Special Master struck his responsive testimony on the Secretary’s motion based on attorney-client privilege. (8/30 Tr. at 442-44.)

91.) Mr. Sabia testified that, during his prior military service, he held a security clearance and acted as a courier of secret and/or classified documents and hard drives. (*Id.* at 29-32.) Specifically, he stated that he inventoried, handled, and securely stored electronic data storage devices used in military aircraft. (*Id.* at 32-45.) This included maintaining a log of access to the secured devices and storing them at particular temperature and humidity levels based on the manufacturer’s specifications for the devices. (*Id.* at 36-37, 44.) He testified that, in later private employment, he transported sensitive legal documents and medical records. (*Id.* at 46-47.)

Mr. Sabia testified that he co-founded Cerberus in 2019, together with his current business partner Kenneth L. Smith. (*Id.* at 47-48.) He testified about Cerberus’s and his own experience⁴⁵ providing services, which include security services during and after natural disasters, consultations to improve the physical security of clients’ buildings through installation of security cameras and other devices, and personal security services. (*Id.* at 48-69.) Mr. Sabia testified that Cerberus’s primary facility is in Florida. (*Id.* at 76.) He stated that Cerberus has not previously done business with Dominion or the Secretary. (*Id.* at 69-70.)

Regarding cost, Mr. Sabia testified that Cerberus typically charges a minimum “service fee” of \$75 per hour to secure items, apart from the cost of the storage space

⁴⁵ In the midst of Mr. Sabia’s direct testimony, the County moved to qualify him as an expert witness. (8/31 Tr. at 70.) The Special Master sustained the Secretary’s objection to that qualification, in which Dominion joined, on the basis that the County’s witness list offered Mr. Sabia as a fact witness regarding Cerberus’s qualifications and experience, and lacked any notice that he would testify as an expert. (*Id.* at 74.) Thus, in order to avoid unfair surprise and prejudice to the Secretary from the County’s *post hoc* request for expert qualification, and consistent with Paragraph 2 of the Special Master’s Scheduling Order requiring the witness list and “the curriculum vitae . . . for any expert witness” no later than August 14, 2023 (Special Master’s Order, 8/3/2023 ¶ 2), the Special Master allowed Mr. Sabia to continue testifying as a fact witness only. (8/31 Tr. at 74.)

itself; he stated there could be an additional \$50 hourly cost for security if additional persons were required to participate. (*Id.* at 83.) Renting a climate-controlled storage space would cost about \$200 per month. (*Id.* at 83-84.) He appeared to testify that transportation costs could range from \$500 if transported within eastern Pennsylvania to \$4,500 if transported to Cerberus’s facility in Florida. (*Id.*)

Mr. Sabia admitted that he did not know what the Voting Equipment looks like or what its components are, but nevertheless opined that Cerberus could maintain a paper chain of custody for the Voting Equipment and safely transport the Voting Equipment, relying on the manufacturer’s specifications. (*Id.* at 85-87.) He explained that, prior to transport, Cerberus would secure the Voting Equipment in “bubble wrap . . . so they don’t smash, they’re not touching each other . . . , they won’t tip over along those lines.” (*Id.* at 86.)

Mr. Sabia further testified that Cerberus has no conflicts of interest in holding and securing the Voting Equipment, and would comply with court orders and federal and state law regarding the Voting Equipment. (*Id.* at 87-88.)

On cross-examination, Mr. Sabia confirmed that he does not currently hold a governmental security clearance. (*Id.* at 92.) He explained that his employment duties prior to his founding of Cerberus included responding to workplace accidents and transporting paper files. (*Id.* at 97-100.)

Mr. Sabia further testified that he had not reviewed the Supreme Court’s April 19, 2023 Opinion in *Fulton I*, and that Fulton County’s counsel had not informed him of its content. (*Id.* at 103, 131-32.) He stated that Attorney Carroll, Attorney Newman, and “Ste[f]anie Lambert” asked him to testify at the hearing. (*Id.* at 104.) Attorney Lambert was the first person to contact him about Cerberus potentially serving as the escrow agent. (*Id.* at 121-22.) Mr. Sabia believed she did so “based

on [Cerberus's] past performance with her,” with which “[s]he was happy.” (*Id.* at 121.) Mr. Sabia stated that he communicated with Attorney Lambert by telephone at 10:00 p.m. on the night before his testimony at the evidentiary hearing, and also texted her the morning of his testimony. (*Id.* at 106-07.) He initially stated that his first communication with Attorney Lambert was in June 2022, but then stated this occurred in November 2022. (*Id.* at 109, 115-16.) Finally, Mr. Sabia clarified a third time that the November 2022 text was not from Attorney Lambert, but was instead from “[t]he individual that hired . . . and that paid for” personal-security services he rendered at Attorney Lambert’s request in an unrelated matter in Michigan in November 2022. (*Id.* at 116-17.) Mr. Sabia stated he was not aware that Attorney Lambert had been indicted in Michigan. (*Id.* at 150-51.)

Regarding his communications with the County in this matter, Mr. Sabia initially stated that he first sent his resume to the County on August 25, 2023, the Friday before the evidentiary hearing began. (*Id.* at 120.) He then corrected himself and stated that he first sent his resume to Attorney Lambert on August 16, 2023. (*Id.* at 121; *accord id.* at 133.) He did not have any other communications with County officials or counsel about this matter until August 25, 2023. (*Id.* at 122.) Mr. Sabia stated he was not aware that the County had proposed Cerberus as escrow agent at least two months before August 16, 2023,⁴⁶ and stated that he had not reviewed the County’s July 28, 2023 filing proposing Cerberus as escrow agent and attaching Mr. Sabia’s resume. (*Id.* at 280-81; *see* Fulton County’s Response to Dominion’s Application for Appointment of Third-Party Escrow Agent, filed July 28, 2023, at 4

⁴⁶ The County apparently first mentioned Cerberus in a letter from Attorney Carroll that the Secretary received June 13, 2023. In the letter, Attorney Carroll represented that “Cerberus Dynamic Solutions is a veteran owned company **willing** to hold in trust the Dominion equipment owned by Fulton County.” (Secretary’s Application to Appoint Escrow Agent, filed July 28, 2023, Affidavit of Robert A. Wiygul, Ex. 5 (emphasis added).)

& Ex. 4.) He testified that he did not have any communications with the Commissioners or County officials, and that he “d[oes not] even know who” Commissioner Ulsh is. (8/31 Tr. at 153.)

Mr. Sabia acknowledged that Cerberus’s website describes its business as providing physical security and personal security in a range of contexts, including after natural disasters, during construction of buildings, during workplace disputes, and at sporting events. (*Id.* at 187-200.) Mr. Sabia stated he is certified to possess a firearm on the job in Pennsylvania pursuant to Act 235⁴⁷ and often does carry a firearm. (*Id.* at 201, 204.) He stated that no Cerberus employees or officers are subject to auditing by governmental agencies other than for tax purposes. (*Id.* at 207-08.)

Mr. Sabia agreed that he did not know anything about the Voting Equipment and has never had any experience with electronic voting machines other than as a voter himself. (*Id.* at 208-09.) He admitted that he could not identify the Voting Equipment if he were shown a photograph of it, other than by “t[aking] a guess.” (*Id.* at 208-10.) He testified: “The only thing I know about voting machines, you put your ballot in, it spits out a receipt. That’s as far as my knowledge goes.” (*Id.* at 211-12.) He had not reviewed any documents that list or itemize the Voting Equipment and could not recall any information about the Voting Equipment other than news coverage. (*Id.* at 212.) Mr. Sabia had not, prior to the hearing, considered how the Voting Equipment should be transported properly or how Cerberus would acquire possession of it. (*Id.* at 213-16.) He had “no idea” about the location of

⁴⁷ Act of October 10, 1974, P.L. 705, *as amended*, 22 P.S. §§ 41-50.1 (Act 235). Act 235 provides “for the education, training and certification of . . . privately employed agents who, as an incidence to their employment, carry lethal weapons.” Section 2 of Act 235, 22 P.S. § 42(b).

serial numbers on the Voting Equipment, (*id.* at 216), and did not know whether the Voting Equipment contained tamper-evident seals, (*id.* at 217-18).

Mr. Sabia conceded he had never made any specific proposals as to the type of room in which the Voting Equipment would be stored. (*Id.* at 279.) Cerberus’s sole physical location is an 800-square-foot converted efficiency apartment in Florida that now serves as its office. (*Id.* at 219-20.) Mr. Sabia was not familiar with the concept of states requiring corporate entities to register to do business in the state, but also stated that Cerberus is “in the process” of being registered in Pennsylvania. (*Id.* at 222.) Regarding price, Mr. Sabia stated that he could not “give . . . an honest price” without knowing where the Voting Equipment would be stored. (*Id.* at 225.) He had not otherwise discussed price with the County’s counsel. (*Id.* at 225-26.) He clarified his direct testimony regarding Cerberus’s hourly rate, stating that as long as someone from Cerberus was monitoring the Voting Equipment via security camera or otherwise, Cerberus would charge \$50 to \$75 per hour. (*Id.* at 226-27.) Mr. Sabia was unwilling to estimate a monthly storage price in his testimony, conceding that he could not do so without knowing the size of the Voting Equipment, the necessary environmental and security conditions, and whether he would need to lease storage space. (*Id.* at 227-29.) He stated that he would need further direction from the Court about the escrow arrangement before he could estimate a price. (*Id.* at 229-30.)

During cross-examination of Mr. Sabia, the Secretary introduced, and the Special Master admitted, several social media posts that Mr. Sabia admitted writing or sharing since June 2023, which reference elections and election technology. (*See* 8/31 Tr. at 242 & Sec’y Ex. 52 (“They stole the 2020 Election by Centralizing a decentralized US voting process using vendors acting as election officials They

supplied or recommended vendors including voting machines”); 8/31 Tr. at 247-48 & Sec’y Ex. 53 (“JANUARY 6TH WILL BE REMEMBERED AS THE DAY THE GOVERNMENT SET UP A STAGED RIOT TO COVER UP THE FACT THEY CERTIFIED A FRAUDULENT ELECTION!”); 8/31 Tr. at 249-51 & Sec’y Ex. 54 (“We’re called ‘Election Deniers’” and “machines in #GOP districts disproportionately ‘malfunctioning’” and “running the same batches of ballots through the tabulating machines multiple times”); 8/31 Tr. at 251-53 & Sec’y Ex. 55 (“NOW WE HAVE PROOF! . . . Massive 2020 Voter Fraud Uncovered in Michigan – Police Find: TENS OF THOUSANDS of Fake Registrations”); 8/31 Tr. at 253-57 & Sec’y Ex. 56 (“If ANYONE still DENIES that they didn’t steal an election than [sic] you are complicit!!!!”); 8/31 Tr. At 259-60 & Sec’y Ex. 58 (showing a photo of a person who appears to be Lesley Stahl of the television show *60 Minutes* with text displayed above saying, *inter alia*, “I lied to you about the outcome of the 2020 presidential election.”).)

The Secretary also introduced social media posts, again made and acknowledged by Mr. Sabia, criticizing current Secretary of the Commonwealth Al Schmidt before and during his confirmation by the Pennsylvania Senate. (*See* 8/31 Tr. at 261-62 & Sec’y Ex. 59 (naming “Al Schmidt—the same man who used to run elections in Philly” and stating “[T]he same Philly that True The Vote showed had over 1,000 mules”); 8/31 Tr. at 262-65 & Sec’y Ex. 60 (“Reach out to your Senator and tell them to vote ‘NO’ on Al Schmidt’s confirmation for the Secretary of the Commonwealth.”).) Despite acknowledging these posts, Mr. Sabia had initially testified he did not know who the current Secretary of the Commonwealth is. (8/31 Tr. at 260-61.)

On redirect examination, Mr. Sabia stated that Cerberus did not need to “know how electronic [voting] machines work in order to” properly transport, store, and secure them. (*Id.* at 282-83.)

Benjamin Cotton

The County offered Benjamin Cotton as an expert witness to testify regarding Pro V&V’s alleged deficiencies and failures to follow proper procedure. (*Id.* at 331.) The Secretary and Dominion objected to Mr. Cotton’s expert testimony because the County had neither attached Mr. Cotton’s curriculum vitae to its witness list nor otherwise provided it to them.⁴⁸ The Special Master sustained the objection on the basis that, without any notice of Mr. Cotton’s offered qualifications, the Secretary and Dominion were deprived of the opportunity to test his qualifications. (*Id.* at 318.) The Special Master stated that the County could present Mr. Cotton’s fact testimony, but the Secretary and Dominion objected that, based on the County’s proffer and the timely filed affidavit, Mr. Cotton would have no relevant fact testimony that did not depend upon his specialized expertise. (*Id.* at 328-31.) Rather than sustaining the objection outright, the Special Master allowed an initial examination regarding the scope of Mr. Cotton’s knowledge. When the Special Master asked whether Mr. Cotton had “any nonexpert personal knowledge that bears on Pro V&V’s fitness as an escrow agent,” Mr. Cotton responded that “[a]ny knowledge that [he] would have would have been based on [his] technical expertise and examination of duties.” (*Id.* at 336-37.) Accordingly, the Special Master sustained the objections of the Secretary and Dominion to Mr. Cotton’s testimony. (*Id.* at 337-38.)

⁴⁸ The County did attach an affidavit by Mr. Cotton to its timely filed witness list and also attached a second affidavit to its August 25, 2023 application requesting leave for its witnesses to testify remotely. By August 29, 2023 order, the Special Master struck the second affidavit of Mr. Cotton on the Secretary’s motion.

IV. ANALYSIS OF PROPOSED AGENTS

A. Purpose of Impoundment

As directed by our Supreme Court, the undersigned is tasked with appointing a “neutral third-party escrow agent to take and retain possession of the voting equipment until further order of court.” *Fulton I*, 292 A.3d at 1020. The Supreme Court was clear that the purpose of impoundment is, in part, to prevent unauthorized physical access to the Voting Equipment, particularly given that the Supreme Court’s Injunction Order was not sufficient to restrain County officials from allowing unauthorized access. *Id.* at 1011 (“[T]he County has given [the Supreme Court] no reason to trust that it will honor a mere reiteration of the same [injunction] order it disregarded before.”). In addition to limiting physical access, the Supreme Court also highlighted the importance of “ensur[ing] subsequent continuity in the chain of custody and the protection of such evidentiary value as the [V]oting [E]quipment may retain.” *Id.* at 1012. While recognizing that the Voting Equipment has undergone one or more unauthorized third-party inspections, the Supreme Court stated that it “will not assume that there is no scenario in which the present condition of the [V]oting [E]quipment may prove relevant to one or more of the County’s claims[.]”⁴⁹ *Id.* at 1011. The Special Master is also cognizant that the Supreme Court ordered the County to bear all responsibility for the costs associated with impoundment, which may ultimately fall on the County’s taxpayers. Accordingly, the Special Master shall consider the costs associated with the impoundment in choosing the appropriate agent.

⁴⁹ Additionally, and separately from its evidentiary value, there may be some risk inherent in the Voting Equipment’s continued status as critical infrastructure, containing software that may remain relevant to elections, even if never used with these particular devices. The Special Master credits Mr. Macias’s testimony to that effect. *See also Fulton I*, 292 A.3d at 979 n.4 (regarding designation of Voting Equipment as critical infrastructure).

In light of these directives, the Special Master will analyze the viability of the parties proposed agents in terms of the agent's ability and fitness to: (1) ensure subsequent continuity in the chain of custody; (2) prevent unauthorized physical access to the Voting Equipment; (3) protect the Voting Equipment's evidentiary value during the escrow period; (4) remain neutral and comply with orders of court; and (5) provide escrow services at a reasonable cost.

B. Chain of Custody

The Special Master begins by addressing the proposed agents' respective abilities to ensure subsequent continuity in the chain of custody of the Voting Equipment. The parties disagreed on what specific qualifications, if any, an escrow agent must possess to ensure this task is met. The Secretary argued that the appointed agent must possess technical expertise and experience specific to voting systems, while the County responded that general experience in security of assets is sufficient. The Special Master initially considered the County's position to be plausibly consistent with the *Fulton I* opinion, and asked the parties at the prehearing conference to be prepared to present evidence regarding whether technical expertise and experience specific to voting systems would be necessary.

After consideration of the testimony adduced at the hearing, however, the Special Master agrees with the Secretary's position that to ensure continuity in the chain of custody, technical expertise and experience specific to digital voting systems is a highly preferable qualification. The Special Master finds Mr. Macias's expert testimony detailing the appropriate way to inventory voting equipment in its initial state, and thereafter document and maintain a secure chain of custody thereof, persuasive. Mr. Macias testified that to adequately perform the initial inventorying and subsequent recording, the proposed agent must be able to identify serial numbers

on the various components and identify and/or add specific seals and locks to the Voting Equipment in order to prevent and detect tampering. Mr. Macias credibly testified that an agent without this specialized knowledge would not be in a position to properly identify the appropriate locations for the addition of locks and seals, nor would that agent be able to understand if or when a break in the chain of custody occurred, and how to appropriately handle that situation. The Special Master further credits Mr. Macias's opinion that Pro V&V is fully capable of maintaining the chain of custody of the Voting Equipment based on its extensive technical expertise and experience maintaining voting equipment as part and parcel of its business as a VSTL.

The Special Master also notes that Mr. Sabia, although generally familiar with seals, does not know where such seals could be applied to the Voting Equipment at issue. This is consistent with Mr. Sabia's testimony that he has no specialized knowledge of any type of voting systems and has never had any experience with electronic voting machines other than as a voter himself.

Considering all this testimony in light of the Special Master's conclusion that technical expertise and experience is highly preferable to maintaining chain of custody of the Voting Equipment, this factor militates in favor of appointing Pro V&V, an entity with technical experience and familiarity with voting systems, as opposed to Cerberus, which lacks technical expertise and is unfamiliar with this specific type of digital asset.

C. Prevention of Unauthorized Access

While the parties disagreed on the level of expertise and experience needed to ensure continuity in the chain of custody, they largely agreed that an appropriate

escrow agent must have the ability to prevent unauthorized access to the Voting Equipment.

To this end, Mr. Walker and Mr. Macias presented credible testimony regarding the security of Pro V&V's facility located in Huntsville, Alabama. Mr. Walker testified, in great detail, about the security measures undertaken at Pro V&V's facility, which include badge-access doors, interior and exterior security cameras, and interior locked doors to each of the 11 laboratories within the facility. Mr. Walker further indicated that Pro V&V could limit access to the secure room containing the Voting Equipment to a single Pro V&V employee. Mr. Macias's testimony reaffirmed the presence of security features at Pro V&V's facility, including increased levels of security as one ventures closer to the laboratories where the Voting Equipment would be stored.

Mr. Sabia's testimony regarding a secure facility was less precise, as Cerberus did not offer a specific proposed location for escrowing the Voting Equipment. Mr. Sabia indicated he could secure the Voting Equipment in its present location in Fulton County, rent a storage unit, or place the Voting Equipment at Cerberus's headquarters, which is a converted efficiency apartment in Florida containing Cerberus's office and business materials. However, Mr. Sabia also testified that he is unfamiliar with both the size and the shape of the Voting Equipment at issue, as he has never personally seen it or asked Fulton County to provide specifications. Mr. Sabia broadly testified that his previous military service, where he inventoried, handled, and securely stored electronic data storage devices, and his more recent work in the nature of personal and event security as an owner of Cerberus, allows him to secure virtually any location for escrow purposes.

The Special Master does not doubt Mr. Sabia's ability to secure assets, as he did during his military service, and currently does as owner of Cerberus. However, the Special Master found more credible the specific and detailed testimony of Messrs. Macias and Walker regarding the security at Pro V&V's facility and Pro V&V's ability to prevent unauthorized access to the Voting Equipment. This detailed testimony was contrasted by Mr. Sabia's less precise testimony, which evidenced that he had not developed a specific proposal as to where to place the Voting Equipment, no less secure it. For these reasons, and the reasons discussed in Section IV.E *infra* relating to neutrality, the Special Master concludes that this factor also favors the appointment of Pro V&V.

D. Protection of Evidentiary Value

The parties also agreed that in order to protect the evidentiary value of the Voting Equipment, the components must be stored in a location that maintains appropriate temperature and humidity levels for the duration of the escrow period.

In regard to Pro V&V's ability to maintain these necessary environmental conditions, the Special Master credits Mr. Macias's testimony that Pro V&V's Huntsville facility was custom built to maintain and house election technology and is fully equipped with the environmental controls needed to maintain these exact types of digital assets. Mr. Macias also explained that to remain accredited as a VSTL, Pro V&V must maintain these environmental controls. In addition, Pro V&V is regularly subjected to audits to ensure it does so. Mr. Walker's credible testimony reaffirmed Mr. Macias's testimony that the HVAC system at Pro V&V's facility was designed to monitor and maintain precise control over the temperature and humidity in each individual room.

Mr. Sabia also testified about the appropriate temperature and humidity levels and explained that he would follow manufacturer's specifications in order to appropriately store the Voting Equipment and could purchase devices for monitoring those environmental conditions in any chosen escrow location.

Weighing these testimonies, the Special Master concludes that Pro V&V is more qualified to maintain the required environmental conditions to protect the evidentiary value of the Voting Equipment. Indeed, Pro V&V's facility was fitted to function under strict guidelines relating directly to these environmental conditions. On the other hand, Mr. Sabia offered no specific explanation as to how he would maintain appropriate environmental controls at the various proposed storage locations, especially at the Fulton County building or the storage unit, neither of which locations he owns or controls. Accordingly, the Special Master concludes Pro V&V is more likely to be able to protect the evidentiary value of the Voting Equipment.

E. Neutrality and Compliance

Preventing further unauthorized access to the Voting Equipment requires two changes in the status quo relative to control over the Voting Equipment: 1) the equipment must be removed from Fulton County's control, and 2) the custodian of the Voting Equipment must be sufficiently independent from any actors that would seek further unauthorized access to the Voting Equipment, so that the custodian would not permit such access. *See Fulton I*, 292 A.3d at 1019 (noting that impoundment is intended to "effectuat[e] the same result the Secretary sought when it first asked the Commonwealth Court for a protective order"). Thus, the appointed agent's neutrality, independence, and willingness and ability to comply with court orders are critical considerations.

The County argues that Pro V&V's ongoing business relationship with Dominion creates a conflict of interest undermining Pro V&V's independence. The Special Master credits Mr. Macias's and Mr. Walker's testimony regarding that ongoing relationship, that Dominion employees are sometimes present at Pro V&V's facility, and that a financial conflict of interest **could** arise between a VSTL and a voting system manufacturer like Dominion. However, the Special Master also credits Mr. Macias's and Mr. Walker's testimony that, exactly because of the risk of such a conflict, the relationship between Dominion and Pro V&V is subject to a robust regulatory framework requiring Pro V&V to prevent and disclose conflicts of interest. As they credibly testified, Pro V&V is regulated and periodically audited for conflicts of interest, both institutionally and for its personnel, as part of its EAC accreditation.⁵⁰ This includes scrutiny for financial conflicts of interest. It must be so audited to prevent undue assistance to voting machine manufacturers, which would undermine its entire purpose as an independent laboratory testing election technology. As Mr. Macias also credibly testified, Pro V&V's business as a VSTL depends entirely upon its accreditation and ongoing good standing with the EAC—an accreditation that would be jeopardized by any partiality or favoritism toward Dominion, or any failure to address a conflict of interest. Pro V&V would presumably tend to avoid behavior that would place its business at such risk.⁵¹

⁵⁰ Regarding Pro V&V's accreditation, the Special Master is satisfied that, as Mr. Macias explained, the provision of HAVA at 52 U.S.C. § 20971(c)(2) controls the period of Pro V&V's accreditation, and that any policy guidance from the EAC in derogation of that provision did not affect Pro V&V's accreditation. The Special Master also notes and credits Mr. Macias's testimony that the EAC itself recognized and rectified the conflict between HAVA and the EAC's renewal policy, and confirmed Pro V&V's continued good standing. Finally, the Special Master credits Mr. Walker's testimony that Pro V&V was aware of the conflict and maintained the position that its accreditation had been continuous since 2015.

⁵¹ The County makes a distinct argument that Pro V&V's use of Clay Parikh, a nonemployee, for security testing on voting machines in 2015 somehow undermines its

Cerberus has different incentives. The Special Master notes Mr. Sabia's testimony that Attorney Lambert solicited Cerberus's participation as escrow agent, based in part on her satisfaction with Cerberus's performance on past work. This testimony is corroborated by the content of Mr. Sabia's social media posts, and by the County Commissioners' testimony that Attorney Lambert selected Cerberus, which the Special Master finds credible. The Special Master also credits and notes the testimony of Mr. Martin and Ms. Hess that, although they are normally involved in the County's use and storage of its election equipment, neither the Commissioners nor the County's counsel discussed or identified Cerberus with Mr. Martin or Ms. Hess. The fact that the County and its counsel apparently recommended Cerberus before even speaking with Mr. Sabia, and without consulting County officials responsible for the integrity of the Voting Equipment, further corroborates Mr. Sabia's testimony about his ongoing business relationship and familiarity with Attorney Lambert. Thus, although the Special Master does not generally credit Mr. Sabia's testimony,⁵² she will accept his testimony regarding Attorney's Lambert's relationship with him as corroborated by other evidence. The Special Master also notes that the social media posts Mr. Sabia admitted making include direct opposition to the appointment and confirmation of the current Secretary, who is a party to this suit. Mr. Sabia's social media posts also include statements calculated

independence today. The County also made reference to testimony Mr. Parikh might offer regarding an alleged conflict of interest with Dominion, (8/30 Tr. at 148), but that testimony ultimately was not presented. As stated above, the current regulatory framework to which Pro V&V is subject reduces the risk of any such conflict. Further, regardless of which entity is appointed escrow agent, the Special Master will tailor the escrow arrangement to restrict access to as few persons as practicable, thus further reducing the risk that an employee or invitee of the agent could gain illicit access.

⁵² The Special Master notes the content of the social media posts that Mr. Sabia admitted making, which were in direct contradiction to Mr. Sabia's testimony on direct examination and therefore significantly reduced Mr. Sabia's credibility.

to undermine trust in elections in general and in the reliability of voting machines in particular. When considered together, Mr. Sabia's election-related statements, Attorney Lambert's ongoing relationship with Cerberus,⁵³ and the Pennsylvania Supreme Court's concerns surrounding Attorney Lambert's conduct,⁵⁴ all support an inference that Cerberus is not neutral on the issue of who should have access to the Voting Equipment. Indeed, the record testimony suggests that Cerberus and/or Mr. Sabia has a philosophical and financial precommitment to Attorney Lambert's position on that issue, which could unduly subject Cerberus to Attorney Lambert's influence if it served as escrow agent. Therefore, the Special Master declines to credit any testimony or averments on the part of Mr. Sabia that Cerberus would remain neutral and compliant with court orders.

Weighing these two sets of incentives the proposed escrow agents possess, the Special Master concludes that Pro V&V is more likely to serve as a neutral, independent escrow agent, and is less likely to be unduly influenced. Pro V&V has financial and legal incentives to disclose conflicts of interest, to prevent such conflicts, and to follow the law and court orders. And that is true independent of whether it is appointed as escrow agent. In this vein, the County's argument that Pro V&V allowed its accreditation to expire is not only legally unsupported, *see supra* n. 50; but also, Mr. Walker specifically testified that Pro V&V remained

⁵³ On July 21, 2023, the Secretary advised the Special Master that Attorney Lambert had been named as a defendant in a civil complaint filed July 18, 2023, in the United States District Court for the Eastern District of Michigan. *See* Sec'y Notice of Recent Developments Relating to Sanctions Proceedings. The complaint alleges that, in March 2022, Attorney Lambert hired yet another third-party contractor to inspect Fulton County's electronic election systems, and represented to the third party that the inspection "had been authorized by a Pennsylvania state court." Complaint at 6, *Apelbaum v. Lambert* (E.D. Mich., No. 2:23-cv-11718-SJM-APP, filed July 18, 2023).

⁵⁴ *See Fulton I*, 292 A.3d at 1018 ("Attorney Lambert may be every bit as culpable as Attorney Carroll, at least in the pattern of non-compliance that has led us to impose upon him joint and several responsibility with the County.").

accredited and in good standing, and there is no evidence that Pro V&V allowed its accreditation to expire. Further, Mr. Macias testified that the EAC recognized that Pro V&V had remained accredited despite the conflicting guidance. (*See also* Sec’y Ex. 12 (VSTL Certificates and Accreditation, U.S. Election Assistance Commission) (“Despite the [administrative error regarding the effect of 52 U.S.C. § 20971(c)(2), which caused confusion about Pro V&V’s status], Pro V&V . . . remained in good standing . . . and retained their accreditation.”).) Pro V&V would be financially unwise to risk its VSTL business by pursuing its role as escrow agent in an improper or partial manner, especially given the relatively minor financial value of the escrow services.

By contrast, Cerberus has at least a financial incentive to perform to the satisfaction of Attorney Lambert, who continues to influence these proceedings in less-than-transparent ways as the Special Master has described, and whose “pattern of non-compliance” with court orders drew criticism from our Supreme Court. *See Fulton I*, 292 A.3d at 1018. Cerberus may even have a perverse incentive, to the extent that allowing Attorney Lambert or others to access the Voting Equipment during the impoundment could enhance, rather than diminish, Cerberus’s business relationship with Attorney Lambert. Relatedly, the Special Master does not credit Mr. Sabia’s testimony that Cerberus would unfailingly comply with this Court’s orders regarding the impoundment.

The Special Master concludes that Pro V&V is both sufficiently neutral and sufficiently independent from undue influence to serve as escrow agent.

F. Costs

Finally, the Special Master compares the proposed agents’ cost estimates. The Special Master credits Mr. Walker’s testimony that Pro V&V will honor the cost

estimates it gave. With Pro V&V's \$6,640 initial charge for transport, and its \$850 per month storage fee, Pro V&V would charge approximately \$16,840 for the first year of the impoundment.

On behalf of Cerberus, Mr. Sabia gave only an incomplete set of potential costs—he did not specifically estimate costs related to storage space because he did not know the size of the equipment or its storage requirements, and he asked for direction from the Court before he could do so. His testimony about other potential costs appeared to vary: He first testified that Cerberus would charge a service fee of \$75 per hour to monitor the Voting Equipment, with a potential additional charge of \$50 per hour depending on storage location. But he later appeared to testify the security rate would be **between** \$50 and \$75 per hour, and would only apply if 24-hour monitoring were required. He stated that Cerberus could charge up to \$4,500 for transport to its sole facility in Florida, but that this depended heavily on the storage location. Given this equivocal testimony, the Special Master cannot precisely quantify and compare the costs of Cerberus to those of Pro V&V. But using one potential, conservative estimate, based on a \$50 per hour security fee, Cerberus's cost for the first year of the escrow could amount to approximately \$438,000 just to monitor, exclusive of transportation, storage, or other costs. This would include a monthly cost of approximately \$36,000 for Cerberus's security service fee alone. This difference in cost, by itself, weighs heavily in favor of appointing Pro V&V. Alternatively, to the extent that these figures do not represent Cerberus's actual costs because it failed to give a more precise cost estimate, that very failure weighs in favor of Pro V&V and creates doubt about the seriousness with which Cerberus has offered its services. It has been clear from before the

impoundment proceedings began that the cost of escrow services should be considered.⁵⁵

VI. CONCLUSION

Having carefully examined the proposed agents' relative abilities to maintain chain of custody, prevent unauthorized access, protect evidentiary value, behave neutrally and in compliance with court orders, and provide services at a reasonable cost, the Special Master finds each factor to favor Pro V&V as the more suitable escrow agent. Accordingly, the Special Master hereby appoints Pro V&V as the agent who will take and retain possession of the Voting Equipment, subject to the conditions of the attached Preliminary Appointment Order and a Final Appointment Order to be entered in due course.



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

⁵⁵ See *Fulton I*, 292 A.3d at 1064-65 (Brobson, J, concurring and dissenting) (opining that impoundment will be “at the further expense of the taxpayers of Fulton County”).

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	:	

PRELIMINARY APPOINTMENT ORDER

NOW, September 15, 2023, following the evidentiary hearing for purposes of the Special Master’s appointment of a neutral third-party escrow agent, as ordered by the Pennsylvania Supreme Court, and in accordance with the foregoing opinion, the Special Master hereby conditionally appoints Pro V&V to serve as escrow agent of the Voting Equipment at issue. Final appointment of Pro V&V as escrow agent will proceed as follows, and is subject to the following conditions:

1. No later than September 29, 2023, the Secretary shall file and serve a Proposed Final Appointment Order executed by Pro V&V¹ that

¹ Pro V&V shall execute the Proposed Final Appointment Order for purposes of indicating its consent to jurisdiction as described in Paragraph 1(e) below, and also to indicate the general acceptability of the terms contained in the Proposed Final Appointment Order.

includes all terms relating to the escrow arrangement,² which must include, without limitation, the following terms, and which may also include any other terms the Secretary and Pro V&V consider to be necessary or appropriate regarding the escrow arrangement³:

- a. **Access Limitations.** Before taking possession of the Voting Equipment, Pro V&V shall designate a laboratory at its facility in which the Voting Equipment shall be stored (Escrow Room). Upon taking possession of the Voting Equipment, Pro V &V shall not permit **any access** to the Escrow Room except as follows:
 - i. **Singular Personnel Access.** Pro V&V shall restrict access to the Escrow Room to only Michael Walker, who shall retain sole possession of the key or other means of access to the Escrow Room. In the event of Mr. Walker’s unavailability, Pro V&V may file a motion with the Court proposing to substitute another Pro V&V employee to temporarily retain sole access, including the dates of the proposed substituted access, to the Escrow Room.
 - ii. **Acts of God; Facilities Emergency.** Mr. Walker, or another Pro V&V Employee designated pursuant to Paragraph 1(a)(i) above, may enter the Escrow Room to respond to acts of God, leaks, fires, or other emergency conditions that require immediate access in order to preserve the Voting Equipment.
 - iii. **Election Assistance Commission Site Visits.** Pro V&V may continue to allow EAC personnel to enter its facility as required for accreditation or audit purposes, but Pro V&V shall not permit EAC personnel to enter the Escrow Room without prior order of Court.

² In the Secretary’s July 28, 2023 filing, the Secretary proposed that “the parties submit a specific escrow agreement for the Special Master’s approval” (Secretary’s Application to Appoint Escrow Agent at 22.) As the parties are unlikely to agree on the terms of any escrow agreement, the Special Master directs the Secretary and Pro V&V to include their proposed terms in the form of a proposed final appointment order, which will be binding on all parties once entered.

³ The Special Master will review and consider all terms contained in the Proposed Final Appointment Order and the parties’ responses thereto contemplated in Paragraphs 2 and 3 of this Order, and will enter a Final Appointment Order thereafter.

- iv. **Emergency Notification to Court.** If access to the Escrow Room must be granted pursuant to Paragraphs 1(a)(ii) or 1(a)(iii) of this Order, or in a manner not contemplated in this Order, Pro V&V shall immediately notify the Court of such access or impending access via email to CCFCEscrow@pacourts.us copying all counsel of record in this matter, and shall then promptly file a formal motion with the Court explaining the same.
- b. **Monitoring.** Before taking possession of the Voting Equipment, Pro V&V shall install a surveillance or security camera in the Escrow Room (Camera). Once the Voting Equipment is moved to the Escrow Room, Pro V&V shall maintain the Camera in a functional state and trained on the Voting Equipment and its immediate surroundings until otherwise ordered. *[[The Secretary and Pro V&V shall, if practicable, include terms requiring the video from the Camera to be 1) continuously transmitted to the parties and the Court, in a manner that could be viewed remotely, 2) recorded and retained, either for a period of time or for the duration of the escrow arrangement; and 3) associated with motion detection technology and the ability to send automated notice and/or video footage to the parties and the Court if a person enters the Escrow Room.]]*⁴
- c. **Transfer of Possession.**⁵ Pro V&V shall arrange to take possession of the Voting Equipment from its present location in Fulton County and shall directly and continuously transport the Voting Equipment to Pro V&V's facility at 6705 Odyssey Drive NW, Huntsville, AL, 35806. The parties' counsel, experts, and

⁴ In Paragraph 1 of this Order, text in italic type and enclosed in double brackets indicates direction that the Secretary and Pro V&V are to supply specific written provisions regarding the relevant term with which they could comply. The Secretary and Pro V&V may explain their inclusion, modification, or exclusion of such provisions in the filing attaching the Proposed Final Appointment Order. Text in ordinary roman type and not enclosed in double brackets indicates provisions that must be included in the Proposed Final Appointment Order.

⁵ In the filing attaching the Proposed Final Appointment Order, the Secretary and Pro V&V shall include a list of dates and times, within a 30-day period after the date of that filing, that are acceptable to them for the transfer of possession of the Voting Equipment from the County to Pro V&V to occur. The County and Dominion may respond thereto in the filings authorized by Paragraph 2 of this Order. In the Final Appointment Order, the Special Master will designate a specific date and time for the transfer of possession.

Fulton County personnel are permitted to be present and observe pickup of the Voting Equipment in Fulton County by Pro V&V.

- d. **Price.** *[[The parties shall supply terms regarding the price of the escrow services and the time and manner of payment, and regarding which person(s) are liable for payment.]]*
 - e. **Consent to Jurisdiction; Entry of Appearance.** Pro V&V consents to the jurisdiction of the Pennsylvania Courts with respect to the Voting Equipment. Within 30 days after entry of this Order, counsel for Pro V&V shall enter an appearance in the Pennsylvania Commonwealth Court in the above-captioned matter, so that the Court may appropriately communicate with counsel for Pro V&V directly.
2. Within seven (7) days of the Secretary's filing of the Proposed Final Appointment Order, any party may file and serve a response thereto. Responses received after the seven (7) day deadline will not be considered.
 3. The Secretary and/or Pro V&V may file a reply, if any, within three (3) days of any parties' timely filed response.

Further, Dominion's Application to Quash is DISMISSED as moot for the reasons set forth in the accompanying Opinion.



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