# IN THE COURT OF COMMON PLEAS FOR FULTON COUNTY, PENNSYLVANIA

WITOLD WALCZAK AND THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA,	) No.: 12-2022 C )
Plaintiffs/Requesters, v.	) AMENDED COMPLAINT IN ) MANDAMUS
FULTON COUNTY and WAKE TECHNOLOGY SERVICES, INC.	<ul> <li>Filed on Behalf of the Plaintiffs,</li> <li>Witold Walczak; American Civil Liberties</li> <li>Union of Pennsylvania</li> </ul>
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Office of Open Records Docket No.: AP 2021-1661

### IN THE COURT OF COMMON PLEAS FOR FULTON COUNTY, PENNSYLVANIA

WITOLD WALCZAK AND THE	)	No.: 12-2022C
AMERICAN CIVIL LIBERTIES UNION OF	)	
PENNSYLVANIA,	)	
	)	
Plaintiffs/Requesters,	)	
V.	)	
	)	AMENDED COMPLAINT IN
FULTON COUNTY and WAKE	)	MANDAMUS
TECHNOLOGY SERVICES, INC.	)	
	)	
Defendants/Respondents		

#### NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

FRANKLIN COUNTY BAR ASSOCIATION FIND A LAWYER SERVICE 100 Lincoln Way East, Suite E Chambersburg, PA 17201 717-660-2118

### IN THE COURT OF COMMON PLEAS FOR FULTON COUNTY, PENNSYLVANIA

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FULTON COUNTY and WAKE	)	MANDAMUS
TECHNOLOGY SERVICES, INC.	)	
	)	
Defendants/Respondents.		

### AMENDED COMPLAINT IN MANDAMUS

AND NOW, come the Plaintiffs, Witold Walczak and the American Civil Liberties Union of Pennsylvania (ACLU-PA), by and through their undersigned counsel, at Saul Ewing LLP and the ACLU-PA, and hereby submit this Amended Complaint in Mandamus to enforce a Final Determination of the Office of Open Records:

# I. INTRODUCTION

1. Plaintiffs seek an order to compel Respondents Fulton County and Wake Technology Services, Inc. ("Wake") to comply with a final order from the Office of Open Records ("OOR") that directs production of *all* records responsive to Plaintiffs' request under the Pennsylvania Right to Know Law ("RTKL") regarding Fulton County's review of its 2020 general election.

- 2. The OOR's September 13. 2021 order became final and enforceable on October 14, 2021, after Fulton County failed to file a timely appeal. *See* "OOR Final Determination," attached as **Exhibit A**. Shortly thereafter, Fulton County produced 691 records.
- 3. Fulton County's production is patently deficient. Fulton County failed to produce responsive records: a) identified in the production, b) given to another requester, c) discussed in news articles, and d) that logically must exist, such as financial transaction records, meeting minutes and draft reports.
- 4. Fulton County's bad faith in failing to comply with the RTKL and OOR order is amplified by the fact that none of the 691 records they eventually produced fit the legal exemptions they relied on initially to refuse any production. The County also has refused to produce an index of responsive documents, even disregarding an OOR order to do so.
- 5. The Fulton County commissioners' blatant non-compliance with long-established RTKL law and the OOR's September 13 order is unlawful and must be sanctioned. "[T]he objective of the RTKL . . . is to empower citizens by affording them access to information concerning the activities of their government." *Uniontown Newspapers, Inc. v. Pennsylvania Dep't of Corr.*, 243 A.3d 19, 33 (Pa. 2020) (citation omitted). Fulton County has willfully and wantonly obstructed the RTKL's plain language and purpose.
- 6. Besides identifying the missing records and directing Defendant to make full production, Plaintiffs also request that this Court order Respondent to pay civil penalties, and to reimburse Plaintiffs for their legal fees and related costs for this enforcement action, because the County acted in bad faith by failing to comply with its duties under the RTKL.
- 7. Plaintiffs also seek an order compelling Wake to provide ACLU-PA with copies of all records responsive to its requests.

## II. THE PARTIES

- 8. Plaintiff/Requester, the American Civil Liberties Union of Pennsylvania (ACLU-PA), is a nonprofit, nonpartisan organization working to protect civil liberties and constitutional rights. The ACLU-PA's focus includes principles of open government and voting rights.
- 9. ACLU-PA's principal office is in Philadelphia, Pennsylvania, with additional offices in Pittsburgh and Harrisburg.
- 10. Plaintiff/Requester, Witold Walczak ("Walczak"), is the ACLU-PA's legal director. Collectively, ACLU-PA and Mr. Walczak are referred to as "Plaintiffs."
- 11. Defendant/Respondent, Fulton County ("Fulton County" or "Defendant"), is a local government entity, led by the three-member Fulton County Commission.
- The County maintains governmental offices at 116 W. Market Street
   McConnellsburg, PA 17233.
- 13. The County is a Local Agency pursuant to Section 102 of the Pennsylvania Right to Know Law ("RTKL"). See 65 P.S. § 67.102.
- 14. Defendant Wake Technology Services, Inc., is a private technology company registered in Pennsylvania, with its registered office located at 117 West Gay Street, Suite 126, West Chester, PA 19380, that performed an improper inspection of Fulton County's voting machines and mail ballots on behalf of Fulton County following the November 2020 election. Upon information and belief, Wake is in possession of public records responsive to ACLU-PA's open records requests.

### III. JURISDICTION

15. This Court has jurisdiction over a complaint in mandamus filed under Pa. R. Civ. P. 1093 and 1095. See also 42 Pa.C.S. § 931(a) (providing for original jurisdiction of the Court of Common Pleas).

- 16. A writ of mandamus compels the government's performance of a mandatory and ministerial duty where a plaintiff has "a clear legal right." *Capinski v. Upper Pottsgrove Twp.*, 164 A.3d 601, 606 (Pa. Commw. Ct. 2017).
- 17. The Right-to-Know Law imposes a mandatory and ministerial duty upon a government agency to provide public records to a requester. *Id.*
- 18. A final determination by the Office of Open Records that the requested records are disclosable means the requester has established a clear right to have the agency produce those public records. *Id.*
- 19. Therefore, under Pennsylvania law, a complaint in mandamus is the appropriate mechanism to enforce a Final Determination of the Pennsylvania Office of Open Records. *Capinski*, 164 A.3d at 607.
- 20. Additionally, this Court has jurisdiction to review Final Determinations of the Office of Open Records pursuant to Section 1302 of the RTKL. *See* 65 P.S. § 67.1302(a).

## IV. FACTUAL AND PROCEDURAL HISTORY

- A. Plaintiffs' Initial RTKL Request and the County's Response.
- 21. In 2021, the Fulton County Commissioners ("the Commissioners") attracted national public attention for allowing an unaccredited third-party contractor, Wake Technology Services, Inc. ("Wake TSI"), to inspect its voting machines and election data as part of a controversial 2020 general-election review.
- 22. In July 2021, the Pennsylvania Department of State decertified Fulton County's voting machines because the County violated state law and mandatory security protocols for the machines when it granted access to Wake TSI. *See* Degraffenreid Letter, attached as **Exhibit B**.
  - 23. On July 16, 2021, Plaintiffs, through Mr. Walczak, made a request to Fulton County pursuant to the RTKL. The request sought:

Any record [] involving or referencing the November 3, 2020, or May 18, 2021, elections that relates to, references, or involves:

- 1. An audit, canvass, or any type of post-election review including, but not limited to, requests for such a review (including but not limited to a request made by State Senator Doug Mastriano); internal and external discussions about such a review, including emails; responses to review requests; and any actions taken in furtherance of such a review; and
- 2. A discussion of cost and funding to pay for an audit, canvass or review of the above-referenced elections.

See the "Request," attached as Exhibit C.

- 24. Plaintiffs' RTKL request was specific, particular, and narrowly tailored. *See* 65 P.S. § 67.703 (discussing requirements for a written request under the Right to Know Law). It focused on documents and discussions related to Fulton County reviews of the November 3, 2020, and May 18, 2021, elections, and associated funding and costs. Plaintiffs' request "describe[d] the records sought with sufficient specificity" to enable the County to ascertain responsive records.
- 25. On July 22, 2021, the County formally denied Plaintiff's request, invoking exemptions for "internal, predecisional deliberations," 65 P.S. § 67.708(b)(10)(i)(A), and records "relating to a noncriminal investigation." 65 P.S. § 67.708(b)(17). *See* Fulton County's Denial of Plaintiffs' Request, attached as **Exhibit D**.
- 26. The County did not claim that there were no responsive records. It claimed that whatever responsive records it did have were exempt from disclosure. *See* Exhibit D.
- 27. The County's response further violated the RTKL because it did not identify responsive records that were exempt from disclosure. *See* 65 P.S. § 67.903. Indeed, the County did not identify any records. The RTKL requires the responding agency to provide affidavits, indexes, or privilege logs explaining why each identified document was exempt from disclosure. 65 P.S. § 67.708; *see also UnitedHealthcare of Pa., Inc. v. Pa. Dep't of Human Svcs.*, 187 A.3d 1046, 1059 (Pa. Commw. Ct. 2018).

- B. Plaintiffs Appealed to the Office of Open Records, Which Issued a Final Determination Ordering Fulton County to Produce All Responsive Documents.
- 28. On August 12, 2021, Plaintiffs timely appealed to the Pennsylvania Office of Open Records. The OOR invited the parties to supplement the record and directed Fulton County to notify affected third parties that they could participate in the appeal. See 65 P.S. § 67.1101(c).
- 29. On September 13, 2021, the OOR issued the Final Determination, ordering full disclosure of all requested records to Plaintiffs. *See* Exhibit A.
- 30. The OOR held that, "[b]ecause the County has not identified the responsive records at issue or submitted any evidence in support of its denial, the County has not demonstrated that any exemption applies." *See* Exhibit A at 8.
- 31. The Final Determination concluded that, "the Requester's appeal is **granted** and the County is required to provide all responsive records to the Requester within thirty days. This Final Determination is binding on all parties." *See* Exhibit A at 9 (emphasis in original).
  - C. Fulton County Neither Timely Appealed the OOR's Final Determination Nor Complied with the Order.
- 32. Fulton County failed to appeal within thirty (30) days of the Office of Open Records' Final Determination. Fulton County also did not produce responsive documents by the deadline.
  - 33. The Final Determination is, thus, binding on both parties.
- 34. On October 21, 2021, after the deadline passed, Fulton County produced 691 documents.
- 35. Many documents in this production were irrelevant, and thus unresponsive to Plaintiffs' Request.

- 36. Moreover, the production did not contain any affidavits detailing the search its open records officer conducted for documents responsive to a RTKL request. *See Off. of the Dist. Att'y of Phila. v. Bagwell*, 155 A.3d 1119, 1130 (Pa. Commw. Ct. 2017).
- 37. The production did not contain any affidavits attesting that certain requested records did not exist. *See Smith Butz, LLC v. Pa. Dep't of Env't Prot.*, 142 A.3d 941, 945 (Pa. Commw. Ct. 2016).
- 38. The production did not contain any affidavits identifying documents withheld under a privilege or RTKL exemption, and explaining why such an exemption would apply to each document. *See Bagwell*, 155 A.3d at 1130; *UnitedHealthcare*, 187 A.3d at 1059
- 39. Nor did the production contain any index or privilege log detailing documents that were withheld under an exemption to the RTKL. *See UnitedHealthcare*, 187 A.3d at 1059.
- 40. Despite the absence of affidavits or logs certifying the withholding of some responsive records, it is clear Fulton County did not produce all responsive records in its possession. The deficiencies are evident because 1) records referenced in documents produced to Plaintiffs are missing; 2) responsive documents produced to another requester, American Oversight, were not produced to Plaintiffs; 3) responsive records discussed in news accounts are missing; 4) records that logically must exist, such as financial documents and draft reports, were not produced or identified for withholding; and 5) the production contains no records covered by the two exemptions Fulton County invoked to refuse production.
  - a) Defendant did not produce contracts and email communications that are discussed in the production.
- 41. Fulton County failed to produce several responsive records referenced in the documents already produced to Plaintiffs, including:
  - Any contracts or contractual documents with Wake TSI, including a December 31, 2020, contractual document signed by Gene Kern,

co-founder of Wake, and Patti Hess, Fulton County Elections Director which included handwritten commentary that "Wake TSI is contracted to Defending the Republic a 501(c)4." *See, e.g.*, Email from Patti Hess to Matt Shuham, attached as **Exhibit E**.

- Any communications about the election review between Gene Kern and the private email addresses of Commissioner Stuart Ulsh or Commissioner Randy Bunch. See, e.g., Email from Stuart Ulsh to Gene Kern, attached as Exhibit F. Records of official business conducted using unofficial systems or stored outside of official files are still subject to the Right-to-Know Law. See, e.g., Barkeyville Borough v. Stearns, 35 A.3d 91, 95–97 (Pa. Commw. Ct. 2012).
- Any communications between County officials and Senators Doug Mastriano or Judy Ward about the election review, even though the production references such communications. See, e.g., Dominion Meeting Notes, attached as Exhibit G.
- b) Defendant did not produce email communications disclosed to American Oversight.
- 42. Fulton County failed to produce two responsive email records that have already been produced to American Oversight as part of that organization's RTKL request, including:
  - An email from Commissioner Ulsh to Senator Ward, Representative Jesse Topper, and Commissioner Bunch on November 9, 2020, stating that "Wolf can't be left allowing to do this" regarding the November 2020 election.
  - An email from Commissioner Bunch to Senator Ward on November 12, 2020, asking if there is anything he can do to stop the election from getting "stolen."
  - c) Defendant did not produce email communications, draft reports, constituent communications, and meeting minutes that have previously been reported in news accounts.
- 43. Fulton County failed to produce responsive records that are discussed in existing news accounts of the County's election review (*see* Rosalind S. Helderman, "It Was Like This Rogue Thing," Washington Post, June 6, 2021, attached as **Exhibit H**), including:
  - Wake TSI's request on December 29, 2020, to review the county's election results.

- A February 2020 draft of the report compiled by Wake TSI summarizing its findings from its election review.
- Emails and letters between county officials and the Pennsylvania Department of State, including a May 4, 2021, letter from County Director of Elections Patti Hess to Secretary of State Veronica Degraffenreid.
- Emails from residents of Fulton County inquiring about the purpose of the Wake TSI election review, including January 2021 communications between the commissioners and county residents Kimbra and Dayton Tweedy.
- Meeting minutes from a January 2021 or February 2021 Commission meeting where the Commissioners met with the Tweedy's.
- Meeting minutes from Commission and Election Board meetings in January and February 2021, where the Commissioners discussed and approved the Wake TSI request.
- Emails between Elections Director Patti Hess and county elections directors from across the state discussing requests from Senators Cris Dush, Doug Mastriano, and Judy Ward to conduct an election review.
- d) Defendant did not produce <u>any</u> records covered by the two exemptions Fulton County invoked to refuse production.
- 44. In denying Plaintiff's request, Fulton County claimed that certain records were exempt under the RTKL's exemptions for records involving "internal, predecisional deliberations," 65 P.S. § 67.708(b)(10)(i)(A), and records "relating to a noncriminal investigation." 65 P.S. § 67.708(b)(17). See Exhibit D.
- 45. However, Fulton County did not produce any documents that would fall under either exemption.
- 46. No produced document contains notes, meeting minutes or communications involving the pre-decisional deliberations of the Commission or other County officials regarding the Wake TSI assessment.
- 47. Moreover, while some produced emails and letters relate to the Pennsylvania

  Department of State's inquiry into the Wake TSI review of Fulton County elections, this inquiry is

not confidential – the Department of State has publicly posted all letters sent to Fulton County officials on its website – and therefore these documents would not be covered by the asserted exemption.

- e) Defendant did not produce several documents that must exist given the nature of an election review.
- 48. Fulton County failed to produce several types of responsive records that should exist given the nature of an election review conducted by a third-party entity like Wake TSI, including:
  - Accounting and payment records such as invoices, checks, and budgets. Financial records are disclosable public records under the RTKL, and the purpose of the Act is "to permit the scrutiny of the acts of public officials and to make them accountable for their use of public funds." Buehl v. Pa. Dep't of Corr., 955 A.2d 488, 493 (Pa. Commw. Ct. 2008).
  - Any payment records in Wake TSI's possession, including records of third-party donations for the review. Records in the possession of a third-party contractor that "directly" relate to the governmental function the third party contracts to perform "shall be considered a public record of the agency for purposes of [the RTKL]." 65 P.S. § 67.506(d).
  - Additional responsive records in Wake TSI's possession, including drafts of the report summarizing the review, records explaining the methods used to conduct the review, and records describing how Wake TSI maintained the security of any election information or technology turned over by the County.
  - Documents and other items provided to Wake TSI to conduct the review, including all documents set forth in the Wake TSI Election Systems
     Analysis dated February 19, 2021. See Wake TSI Analysis, attached as Exhibit I. These documents include, but are not limited to: error log files from scanning tabulation machines, other scanning tabulation machine files, and election management system (EMS) log files.
- 49. In short, Fulton County failed to produce all documents responsive to Plaintiffs' Request, in direct contravention of the OOR Final Determination and the RTKL.

- D. Wake Performed Government Function for Fulton County and Has Not Produced Documents Relating to Its Review of Voting Machines.
- 50. Wake's review of the Fulton County voting machines constituted a "government function" as the County admitted in a discovery response to ACLU-PA. See Exhibit "J" attached hereto.
- 51. After commencing this action, ACLU-PA on October 10, 2022, took the deposition of Lisa Mellott-McConahey, who served as Fulton County's Open Records Officer (ORO) at the time of the ACLU-PA requests.
- 52. Ms. Mellot-McConahey testified that Fulton County made no attempt to obtain documents from Wake despite Wake's engagement to perform a government function in connection with its review of the County voting machines.
- 53. On December 31, 2020 and February 9, 2021, Wake performed reviews of the County's voting machines with County officials in attendance
- 54. Ms. Mellott-McConahey acknowledged that she understood documents from or relating to Wake were relevant and responsive to ACLU-PA requests.
- 55. Ms. Mellott-McConahey also testified that communications between Wake and the County Commissioners and the County Election Director, Patti Hess, existed.
- 56. Notwithstanding the existence of responsive records in the possession of Wake, Fulton County made no effort to obtain those documents.
- 57. Fulton County denied ACLU-PA's RTKL requests without ever asking Wake for a single record in its possession.
- 58. ACLU-PA has a right to records in Wake's possession relating to its work for Fulton County given its admitted performance of a government function in inspecting, analyzing and otherwise reviewing the use and operation of the Fulton County voting machines.

- E. The County Acted in Bad Faith by Failing to Comply with its Duties under the RTKL and Willfully Depriving Plaintiffs of Access to Public Records.
- 59. In failing to fully comply with Plaintiff's request and the Final Determination of the OOR, the County acted in bad faith. Plaintiffs are therefore entitled to attorney fees and related costs under the RTKL.
- 60. When a court grants access to a record after an agency denies a RTKL request, the court "may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester" if the court finds that:
  - (1) the agency receiving the original request acted willfully or with wanton disregard in depriving the requester of access to a public record, "or otherwise acted in bad faith under the provisions of this act" or
  - (2) "the exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law."

See 65 P.S. § 67.1304 (emphasis added). See also Uniontown Newspapers, Inc. v. Pa. Dep't of Corr., 243 A.3d 19, 34 (Pa. 2020) (affirming that Section 1304(a)(1) permits recovery of attorney fees when the receiving agency determination is reversed by the OOR, and the agency deprived a requester of access to records in bad faith).

- 61. Moreover, a court may impose a civil penalty up to \$1,500 if an agency denied access to a public record in bad faith. 65 P.S. § 67.1305.
- 62. Whether an agency showed willful or wanton disregard for a requester's rights, or otherwise acted in bad faith regarding a request under the RTKL, depends on the following factors:
  - The degree of noncompliance with its duties under the law.
  - The repercussions of that noncompliance.
  - Delays in complying with OOR or court orders to produce documents.
  - The duration an agency withholds public records.
  - The unreasonableness of agency determinations of whether a document is a public record or not.

See Uniontown Newspapers, Inc. v. Pa. Dep't of Corr., 185 A.3d 1161, 1171-74 (Pa. Commw. Ct. 2018), aff'd, 243 A.3d 19 (Pa. 2020); Newspaper Holdings, Inc. v. New Castle Area School Dist., 911 A.2d 644, 650 (Pa. Commw. Ct. 2006).

- 63. Fulton County initially denied Plaintiff's records request by invoking two RTKL exemptions. *See* Exhibit D. However, in doing so, the County failed to identify the exempt records or explain why each identified document was exempt from disclosure, which violates its duties under the RTKL. *See UnitedHealthcare*, 187 A.3d at 1059.
- 64. After Plaintiffs appealed to the OOR, the County refused the OOR's request to produce an index of withheld documents, and effectively failed to comply with its duty to participate in the OOR's adjudication process. Finally, days after the deadline to appeal OOR's Final Order directing the County to produce all requested records, the County produced 691 records.
- 65. None of the produced records fit the exemptions the County relied on to withhold documents, suggesting that the County invoked these exemptions in bad faith, or based on an unreasonable interpretation of the RTKL.
- 66. Moreover, the County's production is plainly incomplete, in violation of its duty to comply with the OOR's Final Determination. *See* records identified in paragraphs 38 to 47, *supra*.
- 67. The County's production again failed to identify any withheld documents, or provide any reason for withholding them, in violation of its duties under the RTKL. *See UnitedHealthcare*, 187 A.3d at 1059.
- 68. Additionally, county officials' use of private email servers to conduct official business with Wake TSI and the failure to turn over responsive records from such servers suggests a willful attempt to deprive Plaintiffs of access to public records, in violation of Section 1304.

- 69. In addition, Fulton County made no attempt to contact Wake to obtain responsive documents prior to the denial of ACLU-PA's requests.
- 70. Section 67.506(d) of the RTKL, 65 P.S. § 67.506(d), provides that a public record that is "[...] in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency" for purposes of the RTKL.
- 71. Upon information and belief, the County entered an agreement with Wake TSI and third party payors to perform an inspection and review of the County's voting machines and ballots, which constitutes a written or oral contract to perform a governmental function within the meaning of 65 P.S. § 67.506(d).
- 72. Upon such agreement, Wake TSI did perform the governmental function of reviewing the County's voting machines and ballots within the meaning of 65 P.S. § 67.506(d).
- 73. Wake TSI possessed unproduced records that were responsive to the Requests at the time the Requests were made, and Wake TSI continues to possess records that are responsive to the Requests, but the County failed to obtain and produce those records from Wake to Plaintiff. Such responsive records constitute public records of the County within the meaning of 65 P.S. § 67.506(d).
- 74. In light of the County's failure to seek and obtain responsive records from Wake TSI, ACLU-PA has no adequate remedy at law to enforce the Final Determination with respect to the responsive public records in the possession of Wake TSI.
- 75. In light of the County's failure to obtain the records from Wake TSI and in light of ACLU-PA's lack of any other adequate remedy at law to obtain the responsive records in the possession of Wake TSI, a mandamus order to Wake TSI to provide the records to ACLU-PA is

necessary. This falls squarely within the purpose of the Right-to-Know law, which is "to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials, and make public officials accountable for their actions." *Askew v. Pa. Office of the Governor*, 65 A.3d 989, 991 (Pa. Cmwlth. 2013) (internal citations omitted).

- 76. The records at issue relate to Fulton County's review of the 2020 election, which has attracted national attention. *See*, *e.g.*, Exhibit H. Fulton County is one of only a small number of government agencies nationwide that have undertaken 2020 election reviews, and the only one thus far in Pennsylvania that has completed such a review.
- 77. "[T]he objective of the RTKL ... is to empower citizens by affording them access to information concerning the activities of their government." *Uniontown Newspapers*, 243 A.3d at 33 (citation omitted). The RTKL's "salutary purpose [is] promoting access to official government information in order to prohibit secrets, scrutinize actions of public officials and make officials accountable for their actions." *Id.* (Citation omitted). Fulton County's bad faith in first unjustifiably delaying any production and then making plainly incomplete production has frustrated that purpose.
- 78. Therefore, in addition to production of the responsive documents identified above, Plaintiffs are entitled to reimbursement of their legal costs for this enforcement action and the imposition of appropriate civil penalties.

#### V. <u>CONCLUSION</u>

- 79. For the reasons set forth above, Fulton County violated the provisions of the RTKL, and deprived Plaintiffs and the public of vital information about a secretive election review.
- 80. Further, Fulton County acted in bad faith by failing to comply with its obligations under the RTKL, and by relying on purported exemptions that were not based on a reasonable interpretation of the law.

- 81. Therefore, Plaintiffs are entitled to any and all relief available under the RTKL, including immediate access to the information and records requested from the County and Wake; reimbursement for their attorneys' fees and related costs; and an imposition of civil penalties against Fulton County.
- 82. Plaintiffs are also entitled to discovery, including from Wake. *See* Pa. R. Civ. P. 4001; Pa. R. Civ. P. 1091. Defendant's failure to comply with clear obligations under the RTKL, improper invocation of inapplicable exemptions, failure to produce an index of responsive documents requested by OOR, and the blatantly deficient production require Plaintiffs to conduct discovery to ascertain the universe of responsive documents and the full extent of Defendant's bad faith.

#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, Witold Walczak and the American Civil Liberties Union, respectfully request that this Honorable Court enter an Order providing the following relief:

- 1. Directing the Fulton County Open Records Officer to produce all documents responsive to Plaintiffs' July 16, 2021, RTKL request, as directed by the OOR's September 13, 2021, Final Determination, within seven (7) days of issuance of an appropriate Order of Court;
- 2. Permit Plaintiffs to engage in discovery including but not limited to depositions of the Fulton County Open Records Officer, the Fulton County Commissioners, Wake, and such other parties as discovery reveals appropriate;
- 3. Find that Fulton County acted in bad faith by depriving Plaintiffs of their right of access to public records, and by failing to satisfy its obligations under the Pennsylvania Right to Know Law;
- 4. Award Plaintiffs their attorneys' fees and costs incurred in this matter pursuant to Section 1304 of the Right to Know Law; and
- 5. Impose a \$1,500 civil penalty against Fulton County pursuant to Section 1305(a) of the Right to Know Law.
  - 6. Provide any further relief that this Court deems appropriate under the circumstances.

Respectfully submitted,

Dated: April 5, 2023

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Counsel for Plaintiffs, Witold Walczak and the American Civil Liberties Union of Pennsylvania

# **VERIFICATION**

I verify that the statements made in this Amended Complaint are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: April 5, 2023 s/Marian K. Schneider

#### **CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2023, a true and correct copy of the Complaint in Mandamus with exhibits attached thereto enforcing the Final Determination of the Office of Open Records filed on behalf of the Plaintiffs, Witold Walczak and the American Civil Liberties Union of Pennsylvania, was delivered to the Fulton County Sheriff and Franklin County Sheriff for service upon the following individuals and entities:

Fulton County
Open Records Office
116 West Market Street, Suite 203
McConnellsburg, PA 17233
Lisa Mellott-McConahy (Chief Clerk)

James M. Stein, Esq.
Dick, Stein, Schemel, Wine & Frey LLP
13 W. Main Street, Suite 210
Waynesboro, PA 17268

Craig Staudenmaier, Esq.
Nauman, Smith, Shissler & Hall, LLP
200 North Third Street, 18th Floor
Harrisburg, PA 17101

Respectfully submitted,

Charles Kelly (Pa ID No 1942)

SAUL EWING LLP

One PPG Place, Suite 3010

Pittsburgh, PA 15222

(412) 209-2500

Delene Lantz (Pa ID No. 205426) SAUL EWING LLP 2 North Second St, 7th Fl Harrisburg, Pennsylvania 17101 (717) 257-7561

Counsel for Plaintiffs, Witold Walczak and American Civil Liberties Union of Pennsylvania

# Exhibit A



#### FINAL DETERMINATION

IN THE MATTER OF

WITOLD WALCZAK AND THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA, Requester

V.

Docket No.: AP 2021-1661

FULTON COUNTY, Respondent

#### INTRODUCTION

Witold Walczak, Esq., an attorney with the American Civil Liberties Union of Pennsylvania (collectively "Requester"), submitted a request ("Request") to Fulton County ("County") pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 et seq., seeking all records relating to post-election audits or the funding thereof. The County denied the Request, arguing that the records are exempt because they relate to internal, predecisional deliberations or relate to noncriminal investigations. The Requester appealed to the Office of Open Records ("OOR"). For the reasons set forth in this Final Determination, the appeal is granted, and the County is required to take further action as directed.

#### FACTUAL BACKGROUND

On July 16, 2021, the Request was filed, seeking:

Any record [] involving or referencing the November 3, 2020, or May 18, 2021, elections that relates to, references, or involves:

- 1. An audit, canvass, or any type of post-election review including, but not limited to, requests for such a review (including but not limited to a request made by State Senator Doug Mastriano); internal and external discussions about such a review, including emails; responses to review requests; and any actions taken in furtherance of such a review; and
- 2. A discussion of cost and funding to pay for an audit, canvass or review of the above-referenced elections.

On July 22, 2021, the County denied the Request, arguing that the responsive records are exempt because they would contain internal, predecisional deliberations, 65 P.S. § 67.708(b)(10)(i)(A), and relate to a noncriminal investigation. 65 P.S. § 67.708(b)(17).

On August 12, 2021, the Requester appealed to the OOR, challenging the denial and providing reasons for disclosure. The OOR invited the parties to supplement the record and directed the County to notify third parties of their ability to participate in the appeal. See 65 P.S. § 67.1101(c).

On August 20, 2021, the Requester submitted a statement asking the OOR to issue a briefing schedule and require the production of specific evidence. The same day, the County submitted an unsworn position statement arguing that the records relate to an investigation the County was forced to undertake to litigate against the Acting Secretary of the Commonwealth, and that release of the records would jeopardize the County's ability to participate in that litigation.

On August 24, 2021, the Requester submitted a detailed position statement arguing that the County had failed to prove any exemption and that the exemptions were not facially applicable to the Request. The Requester again asked the OOR to issue an order requiring the County to provide more detailed evidence regarding the responsive records.

<sup>&</sup>lt;sup>1</sup> The OOR asked the parties to respond to the motions for a briefing schedule, but the parties did not do so.

On August 25, 2021, the OOR denied the Requester's motion, noting that the County is responsible for organizing its own case on appeal. The OOR sought additional evidence from the County relating to the scope and nature of the noncriminal investigation and nature of the responsive records, but the County did not respond.

#### LEGAL ANALYSIS

"The objective of the Right to Know Law ... is to empower citizens by affording them access to information concerning the activities of their government." SWB Yankees L.L.C. v. Wintermantel, 45 A.3d 1029, 1041 (Pa. 2012). Further, this important open-government law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." Bowling v. Office of Open Records, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010), aff'd 75 A.3d 453 (Pa. 2013).

The OOR is authorized to hear appeals for all Commonwealth and local agencies. See 65 P.S. § 67.503(a). An appeals officer is required "to review all information filed relating to the request" and may consider testimony, evidence and documents that are reasonably probative and relevant to the matter at issue. 65 P.S. § 67.1102(a)(2). An appeals officer may conduct a hearing to resolve an appeal. The decision to hold a hearing is discretionary and non-appealable. Id. Here, neither party requested a hearing.

The County is a local agency subject to the RTKL that is required to disclose public records. 65 P.S. § 67.302. Records in the possession of a local agency are presumed to be public, unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree. See 65 P.S. § 67.305. Upon receipt of a request, an agency is required to assess whether a record requested is within its possession, custody or control and to respond within five business

days. 65 P.S. § 67.901. An agency bears the burden of proving the applicability of any cited exemption(s). See 65 P.S. § 67.708(b).

Section 708 of the RTKL places the burden of proof on the public body to demonstrate that a record is exempt. In pertinent part, Section 708(a) states: "(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence." 65 P.S. § 67.708(a). Preponderance of the evidence has been defined as "such proof as leads the fact-finder ... to find that the existence of a contested fact is more probable than its nonexistence." Pa. State Troopers Ass 'n v. Scolforo, 18 A.3d 435, 439 (Pa. Commw. Ct. 2011) (quoting Pa. Dep't of Transp. v. Agric. Lands Condemnation Approval Bd., 5 A.3d 821, 827 (Pa. Commw. Ct. 2010)).

The Request seeks all records relating to post-election audits carried out by the County, including discussions of funding for such efforts. The County denied the Request, arguing that it seeks internal, predecisional, and deliberative records, and records related to a noncriminal investigation.

Section 708(b)(10)(i)(A) of the RTKL exempts from disclosure records reflecting:

[t]he internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

65 P.S. § 67.708(b)(10)(i)(A). To withhold a record under Section 708(b)(10)(i)(A), an agency must show: 1) the deliberations reflected are internal to the agency, including representatives; 2) the deliberations reflected are predecisional, i.e., before a decision on an action; and 3) the contents

are deliberative in character, i.e., pertaining to a proposed action. See Kaplin v. Lower Merion Twp., 19 A.3d 1209, 1214 (Pa. Commw. Ct. 2011).

Meanwhile, Section 708(b)(17) of the RTKL exempts from disclosure "[a] record of an agency relating to a noncriminal investigation, including ... [c]omplaints submitted to an agency... [and] investigative materials, notes, correspondence and reports" or a record that, if disclosed, would "[c]onstitute an unwarranted invasion of privacy." 65 P.S. §§ 67.708(b)(17)(i)-(ii); 65 P.S. § 67.708(b)(17)(vi)(C). To successfully assert the noncriminal investigative records exemption, the agency must demonstrate that "a systematic or searching inquiry, a detailed examination, or an official probe" was conducted regarding a noncriminal matter. Pa. Dep't of Health v. Office of Open Records, 4 A.3d 803, 810-11 (Pa. Commw. Ct. 2010). Further, the inquiry, examination or probe must be "conducted as part of an agency's official duties." Id. at 814. An official probe only applies to noncriminal investigations conducted by agencies acting within their legislatively granted fact-finding and investigative powers. Johnson v. Pa. Convention Center Auth., 49 Å.3d 920 (Pa. Commw. Ct. 2012); see also Pa. Dep't of Pub. Welf. v. Chawaga, 91 A.3d 257 (Pa. Commw. Ct. 2014).

In *Chawaga*, the Commonwealth Court held that a performance audit was not part of the Department's legislatively granted fact-finding and investigative powers, and that the audit was ancillary to the Department's public assistance services. 91 A.3d at 259. Pursuant to *Chawaga*, the OOR has noted that "[n]ot all agency fact-finding constitutes a 'noncriminal investigation' subject to the protections of the RTKL." *Hopey v. Pa. Dep't of Corr.*, OOR Dkt. AP 2014-1739, 2014 PA O.O.R.D. LEXIS 1318; *see also Katz v. Lower Merion Sch. Dist.*, OOR Dkt. AP 2014-1572, 2014 PA O.O.R.D. LEXIS 1338. Furthermore, the exempt records must be produced as a result of the agency's own noncriminal investigations; an agency may not rely on the fact that it

has been investigated by another agency to withhold otherwise-public records. *See Levy v. Senate of Pa.*, 94 A.3d 436, 448 (Pa. Commw. Ct. 2014) ("To the extent the documents reference and arguably 'relate' to a criminal investigation conducted by another agency, the records themselves do not contain any investigative material"); *Yakim v. Municipality of Monroeville*, OOR Dkt. AP 2014-1978, 2015 PA O.O.R.D. LEXIS 41 (An agency cannot rely on another agency's investigation when claiming an investigative exemption under the RTKL).

#### Here, the County states that:

Fulton County OOR denicd these requests because, as of the time of the requests, and continuing presently, the Acting Secretary for the Commonwealth of Pennsylvania has been involved with Fulton County in investigating and ultimately deciding to decertify some of the County's voting equipment.

At the time of the [R]equest, the County was of the opinion that the Acting Secretary of the Commonwealth was conducting an investigation into the matter and thus the records were exempt from disclosure under 65 Pa.C.S.  $67.708(b)(10)(i)(\Lambda) \& (17)$ . Now the Acting Secretary has actually attempted to "decertify" Fulton County voting equipment, and the County has initiated litigation in the Commonwealth Court to challenge that action. []

[] Fulton County denied the [R]equest because, based on the actions and investigation being conducted by the Acting Secretary of the Commonwealth, Fulton County has had to conduct its own investigation into all matters surrounding the Wake TSI assessment. This investigation has resulted in the litigation referenced above. The release of the requested information could jeopardize the County's ability to meaningfully participate in said litigation.<sup>2</sup>

The County's position suffers from several fatal flaws. First, as noted above, the investigative exemptions in the RTKL are intended to secure the confidentiality of an agency's own investigations, not protect an agency's records from public scrutiny because that agency was

<sup>&</sup>lt;sup>2</sup> The fact that a government agency is a party to a lawsuit has no significance under the RTKL, unless the judge in that case has issued an order which expressly bars dissemination of the responsive records. *Office of the Dist. Attorney of Phila. v. Bagwell*, 155 A.3d 1119, 1139 (Pa. Commw. Ct. 2017) ("Discovery conducted in a court of law and a request made under the RTKL are wholly separate processes and it is only in rare circumstances, such as the issuance of a protective order, that a judicial order or decree governing discovery in litigation will act to prevent disclosure of public information responsive to a RTKL request.").

investigated. See Hayes v. Pa. Dep't of Pub. Welf., OOR Dkt. AP 2012-0415, 2012 PA O.O.R.D. LEXIS 530 ("[A] review of case law interpreting the RTKL and its predecessor statute indicates that the investigative exemption has only been extended to protect the records of the agency carrying out an investigation"). The County is not entitled to withhold otherwise-public records simply because they were reviewed by the Acting Secretary of the Commonwealth.

Next, the County does not identify any of the responsive records, including the records which it withheld pursuant to Section 708(b)(10)(i)(A). Given the subject matter of the Request, it is possible that there might be internal, predecisional, deliberative material among the responsive records. However, because the County has chosen not to identify any of the responsive records, the OOR is unable to determine which records, if any, would qualify. See Fitzgerald v. Pa. Dep't of Corr., OOR Dkt. AP 2016-2075, 2016 PA O.O.R.D. LEXIS 56 ("In the vast majority of cases, the RTKL's requirement that an agency demonstrate that a record is exempt from disclosure before withholding it means that the agency must provide (1) an acknowledgement that the records exist, (2) a description of the records, and (3) an analysis of why the records are exempt.") In this case, the County has neither explained what records have been withheld nor furnished any evidence that such records qualify for the exemptions raised.

Finally, the County did not submit any evidence to establish the nature or scope of the noncriminal investigation which it has undertaken. The agency bears the burden of proof in appeals under the RTKL. See 65 P.S. § 67.708(b). Although failure to submit evidence in response to an RTKL appeal is not necessarily a cause for default judgment, as the OOR must also consider the context and contents of the appeal filing itself, in most cases, the exemptions are not facially obvious. Pa. Game Comm'n v. Fennell, 149 A.3d 101 (Pa. Commw. Ct. 2016) (holding that the OOR must consider uncontradicted statements in the appeal filing when construing exemptions);

see also Office of the Governor v. Davis, 122 A.3d 1185, 1192 (Pa. Commw. Ct. 2015) (en hanc) (holding that an affidavit may be unnecessary when an exemption is clear from the face of the record). Here, although the Request seeks records which "relate" to one or more audits conducted by the County, the County has not demonstrated the statutory authority under which the audits were conducted, has not proven that it conducted "a systematic or searching inquiry, a detailed examination, or an official probe", and has not demonstrated that all potentially responsive records relate to any such investigation. See, e.g., Bauman v. Pa. Dep't of State, OOR Dkt. AP 2020-1330, 2020 PA O.O.R.D. LEXIS 2930 (finding (b)(17) applicable without an attestation because the request sought investigative records from a specified investigation conducted under an identified statute).

The County did not respond to either the Requester's arguments regarding the sufficiency of its evidence or the OOR's requests for additional evidence, and "it is not incumbent upon [the] OOR to request additional evidence when developing the record. Rather, it is the parties' burden to submit sufficient evidence to establish material facts." *Highmark Inc. v. Voltz*, 163 A.3d 485, 491 (Pa. Commw. Ct. 2017) (*en banc*). Unsworn statements or statements of counsel, such as the County's submissions, not supported by affidavit testimony, have been held not to be competent evidence under the RTKL. *See Housing Auth. of the City of Pittsburgh v. Van Osdol*, No. 795 C.D. 2011, 2012 Pa. Commw. LEXIS 87 (Pa. Commw. Ct. 2012); *Office of the Governor v. Davis*, 122 A.3d 1185, 1193 (Pa. Commw. Ct. 2015) ("Position statements are akin to briefs or proposed findings of fact, which, while part of the record, are distinguishable from the evidentiary record") (citations omitted). Because the County has not identified the responsive records at issue or submitted any evidence in support of its denial, the County has not demonstrated that any exemption applies.

The OOR notes that regardless of an agency's involvement in litigation, the agency cannot ignore its duties and responsibilities under the RTKL. Good faith is a common thread throughout the RTKL process; as noted by the Pennsylvania Supreme Court in *Uniontown Newspapers, Inc.* v. Pa. Dep't of Corr.:

As part of a good faith search, the open records officer has a duty to advise all custodians of potentially responsive records about the request, and to obtain all potentially responsive records from those in possession... When records are not in an agency's physical possession, an open records officer has a duty to contact agents within its control, including third-party contractors... After obtaining potentially responsive records, an agency has the duty to review the records and assess their public nature under ... the RTKL.

185 A.3d 1161, 1171-72 (Pa. Commw. Ct. 2018) (citations omitted), affirmed by, 243 A.3d 19 (Pa. 2020). Furthermore, good faith involvement in the RTKL process includes presenting evidence and argument to the OOR. Failure to do so has resulted in the waiver of an agency or third party's ability to present additional evidence before a reviewing court. See Voltz, 163 A.3d at 491 ("Critically, Highmark offers no explanation for not submitting the evidence comprised in its request to supplement the record when it had the chance to do so before OOR. Therefore, we decline to review the additional evidence as factfinder, or to remand to OOR to open the record to accept this evidence. To allow a remand under these circumstances amounts to giving Highmark the proverbial second bite at the apple").

#### CONCLUSION

For the foregoing reasons, the Requester's appeal is **granted**, and the County is required to produce all responsive records within thirty days. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Fulton County Court of Common Pleas. 65 P.S. § 67.1302(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond

according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>3</sup> This Final Determination shall be placed on the OOR website at: <a href="http://openrecords.pa.gov">http://openrecords.pa.gov</a>.

FINAL DETERMINATION ISSUED AND MAILED: September 13, 2021

/s/ Jordan C. Davis

Jordan C. Davis, Esq. Appeals Officer

Sent to:

Witold Walczak, Esq. (via email);

Charles Kelly, Esq. (via email); John Dixon, Esq. (via email); James Stein, Esq. (via email)

<sup>&</sup>lt;sup>3</sup> See Padgett v. Pa. State Police, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).

# Exhibit B



#### COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE

July 20, 2021

Mr. James M. Stein Dick, Stein, Schemel, Wine & Frey 119 North Second Street McConnellsburg, PA 17233

Dear Mr. Stein,

We are in receipt of your letter of June 29, 2021, written on behalf of Patti Hess and the Fulton County Board of Elections. Based on our discussions and correspondence with Fulton County officials, it appears that the contents of ballot boxes, including the voted ballots, and the components of the Dominion Democracy Suite 5.5A that were used during the 2020 November election were subjected to a post-election review by a third-party in violation of Pennsylvania's Election Code.

Pennsylvania's Election Code vests in each bipartisan county board of elections the authority and duty to maintain proper chain of custody of official ballots, balloting materials and voting systems before, during, and after each election. These requirements ensure that any official tabulation, recount, or election contest is conducted transparently in a manner that does not put at risk this critical election infrastructure.

The Department of State takes steps prior to the certification of a voting system to verify that the system successfully completes penetration testing, access control testing and vulnerability testing to ensure that every access point and all software and firmware is protected from tampering. Once a system is certified, the voting system vendor is then permitted to supply the voting system and counties are permitted to procure that system for use in Commonwealth elections, subject to the conditions of the Secretary of the Commonwealth's certification report.

Following delivery of a certified and procured system, the county is supposed to independently perform acceptance testing on the system. Thereafter, the equipment and software are expected to remain under the full control of the county.

As you have confirmed through our correspondence, Fulton County officials allowed Wake TSI, a company with no knowledge or expertise in election technology access to certain key components of its certified system. Fulton County officials permitted Wake TSI employees to access their "election database, results files, and Windows system logs." Further, the county allowed this third-party entity to use some type of "system imaging tool to take complete hard drive images of these computers" and "complete images of two USB thumb drives" used to transfer results files from their voting system computers to the computers used to upload results to the

state's voter registration and election results reporting system. These actions were taken in a manner that was not transparent or bipartisan.

As a result of the access granted to Wake TSI, Fulton County's certified system has been compromised and neither Fulton County; the vendor, Dominion Voting Systems; nor the Department of State can verify that the impacted components of Fulton County's leased voting system are safe to use in future elections.

Due to these actions and after careful consideration, under the authority granted to the Secretary of Commonwealth under Sections 1101-A through 1122-A of the Pennsylvania Election Code, I have no other choice but to decertify the use of Fulton County's leased Dominion Democracy Suite 5.5A voting system last used in the November 2020 election.

Please know that I did not arrive at this decision lightly. I have a statutory obligation to examine, evaluate and certify electronic voting systems. These reviews include verifying that the voting system conforms to federal and state law and any regulations or standards regarding confidentiality, security, accuracy, safety, reliability, usability, accessibility, durability, resiliency, and auditability. I am also mindful of my federal obligations under Executive Order 13636, which focuses on measures required for infrastructure security and the action taken by the United States Department of Homeland Security to designate elections as critical infrastructure under the "Government Facilities" sector.

Please know that Department stands ready to support you in any appropriate manner.

If you have any questions, do not hesitate to reach out to my office directly.

Sincerely,

Veronica W. Degracionreid

Acting Secretary of the Commonwealth

Cc: Fulton County Board of Elections

# Exhibit C



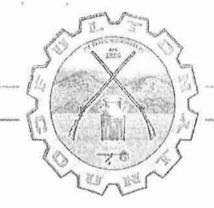
#### Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: Fult	on County Board of Con	nmissioners		(Attn: AORO)
Date of Request: July 16, 2021	Submitted via:	<b>■</b> Email	□ U.S. Mail	□ Fax □ In Person
PERSON MAKING REQUEST:				
Name: Witold Walczak	Company (if	applicable	ACLU of Pe	nnsylvania
Mailing Address: P.O. Box 23058				
City: Pittsburgh State: Pr	A Zip: 15222	Email: VW	alczak@aclup	a.org
Telephone: 412-681-7736 x 321				
How do you prefer to be contacted if the				
matter, time frame, and type of record or per are not required to explain why the records of Use additional pages if necessary.	arty names. RTKL request are sought or the intended	s should see use of the r	k records, not a ecords unless ot	ask questions. Requesters therwise required by law.
Any record, as that term is defined in 6. May 18, 2021, elections that relates to, 1. An audit, canvass, or any type of preview (including but not limited to a rediscussions about such a review, includifurtherance of such a review; and 2. A discussion of cost and funding to elections.	references, or involves post-election review incl quest made by State Se ng emails; responses to	: uding, but enator Doug review red	not limited to, g Mastriano); i quests; and ar	, requests for such a internal and external ny actions taken in
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Do you want <u>certified copies</u> ? $\square$ Yes (r	rson inspection of reco nav be subject to addition	-		est copies idier)
RTKL requests may require payment or I	prepayment of fees. See	the Official	RTKI. Fee Sch	<u>edule</u> for more details.
Please notify me if fees associated w				or) 🗆 \$
ITEMS BEL	OW THIS LINE FOR A	GENCY US	E ONLY	
Tracking: Date Receiv	ved: F	Response [	due (5 bus. da	ys):
30-Day Ext.? $\square$ Yes $\square$ No (If Yes, Final	Due Date:	) Actua	al Response D	ate:
Request was:   Granted Partially (	Granted & Denied 🛚 🖺	enied Co	st to Requeste	er: \$
☐ Appropriate third parties notified an	ıd given an opportunity	to object	to the release	of requested records.
NOTE: In most cases, a completed RTKL	request form is a public	record.		Form updated Feb. 3, 2020

70V

# Exhibit D



# **Fulton County Commissioners**

116 West Market Street, Suite 203, McConnellsburg, PA 17233

Telephone: (717) 485-3691 Fax: (717) 485-9411 Email: commissioners@co.fulton.pa.us

Stuart L. Ulsh, Chair Randy H. Bunch, Vice-Chair Paula J. Shives Lisa Mellott-McConahy, Chief Clerk Jim Stein, County Solicitor

July 22, 2021

Witold Walczak PO Box 23058 Pittsburgh, PA 15222 vwalczak@aclupa.org

RE: Right-to-Know Law Request

#### Dear Witold:

I received your RTK 7/16/21. Below is the information provided by our County Solicitor, James Stein denying your request.

Your request is denied pursuant to Section 708(b)(17), records of an agency relating to non-criminal investigations are exempt from disclosure. These records include investigative materials and records that if disclosed, would reveal the institution or progress of an agency investigation.

Further, your request is denied to the extent that it seeks records of the Department that reflect the internal, pre-decisional deliberations between agencies, or research, memos and other documents used in the internal, pre-decisional deliberations by and between agencies under § 67,708(b)(10)(i)(A).

This Correspondence will serve to close your request.

Sincerely,

Lisa Mellott-McConahy Open Records Officer County of Fulton

Line William William

# Exhibit E



From:

Patti Hess

Sent:

Tuesday, May 25, 2021 1:09 PM

To:

Matt Shuham; Lisa Mellott-McConahy

Cc:

Elections Director

Subject:

RE: Comment request re: Document showing Wake TSI audit was contracted by

Sidney Powell's group

Yes, it belongs to Gene Kern.

#### Patti

Patti K, Hess CDBG COORDINATOR COMMUNITY DEVELOPMENT COORDINATOR DIRECTOR OF ELECTIONS & VOTER REG.

COUNTY OF FULTON 116 WEST MARKET STREET, SUITE 205 MCCONNELLSBURG PA 17233 DIRECT LINE: 717-485-6864

FOR THE TO This confidential message attachment continuous information intended for a specific in syntactic and purpose that, say any properties distribution of copy ment to the probability for the continuous and for the second interference of the continuous and for the second interference of the continuous and for the second interference of the continuous and for the continuous and for

From: Matt Shuham [mailto:mshuham@talkingpointsmemo.com]

Sent: Tuesday, May 25, 2021 12:11 PM

To: Lisa Mellott-McConahy < <a href="mailto:lmcconahy@co.fulton.pa.us">lmcconahy@co.fulton.pa.us</a> <a href="mailto:cc: Elections Director">cc: Elections Director</a> <a href="mailto:electionsdirector@co.fulton.pa.us">electionsdirector@co.fulton.pa.us</a>

Subject: Re: Comment request re: Document showing Wake TSI audit was contracted by Sidney Powell's group

Got it, thank you for clarifying.

So Patti Hess (I've cc'ed the election department because we're speaking about them) confirmed that the signature/handwritten note belonged to Gene Kern?

Best,
Matt Shuham
Reporter, Talking Points Memo
mshuham@talkingpointsmemo.com
mattshuham@protonmail.com
646-738-4485 (office) / 646-397-4678 (cell, Signal)

On Tue, May 25, 2021 at 12:06 PM Lisa Mellott-McConahy < lmcconahy@co.fulton.pa.us > wrote:

That was documentation that Patti Hess, our elections director had from the WAKE visit and was a response to a RTK Request yesterday. She verified the signature when I asked her. I was not here for any of the WAKE Visits and cannot confirm anything as I WAS NOT PRESENT! As the Right-To-Know Officer, I forward the requests to the departments that the requests pertain to and send what is provided to me.

From: Matt Shuham <mshuham@talkingpointsmemo.com>

Sent: Tuesday, May 25, 2021 11:40 AM

To: Lisa Mellott-McConahy <a href="mailton.pa.us">!mcconahy@co.fulton.pa.us">!mcconahy@co.fulton.pa.us</a>; Commissioners <a href="mailton.pa.us"><a h

Hello.

Talking Points Memo is reporting a Fulton County document published by the Arizona Mirror Monday, which shows that Defending the Republic contracted Wake TSI to audit Fulton County's 2020 vote:

https://www.azmirror.com/2021/05/24/group-led-by-kraken-lawyer-sidney-powell-hired-the-firm-recounting-azs-election-to-probe-a-pa-election/

It reports specifically, referring to handwriting on a document embedded in the story, "County clerk Lisa Mellott-McConahy identified the handwriting as belonging to Kern."

Can you confirm that is the case? Were there more pages to this document or was it just one page? And, how did Defending the Republic become involved in this audit? Can TPM have a copy for our reporting? What was the total cost of the audit as paid to Wake TSI? Any other context our readers should know about this document, or about the audit in general?

Thank you very much,

Matt Shuham
Reporter, Talking Points Memo
mshuham@talkingpointsmemo.com
mattshuham@protonmail.com
646-738-4485 (office) / 646-397-4678 (cell, Signal)

# Exhibit F

From:

Stuart Ulsh

Sent:

Wednesday, February 10, 2021 10:39 AM

To:

Gene Kern

Subject:

Re: Personal email addresses

#### tmsexcavating@comcast.net

On Feb 10, 2021 9:04 AM, Gene Kern < gkern@waketsi.com > wrote: Hi Gentlemen

Would you please share a personal email address with me?

Gene Kern EVP

(610) 291-0133

# Exhibit G

#### Meeting with Dominion

#### April 20, 2021

#### **Fulton County Commissioners Office**

Attendance: Stuart Ulsh, Randy Bunch, Paula Shives, Lisa McConahy, Lisa Beatty, Senator Judy Ward, Representative Jesse Topper, Jim Stein, Eldon Martin, Frank Dutton, John Hastings, Kay Stimson, Patti Hess.

Kay referring to the letter sent by her and is attached. The question is about the upcoming election and how to move forward.

Dominion will not back the Central Scanning machines from them since, Wake TSI came in and did an audit. The County was asked by government officials like Judy Ward, Doug Mastriano and others to let Wake come in and do the audit. Dominion states that Wake is not a federal accredited auditing company that is state approved and do not know what they could have done to the machines since no report is back yet. We stated that Wake did not touch the equipment that everything that was done was done by Eldon. The only thing is that Wake gave Eldon a USB Stick to download information on. Eldon downloads information to keep for the county on different USB Sticks after each election.

Short term goal is to bring in Loaner equipment to use for the May 18, 2021 primary election. These are to be approved by the state and set up by dominion. Since Dominion states that the state needs to approve what Dominion is supposed to put in to calculate the machines to be adequate for the election, Jesse and Judy said they would work with the state to get this process approved ASAP.

Dominion states chain of custody of the machines is information goes to the state and they approve the software not the hardware and dominion makes sure it is what is downloaded in the machines.

L & A Testing needs to be done before elections and paperwork from us that we use and from Dominion should be kept to prove everything is working and done properly. Dominion states that they do not keep any copies of this information, that they only give the customer the information. Stuart stated that they as a company should be keeping copies of any information that is given to their customers and it's hard to believe that a company like them working with all the states with voting would not keep copies of all the information. Dominion stated the do not keep copies.

The equipment that is here at Fulton County will remain here until this situation is resolved with Dominion. Eldon has already done a backup of the equipment here.

Kay said she will get with Jonathan Marks and the acting secretary Veronica, from the state to work with them on the loaner equipment.

Jim said that everyone is on the same page to get everything done for this election.

Jim stated that we will discuss the cost at another time and Jesse and Judy said that they would see about getting help to cover things.

Jim stated that when the report from Wake that Dominion is requesting is received we will be making it public and make sure Dominion sees it.

Fulton County is to make sure that only federal accredited companies do audits from here on out and a list is to be on the State web site and Dominion said they will make sure we get a copy.

Judy stated that the audit was done to make sure the voters know that everything was up and up with the election and Stuart said that we know that on our part that we have nothing to hide that is why the audit was done to show that everything was done right. Randy said everything in our November was done by the book and when the audit was done we were told everything went well and no problems were found.

Stuart again asked about the attestation and John said that they do not have to do it and have not done it with any county and do not have copy of it or anything else and that Fulton County should have something.

John stated to call the previous Director of Elections and see where the information could be since they gave it to the county.

Dominion to have equipment here to use by next week and L & A testing will be the following week May 10, 2021 at 9:30 am.

# Exhibit H

# The Washington Post Democracy Dies in Darkness

# It was like this rogue thing?: How the push by Trump allies to undermine the 2020 results through ballot reviews started quietly in Pennsylvania

By Rosalind S. Helderman

June 6, 2021 at 6:00 p.m. EDT



Joe Biden's presidential victory in Pennsylvania had been certified for weeks when officials in some Republicanleaning counties began receiving strange phone calls from GOP state senators in late December.

The lawmakers, who had been publicly questioning Biden's win, had a request: Would the counties agree to a voluntary audit of their ballots?

The push to conduct unofficial election audits in multiple counties, described in interviews and emails obtained by The Washington Post, served as a last-ditch effort by allies of former president Donald Trump to undercut Biden's win after failing in the courts and the state legislature.

The previously unreported lobbying foreshadowed a playbook now in use in Arizona and increasingly being sought in other communities across the country as Trump supporters clamor for reviews of the ballots cast last fall, citing false claims that the vote was corrupted by fraud. The former president's backers argue that any evidence of problems they can uncover will prove the election system is vulnerable — and could have been manipulated to help Biden win.

The audits are being pushed by a loose affiliation of GOP lawmakers, lawyers and self-described election experts, backed by private fundraising campaigns whose donors are unknown.

In Pennsylvania, the state senators quietly targeted at least three small counties, all of which Trump had won handily. Their proposal was unorthodox: to have a private company scrutinize the county's ballots, for free — a move outside the official processes used for election challenges.

Only one county is known to have agreed to the senators' request: rural Fulton County, on the Maryland border, where Trump performed better than anywhere else in the state, winning nearly 86 percent of the roughly 8,000 votes cast.

"I think they thought this was just a small, friendly area. If they could get away with it, they could raise questions about the legitimacy of the election," said Dayton Tweedy, 60, a teacher in Fulton who, with his wife, Kimbra, spent months trying to learn more about how the audit was conducted in his community — and why.

On Dec. 31, in the quiet of the winter holiday, county officials allowed a West Chester, Pa., company called Wake TSI to spend an afternoon recounting about 1,000 mail-in ballots and taking data from county voting machines.

According to a county document obtained by The Post, Wake TSI was "contracted" to a nonprofit group run by Sidney Powell, a pro-Trump lawyer who was in the midst of filing a flurry of lawsuits around the country challenging the election results.

Wake TSI submitted a draft report in February to Fulton officials declaring the election had been "well run" and "conducted in a diligent and effective manner," county documents show.

However, before the final version was posted to the county website, it was revised. The new version included a caveat to the county's otherwise clean bill of health: "This does not indicate that there were no issues with the election, just that they were not the fault of the County Election Commission or County Election Director," it read, before flagging potential problems with the county voting machines and other aspects of the election.

The report has been circulated on social media by Trump allies who have sought to claim that voting machines are vulnerable to hacking and fraud.

County officials did not respond to requests for comment on who made the changes to the report. Wake TSI and Powell did not respond to requests for comment.

The early attempt to launch off-the-books audits in Pennsylvania counties shows the relentlessness of the campaign by Trump's allies to overturn the election — an assault that began before the polls closed and has only expanded in the months since a pro-Trump mob attacked the U.S. Capitol, trying to prevent Biden's win from being formalized.

The full scope of the endeavor to undermine the 2020 results is still coming into public view. On Friday, newly released emails revealed that Trump called the Republican president of the Arizona Senate late last year to thank her for trying to prove fraud in her state. Around the same time frame, White House Chief of Staff Mark Meadows was pressuring the Justice Department to investigate unfounded claims about vulnerabilities in the election, the New York Times first reported Saturday.

At a conference in Texas last weekend, Powell said she still believes Trump should be "reinstated" as president, an idea that has also transfixed the former president.

One of the Pennsylvania state senators who pushed for the county audits, Republican Doug Mastriano, told Trump at a one-on-one meeting in New York last month that he could engineer an audit in his state, according to a person familiar with the meeting, who spoke the condition of anonymity to describe the private discussion. Mastriano did not respond to requests for comment.

Wake TSI has played a key role in the audit of the Maricopa County, Ariz., ballots — hired as a subcontractor to handle the hand recount portion of the process.

Last week, Mastriano and other Pennsylvania lawmakers toured the site in Phoenix where the recount is underway. He told a Wall Street Journal reporter that he believed a similar audit should be initiated in Pennsylvania.

"For the sake . . . of our constitutional republic, and for the sake of people's peace of mind, let's just do it," he said. "Let's pick a few counties and put people's minds at rest."

On Friday, Trump issued a statement praising Mastriano for leading the trip to Arizona and calling on the Pennsylvania Senate to heed his call.

The former president added: "The people of Pennsylvania and America deserve to know the truth."

## A key state swings for Biden

The senators' request to audit county results in Pennsylvania came at the end of nearly two months of tumult in the Keystone State that followed the Nov. 3 election.

Early returns on election night showed Trump ahead in the state that had helped him win the White House in 2016. But a Pennsylvania law that Republicans resisted changing barred counties from opening more than 2.5 million mailin ballots until Election Day. As a result, it took days to tally all the votes, particularly in Democratic strongholds of Philadelphia and Pittsburgh, where many Biden supporters had voted by mail to avoid visiting polls during the coronavirus pandemic.

As the votes were counted, Biden closed Trump's lead and then pulled ahead — a phenomenon that political experts had predicted would occur. Four days after the election, major news organizations declared Biden the winner of Pennsylvania's 20 electoral votes. On Nov. 24, Pennsylvania Secretary of State Kathy Boockvar (D) formally certified Biden's victory by a margin of over 80,000 votes.

But the slow count offered Trump an opening. On Nov. 7, his personal attorney Rudolph W. Giuliani and other allies held a freewheeling news conference in the parking lot of a Philadelphia landscaping business. Giuliani declared the election was being stolen from Trump in the city, which he said had "a sad history of voter fraud."

Giuliani later personally appeared in court for the first time in nearly three decades to argue to a federal judge that he should disqualify about 680.000 votes cast in Philadelphia and Pittsburgh because, Giuliani claimed, Republican

observers had not been given sufficient ability to watch the count.

The judge rejected the suit, comparing the legal theories stitched together by Trump's campaign to "Frankenstein's monster." On appeal, a three-judge panel — all of them appointed by Republicans — also rejected the challenge to Pennsylvania's vote. "Charges of unfairness are serious. But calling an election unfair does not make it so," U.S. Circuit Judge Stephanos Bibas, a Trump appointee, wrote for the group.

Even so, Trump's complaints found fertile ground in Pennsylvania's Republican-led General Assembly.

Mastriano, a retired Army colonel elected to the Senate in 2019 from rural Franklin County, was at the vanguard. Three days after the election, he called for a recount in any precinct where "questionable actions were demonstrated."

On Nov. 25, Mastriano and other Senate Republicans organized a public hearing to air Giuliani's claims of fraud in a hotel ballroom in Gettysburg. Trump planned to attend but canceled at the last minute, instead calling in to the meeting by cellphone. "We have to turn the election over," he said, as Trump lawyer Jenna Ellis held up a phone to the microphone for the room to hear.

Afterward, Mastriano and others in the group piled into vans and cars and drove to Washington, where they met in the Oval Office with Trump, according to people familiar with the meeting. (Mastriano was forced to abruptly leave after the coronavirus test he took when he arrived at the White House came back positive.)

Two days later, Mastriano introduced a resolution asking that the certification of Biden's win be withdrawn and the state legislature be allowed to appoint its own electors instead.

He has told reporters that he and Trump grew close in these weeks, speaking at least 15 times by telephone. As Trump continued to push to overturn the election, the Associated Press reported that Mastriano forwarded an invitation to Pennsylvania Senate Republicans to attend a White House luncheon with Trump on Dec. 23 — what would be his second meeting with the president in less than a month.

## Queries to counties

As December grew to a close, Trump had few options left in Pennsylvania.

A legislative committee in the state had rejected a resolution to conduct an immediate audit of election results statewide, and the legislative session expired without consideration of Mastriano's proposal to appoint electors.

Days before Congress was scheduled to finalize Biden's win in Washington on Jan. 6, the elections director of Cumberland County, a Republican-leaning area on the outskirts of Harrisburg, emailed her counterparts around the state.

"Did anyone else get a request from Senator Judy Ward about auditing your voting machines?" she wrote on Dec. 30, according to a copy of the message obtained by The Post.

Ward, a Republican state senator who took office in 2019, is an ally of Mastriano and shared the dais with him at the Gettysburg hearing.

A clerk in tiny Jefferson County, 150 miles away, responded: "Jefferson received a similar request but ours was from Senator Elect Cris Dush."

Fulton County elections director Patti Hess replied simply: "Yes."

In Cumberland, the request was received with wariness.

Vince DiFilippo, one of the county's two Republican commissioners, said in an interview that Ward called him personally and asked whether Cumberland would be willing to participate in a "voluntary" audit.

Trump won Cumberland County by nearly 11 points, a hefty margin, though smaller than his 18-point victory in 2016. But DiFilippo said the results made sense to him given Trump's eroding suburban support, noting that other Republicans who shared the ballot with Trump had done well in the county.

DiFilippo said he told Ward that he didn't think an audit was necessary, but he promised to discuss the request with Cumberland's other two commissioners.

Jean Foschi, the county's Democratic commissioner, said in an interview that she was confused and dismayed by the request, particularly because the state already conducted formal routine election reviews.

"It was like this rogue thing," she said. "Those election machines are state and federally certified. Why would we let a private company come in and mess around with them?"

Gary Eichelberger, the Republican chairman of the commission, said in an email to The Post that he felt "such requests need to be brought to the board openly and not back-doored."

The commissioners said they informed Ward that if she wanted to request an audit, she should make a formal and public inquiry for them to consider. She never followed up, they said.

"Maybe the Trump faction was trying to prove a point or prove what they felt was maybe some voter fraud," DiFilippo said. "I can't speak for other counties, but it sure as hell didn't happen in Cumberland County."

Ward did not respond to requests for comment, nor did Dush, who requested the audit in Jefferson County.

It is not clear how many counties fielded the requests for voluntary election audits. A spokeswoman for acting secretary of the commonwealth Veronica Degraffenreid, the state's top election official, said her office is not aware of any county other than Fulton agreeing to participate.

Fulton officials did not respond to multiple requests for comment about why they let the audit proceed. But in a letter she submitted to Degraffenreid last month describing the process, Hess, the county election chief, said the audit had been requested by "various members of the Pennsylvania legislature."

"Since we believe in transparency, we agreed to let them come in and do the audit," she wrote, according to a copy of the letter obtained by The Post. Hess added that she was with the ballots at all times and the county's IT director stayed with the machines.

One of the county's three commissioners — Republican Randy Bunch — was present as well, she wrote, moving back and forth between two rooms where the audit was being conducted.

In her letter, Hess also noted that Wake officials had signed a document promising not to "disturb or manipulate any equipment."

The Dec. 31 document included a handwritten notation at the bottom that stated that the audit was "set" by Mastriano and Wake was "contracted to Defending the Republic," according to a copy obtained by The Post. Hess told The Post in an email Friday that the document was submitted to her by Wake founder Gene Kern after she asked him to specify who sent him to the county. Kern did not respond to a request for comment.

Defending the Republic is a group founded by Powell, according to its website, which has raised money to support the legal challenges she filed against the election results. Wake's link to Powell and Mastriano's role was first reported by the Arizona Mirror.

## A community in the dark

The residents of Fulton County initially had no idea that their ballots had been scrutinized.

The first indication came during a Jan. 5 meeting of the county commissioners, five days after the audit.

Minutes from the meeting show that the three commissioners had discussed a request by a "Third Party Analysis Team" to examine the 2020 presidential results on Dec. 29. At the time, Democratic Commissioner Paula Shives said she would agree only if the voting machines were not removed from county offices and if she could be present for the review, according to the minutes.

There had been no vote taken, the minutes show, but the inspection had been allowed to proceed anyway — without Shives's knowledge or attendance.

Shives did not respond to requests for comment.

The following week, comissioners discussed the Wake audit again, minutes show. This time, commissioners took a formal vote to give the company new access to the county's absentee ballots. Bunch — who was well known locally for commissioning an eight-foot-high mural of Trump along the main road in the county seat of McConnellsburg — voted in favor. So did commission chairman Stuart Ulsh. Shives voted in opposition, insisting "anyone wanting to review election materials should go through the legal process and obtain a subpoena."

The dust-up led to a short story in the Fulton County News.

The Tweedys, the local couple, read the piece with puzzlement. Both had previously helped run county elections — Kimbra, 59, as an elected inspector and Dayton as a clerk. They said they believed Fulton's elections were secure and well administered.

On Jan. 21, Kimbra Tweedy submitted a letter to the commissioners with a list of questions. "Exactly who made the initial decision to contact Wake Technology Services?" she wrote. "If there were no discrepancies, what is the reason for auditing the mail-in ballots? What costs would be associated with this audit, and who would pay them?"

In response, the couple said they were invited to a public meeting where IIIsh explained that there had been no

discrepancies reported in the county's vote, but that the audit had been requested by Ward and Mastriano and had been free to the county.

"We asked, 'What was the rationale?' " Dayton Tweedy said. "He just said, 'Transparency.' "

"I was in there during the last presidential election, and they never audited it. Suddenly, they're auditing this election," Kimbra Tweedy said. "It just seemed to me, why are they auditing it, when they overwhelmingly certified it?"

## 'It's not right'

As Fulton County contended with public questions about the audit, the consequences of Trump's attacks on the integrity of the election were on stark display.

On Jan. 6, a mob of his supporters stormed the U.S. Capitol in an attempt to stop Congress from formally certifying Biden's win. Bunch, the Fulton commissioner who had been present for the ballot review, attended rallies in Washington that day, according to photos he posted on Facebook. None shows him inside the building.

Mastriano was also in Washington — he posted a note on Facebook offering bus tickets to bring people to D.C. for the event, local media reported at the time. Recent videos have emerged that show him walking in a crowd as a man removes a bike rack blocking a sidewalk. Mastriano has said that he respected police lines and that he and his wife departed when it became clear the event was no longer peaceful.

Late that night, after the marauders were cleared from the building, dozens of GOP lawmakers still voted to challenge the final electoral college vote in Pennsylvania and Arizona.

Two months later, the Republican president of the Arizona Senate announced that she had hired a group of companies to conduct a new audit and recount of the presidential vote in Maricopa County, the state's largest jurisdiction.

Among them: Wake TSI, which cited its experience conducting a hand recount in Fulton County, Pa.

Hess, the Fulton County elections director, told The Post in April that the company's employees had been "very nice and professional" but that no report had been released of their findings.

Documents obtained by The Post, however, show that the company submitted a 74-page draft report to Ulsh, the chairman of the county commissioners, on Feb. 22.

That report concluded that the county had "no anomalous or unusual incidents reported during the election process" and that the election was "well run, followed all Commonwealth and Federal guidelines, and was conducted in a diligent and effective manner."

The draft identified two "issues of note," neither affecting results. In two places, the draft identified the person who had requested the audit in Fulton as "Pennsylvania State Senator Marsicano" — an apparent misspelling of Mastriano.

In May, the county quietly posted a final version of the report to its website. This version indicated that Mastriano and Ward had been "aware" of the audit but omitted that they had requested it. New warnings of possible problems had been added. Instead of just two "issues of note," the final report cited five — including three related to Dominion Voting Systems, an election machine company that has been the target of unfounded conspiracy theories by Trump's supporters since November.

"While these may seem minor the impact on an election can be huge," read the final report, another line not found in the draft.

County officials and Wake did not respond to questions about why the draft was rewritten. A Dominion spokeswoman declined to comment.

Patrick Byrne, the former chairman of Overstock.com, seized on the report, sharing it on Telegram with Trump supporters fervently monitoring the Arizona audit. Byrne, who has been raising money to fund private election audits, had met with Trump and Powell in the Oval Office in late December to discuss potentially using the military to seize voting machines for analysis, as The Post previously reported.

Last month, Wake ended its involvement with the Arizona recount. An audit spokesman said that the company's contract there ended in mid-May, but that the techniques it had developed are still in use.

In Fulton, county officials may now have to pay to replace all of their voting machines, a pricey consequence of turning them over to be handled by an uncertified company that Arizona officials are weighing, as well.

For their part, Dayton and Kimbra Tweedy said they were glad they rang alarm bells about the election audit — but saddened that their community might have been used in some kind of plan to undermine the vote.

"Democracy is democracy, and the rule of law is the rule of law," Dayton Tweedy said. "It's not right for anyone to be questioning the legitimacy of the election without any kind of evidence — or even evidence to the contrary."

Josh Dawsey, Alice Crites and Amy Gardner contributed to this report.

# Exhibit I

# Fulton County Pennsylvania Election System Analysis



By WAKE Technology Services, Inc.

February 19, 2021





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#### 1 Executive Summary

The purpose of this assessment was to ascertain how the election was conducted, initially from a mail-in, and then from an absentee ballot perspective. With the assistance of the Election Commissioners and the Election Director, this assessment resulted in a full election process and system review. WAKE TSI did not conduct a forensic technology audit of the election management system as WAKE TSI did not have the agreement of the stakeholders to conduct that level of detailed analysis.

Since this was a voluntary assessment, WAKE TSI accepted what was provided and were flexible when the Election Officials did not want to provide sensitive information, such as chain-of-custody documentation that identified County personnel and security tag log files, that identified current numbering schemas. Nor did WAKE TSI look at the configuration of the EMS itself or how the election was designed or built.

What the issues highlighted in this document reveal, is that the election was well run, was conducted in a diligent and effective manner and followed the directions of the Commonwealth. This does not indicate that there were no issues with the election, just that they were not the fault of the County Election Commission or the County Election Director.

Fulton County had no anomalous or unusual incidents reported during the election process. Expectations were that this assessment would not show any indications of error, technology interference, fraud, or misconduct. Five issues of note were found in the conduct of the election, three of which are related to the EMS Vendor:

- 1. There were a number of errors in ballot scanning
- 2. The failure of Dominion Voting to meet the Commonwealth Certification requirements
- 3. The addition of non-certified database tools installed on the system.
- 4. Changes were made to the EMS three (3) weeks prior to the election
- The lack of Commonwealth L&A inspections of the voting systems.

The last issue is hard to understand as the Commonwealth's documentation requires the DOS to collect the L&A testing results.

While these may seem minor the impact on an election can be huge. The adjudication process of the Dominion system is caused by the scanning system and software not being able to read the intent of the voter. This forces human intervention and for those humans to "determine" the intent of the voter.

#### 2 Fulton County Demographics

Fulton County, Pennsylvania is located in south central Pennsylvania. The County Seat is in McConnellsburg. The assessment was completed at the County Offices located at 116 West Market Street, McConnellsburg, Pennsylvania 17233.





Image 1 - Fulton County Location

#### 2.1 County Description

Fulton is a small county of approximately 14,619 people with approximately 9,847 registered voters. The County averages 33.38 people per square mile, 26.53 people of voting age per square mile and 22.48 registered voters per square mile. These numbers mean little until you begin to compare them to larger more densely populated areas.

County Population	Voting Age Population	Registered Voters	Votes Cast	County Land Area	Registered Voters Per Sq Mile
14,619	11,622*	9,847	8,019	438 sq miles	22.48
	79.50%	84.73%	81.44%		

Table 1 – Fulton County Demographics

The voting age population (VAP) is estimated to be 11,622 people, which, is approximately 79.50% of the County population. Of the Voting Age population approximately 84.73% of these people are registered voters and of those 81.44% voted in the 2020 General Election.

#### 2.2 Voting History and Registration Roles

During the 2020 Presidential General Election Fulton County had 8,019 votes cast at 13 polling locations with 81.44% of registered voters casting a ballot. This is a high percentage of voters even for a Presidential election but was quite common in this election cycle across the Commonwealth and the nation.

The assessment reviewed all 954 mail-in ballots, all processes followed for In-Person, Mail-In, Absentee, Provisional voting and the handling of adjudicated ballots. WAKE TSI also reviewed voting related information published by the County, posted on the County web site, reported by news media and reported by the office of Commonwealth of Pennsylvania Department of State (DOS).

Election history in the Pennsylvania SURE system, for Fulton County, goes back to elections beginning in 1987.

<sup>\*</sup>Estimated from 2019 Census Department numbers



Of the 9,847 Registered Voters 1,468 (14.81%) people did not vote in the 2020 General Election. Fifty-six (56) people who voted in the Primary did not vote in the General Election. The Commonwealth's voting records show that Fulton County has 702 people whose date of last vote was unknown or was prior to 1987. There are 1,065 registered voters who have not voted in an election between 1987 and the 2019 elections. This accounts for 10.82% of the County's registered voters.

Somehow the explanation of the voting numbers in the previous two paragraphs do not add up to 100% of the registered voters. Fulton County has 9,847 registered voters, there were 8,019 votes cast (81.44%) and 1,468 (14.81%) registered voters who did not vote. This totals 1,828 voters. Missing is an explanation of what happened to 360 voters (3.66%)?

What this information suggests is that the Voter Registration rolls need to be validated and purged if possible. From the data that was purchased from the Commonwealth we were unable to determine which field indicates inactive voters.

#### 2.3 County Election Commission

The County has a mostly rural population, which has voted overwhelmingly Republican for elections since 1964.

The County has 13 voting precincts based upon the Townships and Boroughs within the County.



#### Image 2 – Fulton County Poling Precincts

The county Election Commission consists of three members: Stuart L. Ulsh (R), Chair, Randy H. Bunch (R) and Paula J. Shives (D). All three are business owners in the County.

There is also an Election Director who manages the elections, maintains voting equipment and voting integrity, oversees data security, is responsible for ballot security and reports the tallies to the Commission and the Commonwealth. The Election Director is assisted in many functions by the Fiscal Administrator and the County Information Technology Consultant. The Election Director and the Fiscal Administrator are County Employees.

The County's Information Technology support is provided by a contracted firm. The primary support person is an employee of that firm who has been doing the technology work for the County for many years.



#### 3 Company Performing Review

WAKE Technology Services Inc. (WAKE TSI) is a managed services provider specializing in data center, network, server and desktop systems design, cybersecurity and management, as well as remote help desk and systems support. The company develops and executes various processes and methodologies across all its disciplines. The firm was founded in 2004 and has worked with organizations in Healthcare, Government, Manufacturing, Insurance, Automotive, Higher Education and Professional Services industries.

WAKE TSI's technical and management teams are experienced in working with DOD and other federal agencies as well as state and local governments. This includes working with the Commonwealth of Pennsylvania's State System of Higher Education (PASSHE).

WAKE TSI is located in West Chester, Pennsylvania.

#### 3.1 Who Wrote / Compiled the Report

This report was compiled and written by E. Eugene Kern, Executive Vice President of WAKE TSI. Mr. Kern has been working in the information technology field since 1982. His background is in technology infrastructure (not programming). His experience includes network, systems, data center, physical design, systems and cybersecurity management as well as extensive project management experience. He has been at the management and executive levels in the information technology field for more than 30 years both as a consultant and as a member of various organizations.

Mr. Kern is a co-founder of WAKE TSI and has been the Executive Vice President since the firm began.

#### 3.2 Team Performing Assessment

WAKE TSI's Team consisted of three (3) ballot counters, two (2) technical personnel and one (1) management person acting as program director / observer.

Our cybersecurity team who collected, reviewed and analyzed the technology data has experience with DOD/DARPA, NSA and other federal agencies.

For further company information please see our website at https://www.waketsi.com.

#### 4 WAKE TSI Process Followed

Two visits were made to the County Offices. The first on December 31, 2020 and the second on February 9, 2021. For both visits to the Election Offices, our Personnel provided government issued identification and signed a log at the request of the Election Director, prior to being allowed to visit the election system area. WAKE TSI also agreed that our inquires and work would not change or impact any of the systems reviewed. The County agreed to keep the names of our personnel private so that none of them could be threatened or harassed, as Mr. Kern has been after the first visit and subsequent newspaper reports were circulated.



For our first visit, WAKE TSI provided a sign-in log for collection of contact information and to understand who the stakeholders were. This is also to ensure we know who the proper people are for follow-up questions and requests. Since the second visit was with the entire Election Commission and the Election Director, WAKE TSI did not ask for a sign-in log to be completed.

#### 4.1 Assessment Scope

The assessment was intended to review the mail-in ballots for each County and validate that all conduct relating to the mail-in ballot requests, distribution, receipt and counting were in line with Federal and Commonwealth guidelines. WAKE TSI was not asked, nor did we conduct, a technology forensic audit of either the operating system or the EMS. WAKE TSI did review operating and application system file dates, operating system and application log files, ballot images and related files.

WAKE TSI personnel did not "image" the EMS systems. WAKE TSI did receive copies of various ballot image directories and log files for offline evaluation. WAKE TSI was careful to not infringe upon any portion of the Dominion software agreement with the Commonwealth or with the County.

The ballot images that WAKE TSI received, do not allow for the identification of individual voters. WAKE TSI did not inspect, review, assess or copy the County Electronic Poll Book or any of the mail-in or absentee ballot envelopes.

#### 4.2 First Visit

During the first visit our technology team collected electronic copies of EMS application log files, directory information, TIF images of the scanned ballots, Operating System (OS) directory and file information, OS log files and pictures of the paper Mail-In ballots.

This technology-oriented data collection was utilized to compare manual log files to electronic files to ensure that the conduct of the election from a manual process matched the technology-oriented process.

The Election Director, or an Election Commissioner, remained in the room with the ballots throughout the entire course of our review. The Election Director was the only person removing and replacing ballots in the ballot carts. Ballots were placed on the counting table for review and then immediately placed back into the ballot cart once the review was complete.

The IT Support Technician, or an Election Commissioner, remained with the technical team during the assessment of the voting systems and was the only person to access, copy or download information from the EMS, as he does as a regular part of his duties. WAKE TSI personnel were escorted at all times while we were in all of the election system related areas during the assessment.

#### 4.3 Second Visit

The second visit to Fulton County occurred on February 9, 2021. WAKE TSI returned to ask follow-up questions about processes, review some of the sensitive documentation that the



County did not want to have copied and to discuss the absentee ballots and the County's adjudication process.

#### 4.4 Overall Process

This was a voluntary assessment by the County, WAKE TSI accepted what was provided and understood when Election Officials declined to provide sensitive information, such as chain-of-custody documentation that identified County personnel and security tag log files, that identified current numbering schemas. WAKE TSI was allowed to view, but not copy, this type of documentation on the second visit.

The Election Commission did provide the templates utilized for these and other requested documentation and the processes used by County Personnel for securing the ballots and transporting them from the Precinct voting locations to the Central Tabulation Point (McConnellsburg County Office). WAKE TSI also discussed but did not review County provided training materials used for the General Election. Some of this documentation is in the process of being updated by the Election Director as 2020 was the Election Director's first year in the position and has identified processes that needed refinement and updating to help Poll Workers better understood and follow the election process in Fulton County.

#### 4.5 Collection of Data

As stated previously, WAKE TSI's technology people were assisted by the County's Information Technology Consultant. WAKE TSI was allowed to receive copied files from the application directory of the EMS Server, the tabulation machines, the EMS workstation and the adjudication workstation. WAKE TSI also obtained lists of all operating system files on each of the machines. WAKE TSI received copied configuration files, images and log files from all of the machines, both from the OS and the EMS.

#### 4.6 Forensic Technology Tools Utilized

Since this was voluntary assessment and not an audit, WAKE TSI did not collect information (disk images) from the machines as we would in a "normal" forensic audit. For this reason, WAKE TSI did not utilize any of our forensic tools for the assessment.

#### 5 Conduct of Election

The County Election Commissioners agreed, on a two to one vote following party lines, to have this voluntary audit conducted and provided technical and administrative oversight and support for the effort. Later the Election Commissioners again voted to allow WAKE TSI to count and discuss the Absentee Ballots. Our request and the vote were what prompted the second trip to the McConnellsburg. Fulton County is in two State Senate Districts as the maps below show.



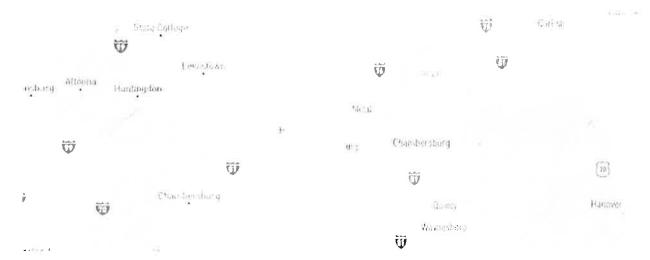


Image 3a – PA Senate District 30 – Image from Pennsylvania Senate web site

Image 3b – PA Senate District 33 – Image from Pennsylvania Senate web site

Since the County is in two State Election Districts both State Senator Judy Ward and State Senator Douglas Mastriano were aware of our efforts.

#### 5.1 Anomalies

Election anomalies occur in many forms and vary from election to election depending on how the election was conducted and who ran the election. Anomalies can be human errors, equipment failures, configuration errors, software failures, paper issues and such mundane items as water leaks and power failures.

#### 5.1.1 Election Process Anomalies

There were no reported conduct anomalies during this election. The Judge of Elections, at each polling location, and the Minority and Majority Inspectors (Observers from both major parties) were at each polling location during In-Person voting and then escorted the ballots from the precincts to the County Offices for tabulation.

Multiple County Election Officials were present at all ballot handling, tabulation, adjudication and reporting functions. At no time was only one-person handling ballots without supervision by other election officials. No accounts of conduct irregularities were reported during the election cycle either before, during or after the election in Fulton County.

#### 5.1.2 Voting System Anomalies

There were no EMS system anomalies reported during the election or in the election results reporting.

WAKE TSI found two EMS anomalies with the voting system which were; 1) the number of scanning errors and 2) the installation of the Microsoft SQL Server Data Tools (SSDT).

For the first issue the Federal Government has set an allowable error rate of 1 error in 250,000 ballots scanned for an allowable error rate of 0.0004%. Fulton County should not have had any ballot scanning errors according to Federal guidelines.



There were two sets of log files reviewed for this assessment. The first is the error log files on the ICC machines (scanning tabulation machines). These log files show that scanning issues occurred during system setup / testing on 10/18/2020, during the election process on 11/3/2020, during the County validation on 11/6/2020, and during the certification process on 11/10/2020. Usually, the scanning issues were one error during a batch of fifty ballots being scanned. This leads to an error rate of 0.02% during batch processing. If you look at the approximately 40 scanning errors that occurred during the election process this provides an error rate of approximately 0.005%.

The second set of log files from the EMS server show that during the 11/03/2020 General Election there 3,383 individual events, of which 142 were for scanning errors (4.20%) and only three (3) were for write-in ballot warnings (0.09%). The scanning errors are far in excess of the allowable error rates as legislated by the Federal Government.

WAKE TSI suggests that this issue should be resolved by the EMS Vendor.

#### 5.1.3 Other Anomalies

The only other anomaly reported was with the printing of ballots in one of the precincts. The ballots are printed with a tear off tag that shows the voter what number voter they were for that election and day. The printing firm, who provided the ballots, mistakenly started the ballot numbers at the wrong number, which forced a change in the tracking of the ballots provided to that location.

This issue had no impact on the actual voting in the Precinct.

#### 5.2 Public Communications

The Web Page is the primary form of communications for the County during election periods. Individual Candidates, or Parties, provide all their own election materials. The County does not provide election advertising except for signage for polling locations and ballot collection points that indicate locations and processes to be followed.

#### 5.3 Web Page

The County website shows election results since 2002 and is consistent with what other online sources provide. This information was also confirmed via data from the Pennsylvania Statewide Uniform Registry of Electors (SURE) system.

Fulton County has an easy-to-use website with all voting information (information, reporting and registration) accessible from a link on the left side of the County Homepage. The website was built and is maintained by the County's contracted Information Technology Services Company.

The election page displays the primary access points in the middle of the page as boxes. Above the boxes is an election day phone number for assistance or issue reporting. Sample ballots for all precincts are easily accessed from this page.



#### 5.3.1 Sample Ballots

The sample ballots are downloadable as PDF files and match the County precincts, mail-in ballots and election day ballots. The Sample ballots have a watermark showing them as "Specimens". This watermark was easily removed with Adobe Acrobat. The sample ballots print the same size as the election day ballots (8.5 by 11.0 inches). The sample ballots do not contain any Precinct identification or serial numbers.

See Sample Ballots in Appendix A - Sample Ballots.

## 5.4 EMS System Physical Security (Machines, Ballots and Devices)

The voting systems are maintained in multiple rooms in the basement level of the County Office building listed above. The rooms are only utilized by the Election Commission and are kept locked unless personnel are utilizing the rooms as part of their duties.

The building has a keycard security system and reporting of access to the various areas can be generated as needed. The building also houses Veteran Affairs and Domestic Relations offices. They are separate with their own entrance and security system. Personnel from these Departments do not have access to the Election Systems areas.

All ballot carts, paperwork carts, supplies, and EMS related devices are stored in the election area of the building. Some election related paperwork is kept in the Election Director's office, which is on a different floor in a secured access area.

There is one ballot cart and one paperwork cart per precinct. All carts were locked and sealed with numbered security tags, which were removed by the Election Director as the mail-in ballot count proceeded.



Image 4 - Ballot Carts



Image 5 - Paperwork Carts

Note in the pictures above the red security tags on the Ballot Carts and the green security tags on the Paperwork Boxes.



Once the ballot recount had been completed for a Polling location, the ballots were immediately replaced by the Election Director and resealed.

The Election Director maintains a log of the security tags when removing / replacing the security tags. The log is kept on her County provided computer located in her office and is only accessible by her.

See a template of the log file in Appendix D – Security Tag Tracking Template.

#### 5.5 Poll Book

The Poll Book is not part of the Dominion Election Management System. While the two are related and work together, the Poll Book is not generated by, nor used by, the Dominion System directly. Individual counties throughout the Commonwealth use a variety of electronic or manual Poll Books.

Fulton County uses a "Manual Poll Book" printed from data in the State Voter Registration Database. The Poll Book is printed the Friday before the election and delivered with the Ballots and other Paperwork to the Judge of Elections at each Precinct in preparation for Election Day. The Poll Book is updated from Friday through Election Day as registration information is updated or new voter registrations are added to the statewide Voter Registration database.

The Poll Book is signed by each voter and the Poll Workers hand a ballot to the Voter. While ballots were not serialized, the pre-printed in-person ballots do have a tear-off tag intended to inform Voters what number voter they were for that precinct.

The process followed by the Poll Worker distributing ballots is to inform the person managing the Poll Book the number of the ballot tag, which is then entered into the Poll Book, with that person's name. Once that ballot is cast the numbered tag is removed and provided to the Voter.

Since these ballot tag numbers are written into the Poll Book, they become part of the voting record. A curious side effect of the tear-off ballot numbers being entered into the Poll Book is that it allows for tracking of individual voting by comparing the Poll Book to the batches run through the tabulation machines. Since the ballots are carefully tracked in batches and are placed in the ballot carts in the order voted it allows for this matching of voting order to the Poll Book and to the images taken for the counting process.

In January 2021, after WAKE TSI had collected data from Fulton County, the ex-Secretary of the Commonwealth, Kathy Bookvar requested that Fulton County perform a random sampling analysis of voting in the County. The State personnel who performed the analysis selected a not-so-random sample of Ballots from a comparison of the Poll Book to the batch logs to select the ballots they wanted to review for sampling. The results showed that rather than the actual 85% percentage voted for President Trump the selected sampling showed an 89% voting selection. We do not know why the vote review / sampling was conducted in this manner. This information was provided to WAKE TSI by one of the Election Commissioners.



## 5.6 Ballot Casting and Election Results

Fulton County certified that they only counted votes cast / received by 8:00 pm on November 3, 2020 or as appropriate for absentee ballots in accordance with state and federal guidelines. All ballots are cast in the precincts and taken to the McConnellsburg County Offices for tabulation and reporting. There is a McConnellsburg Precinct location as well where voting occurred.

The Election Director utilized a handwritten Ballot Scanning Log for managing the batches during scanning. The log sequentially tracked batches by polling location, quantity in the ballot cart and type of ballot. The Election Director's handwritten log files exactly matches the scanning logs from the tabulation devices labeled ICC#1 and ICC#2 as to the ballot type, size and number of ballots per batch ran through the devices. Most of the batches run through the system were in groups of 50 ballots. The largest batch was 108 ballots, and the smallest batch was 1 ballot.

Ballot abbreviations on the log include Mail-In = MI, Election Day = ED, and PR = Provisional. These designations match the directory structure of the ballot images within the EMS directory structure. Absentee ballots were included in the mail-in category for logging purposes but were tracked separately in the ballot carts and in the EMS. Provisional ballots were handled by the Election Director under the supervision of the Election Commissioners.

See Appendix B - Ballot Scanning Log Example

The County Sheriff's Department is present at the McConnellsburg Offices, on election day, to observe that there are no interruptions or interference with proper procedures. They do not take part in the transportation of ballots or voting equipment.

The ballots are transported from the Precincts to the election offices in McConnellsburg by the Election Judges and the Minority and Majority Inspectors. Chain-of-Custody documents, for the ballots and supplies were utilized by the County for transport.

WAKE TSI did request and receive copies of the templates used for these documents as shown in Appendix C - Ballot Tally & Tracking Template and Appendix D - Security Tag Tracking Template

The following table shows the votes cast and reported by election for the 2020 General Election on the County web site and through the Pennsylvania SURE system:

Election Race	Total Vote Count
Presidential	7,981
Attorney General	7,815
Auditor General	7,762
State Treasurer	7,761
Representative in Congress	7,840
Representative in the General Assembly	7,261
Count of People Voting as Reported in SURE	8,019



#### Table 2 – Votes by Election Contest

All votes were scanned / tabulated using devices labeled ICC#1 and ICC#2. All mail-in ballots were scanned using ICC#2 while ICC#1 served in a backup roll.

#### 5.6.1 Election Night Versus Certified Results

The table below shows the differences between the reported numbers.

Date	County Population	Registered Voters	Total Votes Cast	Biden	Trump	Third Party	Write- In	Total Votes For President
Nov 3	14,619	9,847	7,807	1,068	6,660	79	0	7,807
Nov 20	14,619	9,847	7,981	1,085	6,824	69	3	7,981
Diff	0	0	174	17	164	(10)	3	

Table 3 - Election Night Reporting vs Certified Reporting

As the table above indicates, election night reporting did not match with the certified results. The reasons provided for this difference were receipt of military and civilian absentee ballots, clarification of write-in ballots, resolution of provisional ballots and adjudication of ambiguous ballots. The table above shows the differences between the election night and certified results and what ballots changed categories.

The log files show that ICC#1 had two provisional ballots scanned on 10/13/2020 as part of the setup of the election. None were scanned on this device during the 11/3/2020 election.

The log files on ICC#2 had 22 provisional ballots scanned on 10/13/2020 in two batches as part of the election setup. Twelve (12) provisional ballots were scanned on 11/06/2020 in six batches as part of the ballot adjudication process, and 115 ballots were scanned on 11/10/2020, in two batches, as part of the certification process.

See the County Certification Report in Appendix E – County General Certificate of Results

### 5.6.2 In- Person Ballots

The printed In-Person ballots do have a machine-readable ID (barcode) in the lower left corner that identifies the precinct in which the ballot was cast. The example below is from an image of an Ayr Township ballot. Image 1 is from the top center of the ballot and Image 2 is from the lower left corner of the ballot. All Ayr Township Ballots have the same marking. The markings for each Precinct are distinct and match from ballot to ballot within the precinct. This is the only difference between the sample ballots and the actual ballots used in the election.

This difference stops someone from downloading the sample ballots, printing them and then casting them as if they were actual ballots. The barcode does not identify individual voters.



# OFFICIAL MAIL-IN BALLOT FULTON COUNTY, PENNSYLVANIA GENERAL ELECTION, NOVEMBER 3, 2020 AYR TOWNSHIP

Image 6 - Top of Ballot



#### Image 7 - Bottom of Ballot

The ballots are also printed on a heavier stock than the normal 20-pound paper used by copiers and for other technology uses. The reasoning behind this was explained as assisting the scanners in feeding individual ballots without as many jams.

#### 5.6.3 Provisional Ballots

The following table is the count of Provisional Ballots listed by the reason for inclusion in the provisional category.

Township	Total # Provisional Ballots Received	Not Registered	Absentee / MI Not Returned	Registered But Not in Poll Book	Excepted Ballots
AYR	10	3	6	1	7
BELFAST	11	0	11	0	11
BETHEL	18	2	13	3	16
BRUSH	18	4	12	2	14
DUBLIN	10	0	10	0	10
LICKING CREEK	9	0	9	0	9
MCCONNELLSBURG	8	1	5	2	7
TAYLOR	7	0	7	0	7
THOMPSON	22	4	16	2	18
TODD	10	3	6	1	7
UNION	15	3	12	0	12
VALLEY HI	0	0	0	0	0



/ELLS	11		3	8	0		8
SUBTOTALS				115	11	=	126
TOTALS	149	-	23	-	+		126

Table 4 - Provisional Ballots

As can be seen by the table above 23 voters who were not properly registered, plus 115 people who had requested an absentee or mail-in ballot which had not been returned and 11 people who had registered but were not in the Poll Book. These 149 ballots were not counted in the election for these failures in following the proper process to vote.

#### 5.6.4 Mail-In Ballots

The numbers below represent the numbers of the Mail-In ballots requested and returned to the County. The numbers below are from the Pennsylvania SURE system. Of this amount 954 Mail-In Ballots were completed properly and counted for the election.

Requested	All Returned	Returned By 11/3	Returned After 11/3	Not Returned
1,429	1,233	1,222	11	196
	86.28%	99.11%	0.89%	13.72%

Table 5 - Mail-In Ballot Numbers

In accordance with Department of State directives only Mail-In ballots delivered by 8:00 PM on November 3, 2020 were counted. The McConnellsburg Post Office worked diligently with the Election Commission to deliver Mail-In ballots twice-a-day during the last few days leading to deadlines. Sometimes calling the Election Director to inform her that there was no mail for that day.

#### 5.6.5 Absentee Ballots

Absentee ballots are handled differently from mail-In ballots as they have different rules, regulations and deadlines. Absentee ballots were counted if they were postmarked by November 3, 2020 and received prior to November 6, 2020.

An Absentee ballot request is a different type of request from a Mail-In ballot request.

## 5.7 Results Reporting

WAKE TSI reviewed several sources to ensure that reporting was consistent and accurate. The results were then compared to information which was provided from the EMS. The reporting reviewed was completed from Election Night Results through Result Certification and included published results from November 3 through December 28.

#### 5.7.1 County Web Site

All the information on ballot count reporting above is from either the County's web site or the Pennsylvania SURE system.



All information reported by the SURE system is input by the Election Support Team of Fulton County. The data is transported from the EMS to the County Election Director's workstation via thumb drive and then uploaded to the SURE system.

The County web site is easy to use and has reports in standard formats that do not need adjustment to run reporting or statistical tools against.

See the County election web site at this link: <a href="https://www.co.fulton.pa.us/elections.php">https://www.co.fulton.pa.us/elections.php</a>

#### 5.7.2 Media

WAKE TSI reviewed reporting by the New York Times (NYT) for all counties in Pennsylvania as well as reporting provided by local and national television and cable outlets. WAKE TSI also reviewed results posted on or by national voter data tracking outlets like Edison Research, Scytl and Verified Voting.

This data was compared to the information provided by the County and the Commonwealth's web sites.

#### 5.7.3 Commonwealth

As the table at the beginning of this section indicates the highest count of votes appeared in the Presidential race, with 7,981 ballots cast. This table is based upon the certified election results from November 10<sup>th</sup>. The State SURE system indicates that 8,019 ballots were cast in the County. There is a difference of 38 votes (0.47% of ballots cast). This difference is from the remediation of issues such as double voting where only one candidate can be selected, but two were marked, naked ballots (mail-in ballots) where the security envelope was not included in the outer envelope when the ballot was returned, write-in ballots for famous entities like Mickey Mouse, Jesus Christ, Abraham Lincoln, etc. and ballots cast by people who were not properly registered.

#### 5.7.4 EMS Vendor Website

No reporting of election results was found at the Dominion web site as some of the other Election Management System Vendors provide.

## 6 Election Management System (EMS)

Fulton County uses the Dominion Democracy Suite 5.5A as certified by the Pennsylvania Secretary of State (SOS). The County began using the Dominion EMS in 2019. It has been used in the last three (3) elections. More information on the EMS and how to use it can be found at the Department of States web site listed here: <a href="https://www.votespa.com/voting-in-PA/Pages/Voting-System-Demos.aspx">https://www.votespa.com/voting-in-PA/Pages/Voting-System-Demos.aspx</a>.

The EMS system was originally installed and used for the 2019 Municipal Election and was utilized for the 2020 Primary and 2020 General Elections. The EMS Server log files indicate that the election management system was originally installed on 08/16/2019 and updated for the Municipal Election on 10/17/2019. The next date that the system logs show the EMS as being updated is for the 2020 General Election (10/13/2020). The election files from all three



elections were on the server. This information matched exactly what the Election Commission provided.

## 6.1 EMS Software Components

The Dominion Democracy Suite 5.5A consists of the following software and firmware components:

Application	Version
EMS Election Event Designer (EED)	5.5.12.1
EMS Results Tally and Reporting (RTR)	5.5.12.1
EMS Application Server	5.5.12.1
EMS File System Service (FSS)	5.5.12.1
EMS Audio Studio (AS)	5.5.12.1
EMS Data Center Manger (DCM)	5.5.12.1
EMS Election Data Translator (EDT)	5.5.12.1
ImageCast Voter Activation (ICVA)	5.5.12.1
EMS Adjudication	5.5.8.1
EMS Adjudication Service	5.5.8.1
Smart Card Helper Service	5.5.12.1
ImageCast Precinct (ICP)	5.5.3-0002
ImageCast Central (ICC)	5.5.3.002
ImageCast X (ICX)	5.5.10.30

Additional Commercial Off The Shelf (COTS) software and firmware included in the systems has been defined as part of the EAC system certification scope. We did not include this information as it is listed in the Commonwealth certification document, which has been included as an Appendix.

#### 6.1.1 Third Party Software Components

All expected third party software components were installed in the system. Versions were as listed in the certification documentation.

File dates and times matched the expected results and file sizes matched software vendor data for the versions installed.

#### 6.2 EMS Devices Utilized

Fulton County Pennsylvania uses the Dominion Democracy Suite 5.5A EMS. The following is an excerpt from the Pennsylvania Certification Report for the Democracy Suite 5.5A components considered for use in Pennsylvania.

"The System is intended to provide a paper-based voting system with end-to-end election support, from defining an election to generating final reports. The system is comprised of both precinct and central count tabulators, and BMDs as the ADA component. The system components include: The Election Management System (EMS), the ImageCast Central (ICC) - utilizing two



Commercial Off the Shelf (COTS) scanners, the ImageCast Precinct (ICP) optical scanner and the ImageCast X (ICX) (Prime and Classic) ballot marking devices."

## 6.2.1 Ballot Marking Devices

The County provides Ballot Marking Devices (BMD) in each Polling Location as required by HAVA and Commonwealth guidelines. These devices can be used by anyone who wishes to use them instead of a paper ballot. The voter views the ballot on the computer screen, makes their selections and then a ballot is printed with their selections listed and with a QR code that is read by the tabulation machine when these ballots are scanned.

The important point here is that the machine readable QR code is what is being scanned and entered by the tabulation machine not the human readable details printed on the ballot.

We are not inferring anything by making this point, we are just stating the obvious, that what you see and what the machine reads is not the same information when using these devices. That does not mean that the QR code is any different than what is printed on the ballot, just that you cannot see what it says.

See an example of a printed BMD generated ballot in Appendix F - BMD Ballot Printout.

The certified ballot marking device that the County uses is the ImageCast® X (ICX) Ballot Marking Device (BMD). This is a ballot marking device with a Commercial Off The Shelf (COTS) printer, HP LaserJet Pro Printer M402dn or HP LaserJet Pro Printer M402dne, for printing marked ballots.

Once the BMD generated ballot is printed it is then added to the Precinct Ballot Cart for transportation to the Central Tabulation Site in McConnellsburg, as are the hand marked ballots.

The BMD printed ballot is scanned into the system using the same tabulation devices as the hand marked ballots.

WAKE TSI did not review any of the BMD devices during this assessment.

#### 6.2.2 Tabulation Machines

Fulton County does not utilize a tabulator at the precinct voting locations. All scanning and tabulation functions are completed at the central McConnellsburg location.

Fulton County utilizes the ImageCast Central Station (ICC), a ballot scanning and tabulating system that can be configured with high-speed COTS scanners, Canon Image Formula DR-G1130 or the Canon Image Formula DR-M160- II, to tabulate ballots in the central office.

Fulton County has labeled their devices ICC#1 and ICC#2. All reporting refers to these names and it is included in the log files from the server and tabulation machines.

#### 6.3 EMS Training

At this time the Election Commission and County Staff have received a portion of the required training. The situation with training is that at the time of system purchase the then Election



Director was retiring, and the current Election Director was not yet onboard. The Election Commission decided to postpone some of the training until the new Election Director was onboard.

Dominion "owes" the County training manuals, training and system manuals. The Election Commission expects that Dominion will provide those materials and training prior to the 2021 Municipal Primary which occurs May 18, 2021.

See the section below on Commonwealth training requirements for more details.

#### 6.3.1 Election Commission

The Election Commissioners and the Election Director received some training from the EMS Vendor, Dominion. It is intended to familiarize the Commissioners and Election Director with the election process, conduct and security.

It is provided as part of the purchased contract for the system.

#### 6.3.2 County Workers

This group includes the Election Director, IT support and others as needed. This training is also provided by the Vendor and is part of the system purchase contract. Dominion's contract with the County provides for training for up to six (6) of the Counties personnel. More can be purchased as needed.

The training is provided as online videos, manuals and printed guides as well as in-person training as needed.

#### 6.3.3 Poll Workers

The training for Poll Workers is mostly provided by the County, with assistance from Dominion. This training is based on Dominion materials but is modified to meet the needs of the County. Locality specific training is created and designed by the Election Director. It also includes instructional materials from the Vendor for the use of the Ballot Marking Devices in the Precincts.

#### 6.3.4 Information Technology

The Vendor has not yet provided training materials or manuals for information technology support of the system.

The Vendor is scheduled to provide that information in 2021, prior to the May election.

#### 6.3.5 Commonwealth Requirements for Training

Commonwealth law and County contracts require that Dominion must provide training and training materials as set forth below prior to the first use of the voting system in a primary or general election.

a) A demonstration of, and training on, the setup and operation of the Voting System to the purchasing county's board of elections' members and staff and the county's precinct election officials.



- b) A training session on the Voting System's election management system and/or EPBs for the purchasing county's board of elections' members and no less than two and no more than six staff members chosen by the board of elections. The training sessions must afford the board members and its staff the opportunity to learn how to setup and program an election, and if applicable design and layout ballots independently of the Supplier's assistance and support. (Emphasis added by WAKE TSI)
- c) A training session on the following subjects for the purchasing county's board of elections' members and no less than two and no more than six staff members chosen by the board of elections:
  - a. programming of all voting units and ancillary devices;
  - b. tabulating results during the unofficial and official canvass;
  - c. ensuring accuracy and integrity of results;
  - d. preparing polling places and setting up the system for election day operation;
  - e. Training on accessibility options of the voting system
  - f. Election day operating procedures;
  - g. auditing procedures;
  - h. conducting a recount;
  - i. preserving records;
  - j. printing, designing, and formatting election reports;
  - k. troubleshooting common issues;
  - I. safeguarding and preventing tampering and unauthorized access to all parts of the Voting System; and
  - m. xiii. Post-election care, maintenance and storage.
- d) Any and all system manuals necessary to allow a purchasing county to operate the Voting System independently of the Supplier's assistance and support.
- e) Training materials for a purchasing county board of elections to use when training its precinct election officials on how to setup, operate, and close down the Voting System on Election Day.

Dominion did not meet the training requirements for the reasons stated above and has continued to build the election system for the County for each of the elections since the system was installed.

## 6.4 EMS Last updated

The EMS was last updated on 10/13/2020. This update consisted of Dominion delivering the 2020 General Election Build to the County. No documentation of what this update consisted of was provided at the time of the upgrade.

As it turns out this was the actual election build and not an update to the EMS software and occurs three (3) weeks prior to the election. This update occurs at this point as it is after candidate's final withdrawal date occurs.

The issue here is that the County does not receive a formal document that states what changes were made during the update.



## 6.5 Error handling in the Election Management System

The allowable election error rate established by the Federal Election Commission guidelines is 1 in 250,000 ballots (.0004%). We observed 40 errors in the scanning log files for an error rate of 0.4988%.

#### 6.5.1 Classification of Ballots

The Dominion Systems classify ballots into two categories, 1) normal ballots and 2) adjudicated ballots. Ballots sent to adjudication are from occurrence of an error during scanning such that the technology cannot determine the intent of the voter.

Ballots sent to adjudication must be altered by election administrators and adjudication files can be moved between different Results Tally and Reporting (RTR) terminals with no audit trail of which administrator actually adjudicates (i.e. votes) the ballot batch.

The lack of audit trail shows a serious flaw in the security and election integrity because the system does not provide a meaningful technology method for observation of the adjudication process or audit trail of which administrator actually adjudicated the ballots.

Fulton County has one (1) adjudication Results Tally and Reporting terminal. It is referred to as the Adjudication Workstation by County Employees and Contractors.

## 6.6 EMS Handling of Errors (Adjudication)

Fulton County's adjudication process consists of review of ballots that were not machine readable. The process is observed by three people. The County Solicitor provided that direction to the Election Director. The Commonwealth guidelines indicate that a minimum of two people must observe the adjudication process.

There were two sets of ballots that were adjudicated during the election. The first set were adjudicated by the Election Director and two other county employees on 11/06/2020. The second set was adjudicated by the Election Director in the presence of the Election Commission on 11/10/2020 during the election certification process.

The issues that resulted in adjudication were cases involving people voting for multiple candidates, write-in ballots and unclear markings.

The Dominion EMS does not provide a clear way to determine the number of adjudicated ballots, or their outcome, from log file reviews. While WAKE TSI can tell how many ballots were rejected by the electronic scanning system, which would indicate a need for adjudication, we cannot track what the final outcome of those ballots were. Outcomes could include; candidate selection, over or under vote conditions or ballot rejection.

The County did manually track and provide that information.

#### 6.7 EMS System Configuration

WAKE TSI did not closely investigate the systems settings within the EMS System. If this had been a forensic analysis or some anomalies had been reported that level of effort would have



been suggested. In this case our preliminary analysis did not indicate that level of investigation was required.

In all cases that where we reviewed the EMS settings and operating parameters, the County IT Support Technician keyed in all information and took us through the screens and settings of the system.

## 6.8 Review of EMS System Logs

WAKE TSI did review system logs from the EMS system. These are the logfiles that show configuration events (changes, errors, etc) as detected by the EMS itself. These were reviewed and showed the changes and scanning errors as would be expected.

These files are not encrypted and can be accessed via a text editing tool.

## 6.9 Configuration files

WAKE TSI did review the EMS configuration files. These were reviewed to validate that the system changes that the County informed us had occurred were indeed what the system had logged as well. All log files matched expected events and changes.

## 6.10 EMS Backups

The County IT Support person conducted EMS backups at regular times. All of the backups were conducted when changes were to be made to the systems and when reporting was being conducted.

There were EMS backups from all election periods and during all election system definitions. The county IT person also backed up the EMS prior to our arrival to ensure that we had no impact on the system configuration or data.

## 7 Computer Hardware

On the Server machine all data files are retained for all elections the system is utilized for.

The tabulation machines, EMS workstation and adjudication workstation contain the current, 2020 General Election, data. On these machines the previous election files are overwritten when the next election's preparations are installed.

All systems were Dell OptiPlex workstations running Microsoft Windows 10 workstation. These workstations are listed as part of the system components on the PA DOS website and in the certification reports for the system.

The ICC workstations had Cannon scanners attached as suggested in the Commonwealth's certification documents.

#### 7-1 Disk Drives

None of the internal disk drives for any of the systems were encrypted. This would allow a malicious actor to remove the disk drive from the system and read the files on an external system, if they were able to gain physical access to the system.



## 8 Computer Operating System (OS)

The Dominion Election Management System application runs on the Microsoft Windows Operating System (OS). The Fulton County machines had version 10 of the operating system installed.

As a security best practice the OS should be reduced to remove extraneous applications that are not needed for the operation of the voting system. This includes applications like MS Office stubs / Get Office, Calendar, Mail, News, Microsoft Solitaire Collection, Games, Xbox, Store, 3D Builder, Alarms and Clock, Calculator, Camera, Contact Support, Cortana, Skype, Get Started, Groove Music, Maps, MS Edge, Money, Movies & TV, OneNote, Phone Companion, People, Photos, Sports, Voice Recorder, Weather and any extra OEM hardware applications.

The Fulton County systems did not have these applications removed. The Democracy Suite was "certified" by the State of Pennsylvania with these applications and as such had to be installed with these extraneous applications.

## 8.1 Other Required Microsoft and Third-Party Products

The certification report list fifty-two (52) Microsoft and other third-party products required to run the election management system. All of the listed products had been installed as of the date of our examination.

Since this was not a technology forensic examination of the system, we did not go into the details of whether they were changed since installation or whether they were the correct versions as listed in the certification report.

The one major area of concern with installed software is that Dominion has installed the Microsoft SQL Server Data Tools (SSDT) on the server. This software is not part of the EAC certified configuration and makes the system certification invalid.

There is no valid reason for Microsoft SQL Server Data Tools (SSDT) to be installed on the EMS. This software toolbox allows any user with access to change and manipulate the EMS databases without logging (recording) to the Database, EMS or OS logfiles.

Dominion has installed this toolbox on all installations of their software that we have inspected.

#### 8.2 Patches

The operating systems (OS) were checked to ensure that modules were up to date on security patches and fixes, to review the date that the patches were installed, and to ensure that no malware was present on the machines used by the voting system.

Patches were **NOT** up to date; they had been installed over a year before the election. The reason for this is because the Election Management System Certification Process does not allow any changes to the EMS once it has been certified without complete recertification and that includes changes to the operating system. This makes the Operating System vulnerable to cyber-attack if it is attached to the Internet.



There are multiple ways that the Windows Workstation Operating System can be updated. The first is a direct connection to Microsoft via the Windows Update Manager in settings, which requires an Internet connection. The second approach is through Windows Server Update Services (WSUS). The third approach is via System Center Configuration Manager SCCM. The fourth approach is through a manual process of going to the Microsoft Windows website and downloading the patch manually. Error logs and file dates show that none of these approaches were used on any of the operating systems that the EMS resides on.

#### 8.3 MS Defender Anti-Virus

The Microsoft Defender Antivirus is included with the Windows 10 OS. This application was not configured on any of the five devices that make up the EMS. None of the five machines had current antivirus patches.

## 8.4 OS Log Files

All expected OS log files were present on all five devices running Microsoft Windows 10. They all had entries from installation through our inspection and none showed any evidence of tampering.

The operating system log files on the devices showed that they had never been connected to the Internet or to any external network.

## 9 Extraneous (Non-EMS, Non-OS) Applications

For all computers used for a specific purpose, security best practices dictate that the machines are used solely for that single application. In this case the EMS. No other applications should be installed on the device unless it is required for the explicit use of the voting system.

The Fulton County systems did not have any external (non-OS or Election) applications installed that were not utilized by the Election Management System, other than the extraneous Microsoft software that comes with version 10 of the OS and the SQL toolbox files discussed previously.



## 10 Applicable Federal and State Laws

WAKE TSI is not a law firm, nor are we legislators, however the seeming discrepancies between the laws laid down by the Federal Government, the Commonwealth of Pennsylvania and what is done by the EMS vendor does not seem to be in synch.

So far we have discussed discrepancies in training, provisioning of Logic and Accuracy documentation, extraneous software tools and attestation when system components are changed or replaced.

The following is intended to provide the background about why we think these are issues that need to be addressed by the Commonwealth and the Vendor.

## 10.1 Federal Statutes (HAVA)

The Help America Vote Act of 2002, or HAVA, is a United States federal law which passed and was signed into law by President Bush on October 29, 2002.

## The goals of HAVA are:

- 1. replace punch card and lever-based voting systems;
- 2. create the Election Assistance Commission to assist in the administration of federal elections; and
- 3. establish minimum election administration standards.

HAVA mandates that all states and localities upgrade many aspects of their election procedures, including their voting machines, registration processes and poll worker training. The specifics of implementation have been left up to each state, which allows for varying interpretations of the federal law.

#### 10.1.1 State Funding, Planning & Reporting for HAVA

A description of the HAVA law on WIKIPEDIA describes the application approach to be taken for States to apply for HAVA funding. We have quoted WIKIPEDIA below:

To be eligible for federal funding, states must submit a plan describing how payments will be used and distributed, provisions for voter education and poll worker training, how to adopt voting system guidelines, performance measures to determine success (including goals, timetables, responsibilities, and criteria), administrative complaint procedures, and the committee who helped develop the state plan.

Each year the state receives testeral funding they must subject a report to the Election Assistance Commission (EAC) detailing a first of expenditures, the number of and types of voting equipment obtained with the remain analysis and description of the activities funded."

HAVA rules have changed many election functions from being local community responsibilities to Statewide requirements. These include: Voter Registration codified in the 1993 National Voter Registration Act (NVRA), Voter identification requirements, provisional ballot creation and the HAVA law created the Election Assistance Commission (EAC).



HAVA also provides funds for making polling places accessible to individuals with disabilities. This includes the purchase of Ballot Marking Devices and the conversion of older buildings to become ADA compliant.

#### 10.2 State Statutes

WAKE TSI is discussing the statutes below since it would appear that discrepancies exist between Pennsylvania Department of State (DOS) conduct and Federal and Commonwealth Laws.

#### 10.2.1 Ballot Secrecy

"The Pennsylvania Constitution mandates secrecy of the vote. Consequently, Mail-In ballots are separated from their outer envelopes before being counted so that no one can determine how the mail-in ballot voter votes. Pa. Const. art. VII, § 4." This was a statement made by the DOS in a letter to Representative Seth Grove.

This is why in the Poll Book Section we questioned why the Department of State (DOS) representatives looked through the Poll Book and then selected ballots for a "random" ballot count. No one is supposed to know who voted for which candidates, but it would seem that the DOS is aware of how constituents voted through the matching of ballot scanning order to the Poll Book and numbered tags on the ballots.

## 10.2.2 HAVA discrepancy

The Commonwealth's schedule of elections for 2021 is shown below. There is a disclaimer with this document that any of the dates are subject to change without notice. The purpose in showing this schedule is to indicate that the setup of the election files within the individual elections are not considered to be changes to the election system itself. If the election setup was included, then the Commonwealth would not be in compliance with HAVA 90-day rules for no changes allowed to the EMS prior to an election.

Date	Scheduled Activity	Cays to
16-Feb	First day to circulate and file nomination petitions	91
17-Feb	HAVA 90-day cutoff for changes to EMS	90
9-Mar	Last day to circulate and file nomination petitions	70
10-Mar	First day to circulate and file nomination papers	69
16-Mar	Last day to file objections to nomination petitions	63
24-Mar	Last Day for withdrawal by candidates who filed nomination petitions	55
20-APR	**Approximate Date of Election Setup to be expected by County	28
3-May	Last day to REGISTER before the primary	15
11-May	Last day to apply for a mail-in or civilian absentee ballot	7
18-May	Last day for County Board of Elections to receive voted mail-in and civilian absentee ballots (must be received by 8:00 PM)	0



18-May	Municipal Primary Election		
19-May	First day to REGISTER after primary		167
25-May	Last Day for County Board of Elections to receive voted Military and overseas absentee ballots (submitted for delivery no later than 11:59 PM on May 17)		161
2-Aug	Last day to circulate and file nomination papers		92
4-Aug	HAVA 90-day cutoff for changes to EMS		90
9-Aug	Last day to file objections to nomination papers		85
9-Aug	Last Day for withdrawal by candidates nominated by nomination papers		85
9-Aug	Last day for withdrawal by candidates nominated at the primary	1	85
5-Oct	**Approximate Date of Election Setup to be expected by County		28
18-Oct	Last day to REGISTER before the November election	1	15
26-Oct	Last day to apply for a mail-in or civilian absentee ballot		7
2-Nov	Last day for County Board of Elections to receive voted mail-in and civilian absentee ballots (must be received by 8:00 PM)		0
2-Nov	Municipal Election		
3-Nov	First day to REGISTER after November election		
9-Nov	Last Day for County Board of Elections to receive voted Military and overseas absentee ballots (submitted for delivery no later than 11:59 PM on November 1)		

**Table 5** - \*\*These dates are estimates based upon previous election installations as shown by log files on the systems. They ranged from 3 to 4 weeks before the election in all three cases.

#### 10.2.3 Commonwealth Election Data Retention

The list of statutes below provides the retention timeframes for election data. This list is from the DOS website at the following link:

https://www.dos.pa.gov/VotingElections/Documents/Elections%20Division/Administration/Election%20statutory%20reference%20guide.pdf

The DOS does not provide direct access (links) to any of the statutes from their website. We were unable to find a complete retention list from any Pennsylvania Department web site.

Data Area for Retention	Statutes	Months
Absentce ballot records	25 P.S. § 3146.9	22
County election records (generally)	25 P.S. § 2649	22
Copies of district records retained by minority inspector	25 P.S. § 3065(b)	
Federal election records retention	42 U.S.C. § 1974	22
Preservation of nomination petitions, certificates and papers	25 P.S. § 2943	
Preservation of campaign finance reports	25 P.S. § 3259(4)	
Record of ballots	25 P.S. § 2971	
Voter Registration Records (generally)	25 Pa.C.S. § 1405; 4 Pa. Code § 183.12	24
Voter Registration Records (cancelled voters)	25 Pa.C.S. § 1904(a)	

The DOS does not provide direct access (links) to any of the statutes from their website. We were unable to find a complete retention list from any Pennsylvania Department web site via a



DUCK-DUCK-GO web search or from a Google Search. Nor did we find the election statutes from any DOS or pavotes.gov website search. We did finally locate all record retention timeframes for elections in the County Records Manual. This is a PDF document issued by the County Records Committee by the Pennsylvania Historical and Museum Commission Bureau of the State Archives Harrisburg. This is the organization assigned the responsibility for retaining all State records.

Please see Appendix H ~ Pennsylvania Election Record Retention Rules for a complete list of all election records to be retained, timeframes for retention and the supporting statute that orders the retention.

## 10.3 Pennsylvania Certified EMS

"Article XI-A of the Pennsylvania Election Code, 25 P.S §§ 3031.1 et seq., authorizes the use of electronic voting systems. Section 1105 A of the Election Code, 25 P.S. § 3031.5, requires that the Secretary of the Commonwealth (Secretary) examine all electronic voting systems used in any election in Pennsylvania and that the Secretary make and file a report stating whether, in his opinion, the electronic voting system can be safely used by voters and meets all the applicable requirements of the Pennsylvania Election Code."

The above quote is the opening paragraph from each certification report signed by the Pennsylvania Secretary of State, or Acting Secretary of State, as was the case in January 2019 when the Election Management System used in Fulton County was certified by the Commonwealth of Pennsylvania.

The Dominion Democracy Suite 5.5A was certified by the State of Pennsylvania Acting Secretary of State Kathy Boockvar on January 17, 2019.

"Upon the request of Dominion Voting Systems Inc. (Dominion), the Department of State's Bureau of Commissions. Elections and Legislation (Department) scheduled an examination for October 15, 2018 of the Democracy Suite 5.5 voting system. The voting system presented for certification in Pennsylvania included the Democracy Suite Election Management System (EMS) election management software used in conjunction with the following components: 1) ImageCast® X (ICX) Ballot Marking Device (BMD), a ballot marking device with Commercial Off The Shelf (COTS) printer, HP LaserJet Pro Printer M402dn/HP LaserJet Pro Printer M402dne, for printing marked ballots; 2) ImageCast Precinct Scanner (ICP), a precinct optical scan ballot tabulator that scans, validates and tabulates hand-marked paper ballots and ballots produced on the BMD; and 3) ImageCast Central Station (ICC), a ballot scanning and tabulating system that can be configured with high speed COTS scanners Canon Image Formula DR-G1130 /Canon Image Formula DR-M160- II to tabulate ballots in central office.

The Acting Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as professional consultants to conduct the examination of Democracy Suite 5.5."



Information above is quoted from the Pennsylvania certification report of the Dominion Democracy 5.5A Suite.

Please see the entire certification report for the Dominion Democracy Suite 5.5A system at the DOS website:

https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/Dominion%20Democracy%20Suite%205.5~

A/Dominion%20Democracy%20Suite%20Final%20Report%20scanned%20with%20signature%20011819.pdf

## 11 Election System Certifications

The EMS has to be certified first by the Federal government and then by the State government prior to a County being able to buy the system. This true for all States and Counties participating in the <u>voluntary</u> EMS certification program in the United States.

## 11.1 Election Assistance Commission (EAC) Certification

The Election Assistance Commission was created by the Help America Vote Act (HAVA) and is a voluntary program which 40 states participate in. The current guidelines are Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0), published in

All information provided in this section is from the EAC website. We left all links active so that anyone may easily follow up in areas of interest.

The U.S. Election Assistance Commission (EAC) was established by the Help America Vote Act of 2002 (HAVA). EAC is an independent, bipartisan commission charged with developing guidance to meet HAVA requirements, adopting voluntary voting system guidelines, and serving as a national clearinghouse of information on election administration. EAC also accredits testing laboratories and certifies voting systems, as well as audits the use of HAVA funds.

Other responsibilities include maintaining the <u>national mail voter registration</u> form developed in accordance with the <u>National Voter Registration Act of 1993.</u>

HAVA established the <u>Standards Board</u> and the <u>Board of Advisors</u> to advise EAC. The law also established the <u>Technical Guidelines Development Committee</u> to assist EAC in the development of <u>voluntary voting system guidelines</u>.

The four <u>EAC commissioners</u> are appointed by the president and confirmed by the U.S. Senate. EAC is required to submit an <u>annual report</u> to Congress as well as testify periodically about HAVA progress and related issues. The commission also holds <u>public meetings and hearings</u> to inform the public about its progress and activities.

HAVA also requires that EAC provide certification, decertification, and recertification of voting systems and the accreditation of testing laboratories, marking the first time the federal government will be responsible for these



activities. Under HAVA, the National Institute of Standards and Technology (NIST) will assist the EAC with the certification program through its National Voluntary Laboratory Accreditation Program (NVLAP), and will provide recommendations to the EAC regarding laboratory accreditation. EAC will make the final decision to accredit laboratories based upon the information provided by NVLAP. Participation by states in EAC's certification program is voluntary; however, over 40 states currently require EAC certification, or some component of the EAC program, for the voting systems used in their jurisdictions. Highlighting provided by WAKE TSI.

The purpose of EAC's national voting system certification program is to independently verify that voting systems comply with the functional capabilities, accessibility, and security requirements necessary to ensure the integrity and reliability of voting system operation, as established in the Voluntary Voting System Guidelines (VVSG).

#### 11.2 State Certification

The Dominion Democracy Suite 5.5A was certified on 01/17/2019 for the General and Primary Elections occurring in 2019. The Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as professional consultants to conduct the examination of Democracy Suite 5.5. The certification process was approved by, and the report was approved and signed by Acting Secretary of the Commonwealth, Kathy Bookvar.

## 11.3 County Implementation Attestation (IA)

As part of our review of the Dominion certifications at each of the three (3) required levels WAKE TSI requested the completed and signed Attestation Form from the County which should have been created with Dominion when they installed the Fulton County Systems in 2019. The form in Appendix G is the Pennsylvania template for the IA Form, which is then followed by the completed Dominion form.

The purpose of the Attestation is to indicate that the Vendor (Dominion) has provided the components required that have previously been certified by the Department of State of the Commonwealth of Pennsylvania.

The County upgraded a scanner, but a second attestation was not completed at that time. These forms are proof that that system has been installed completely and accurately and must be completed with each system change.

#### 11.3.1 Components not provided

Dominion "owes" the County training manuals, training and system manuals. The Election Commission expects that Dominion will provide those materials and training prior to the 2021 Municipal Primary which occurs in May 2021.

The Vendor has not yet provided training materials or manuals for information technology support of the system.



#### 11.3.2 Dominion statement about certification

When WAKETSI first sought to review the Implementation Attestation document the Election Commission and the Election Director could not immediately locate the IA form. Since they could not find it in their own records the Election Commission asked Dominion for a copy of this form. Dominion then told the County that it had not been completed because it was "optional". This statement does not agree with "Section IV Conditions for Certification" of the "Dominion Democracy Final Report scanned with signature 020119.pdf" page 40 that states the following:

"Given the results of the examination that occurred in October and December 2018 and the findings of the Examiners as set forth in their reports, the Secretary of the Commonwealth certifies the Democracy Suite 5.5A subject to the following conditions:"

#### Section IV, Item

"K. All jurisdictions implementing Democracy Suite 5.5A <u>must</u> work with Dominion to ensure that only the certified system configuration is <u>installed on purchase or anytime a system component is replaced or upgraded</u>. Jurisdictions must as part of their user acceptance test verify the implementation to ensure that the components, software and firmware belong to the certified system. Jurisdictions must also perform a trusted build validation as part of the election preparation activities and nost-election canvass activities utilizing the vendor supplied methods of validation and verification of voting system integrity. A sample format that can be used for the attestation is added as Attachment C to this document."

The use of the word MUST is a legal term that is enforceable. Fulton County had their original Implementation Attestation completed but it would seem that they have never had a Logic and Accuracy test documented. This is not to say whether or not the L&A testing has been completed, but there is nothing documenting that the process was completed.

It would seem that Dominion does not retain the documentation of what work they are completing even when that documentation is of great importance to the election integrity of this Country.

#### 11.3.3 Logic & Accuracy Testing Requirement

The L&A testing is a before and after certification that is supposed to occur within 15 days before and within 15 days after every election. This is a technology certification to ensure that the system is able to read the scanned document and apply the Vote correctly to the candidate that was chosen.

Section IV Item E <u>REQUIRES</u> that: "All jurisdictions implementing the Democracy Suite 5.5A need to carry out a full Logic and Accuracy test on each device without fail and <u>maintain evidence of Logic and Accuracy (L&A)</u> testing in accordance with the statutory requirements for pre-election and post-election



testing. Jurisdictions must include audio ballots and accessible devices during L&A testing. The Department does not recommend automated L&A testing, and discourages the use of preprinted ballots provided by vendors. All components being used on election day, including any Electronic Poll Books being used, must be part of the L&A testing. Counties must ensure that the L&A test cases include all applicable scenarios of the PA straight party method identified in Attachment C to the Directive for electronic voting systems published by BCEL on September 11,2017.

As WAKETSI stated in the previous section no L&A testing has been documented. No documented attestation form nor L&A can be provided from when a scanner was upgraded. These may seem like minor issues until one understands the impacts that issues of accurate scanning have on the election process. The positions of each candidates voting circle is programmed into the Election Management System. If the alignment of that circle is off by a tiny fraction of an inch the system will not be able to properly read the ballot. The ballot will then be moved to adjudication where the Voter's selection of candidate is open to "interpretation" by the person or persons conducting the adjudication process.

A simple human error, or a bad actor, could cause huge issues with accurate ballot counting if it is not caught by proper testing both before and after an election, as is required by the Commonwealth of Pennsylvania. This problem falls not only on Dominion, but also on the Commonwealth's Department of State for not enforcing their own certification guidelines.

## 11.3.4 Dominion addition of non-certified software

Dominion has added the Microsoft SQL Server Data Tools (SSDT) to their installations. This toolset is not an authorized portion of the system as certified by the EAC or the Commonwealth of Pennsylvania.



## 12 Appendix A – Sample Ballots

The enclosed sample ballot is from the Fulton County web site and are downloadable from the web site in PDF format.

The watermark of "SPECIMEN" is removable using Adobe Acrobat or a similar tool. The only difference between the Sample Ballots and the Regular Ballots is the machine-readable precinct Identification on the Actual ballots is not printed on the Actual Ballots.

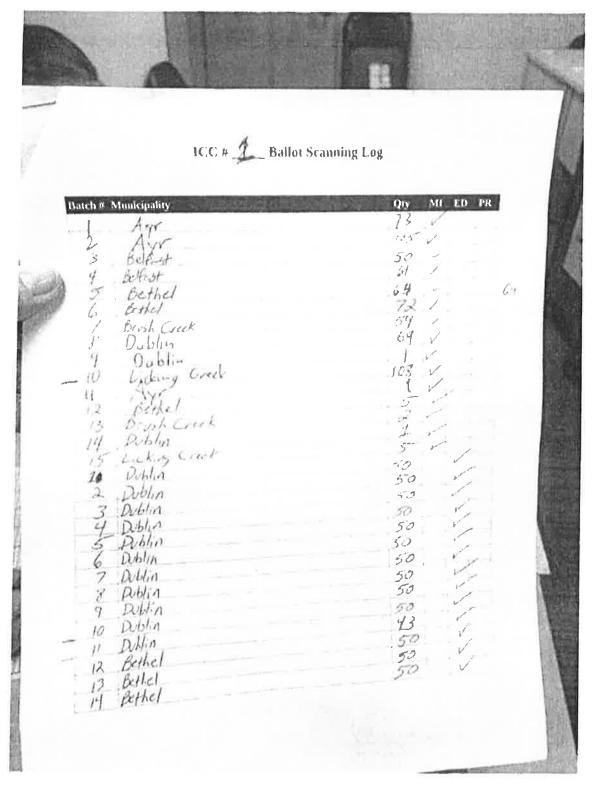
We provided a sample for Ayr Township Precinct as the others follow the same standards as does this sample.

The ballots for all precincts contained the same election information for contests and candidates.

	OFFICIAL BA FULTON COUNTY, PEI GENERAL ELECTION, NO AYR TOWNS	NNSYLVAN		
to the right of 2. The cost as provided and 2. Mee only a 3. Mee only a 4. My united 4. My united 4. My united 5. Mee only a 4. My united 5. Mee only a 5. M	YOU WUST COMPLETELY BLACKEN THE only minimized and carks, in other to the case artificial voids far a person whites terms is a person the amount one Marris cance. See order a fall which person or market is a world way, after a receive still market to sell care scalaring air view of called to the sell could be proposed for which is delicated by the isolation, you monotoning which all the sell care articles of the proper of der-	date not on the ballot, or half-repose given is allowed as the or may value a pro-	you must derken the rival to th	is right of mo line
PRESIDENTIAL ELECTOR (Vote for the candidates of ONE pince President and Vice-President insert the manusc of candidates)	Iarly (VOTE FOR ON		REPRESENTATIVE 13th Disi (VOTE FOR	trict
Joseph R Biden Kamula D Harris Corner catte	Democratic Timothy DeFoor		Todd Rowley	
Donald J Trump Michael R Pence Republican	Republican  Jennifer Moore	Ţ.	John Joyce Rapubboan	Ç
Jo Jorgensen Jeromy Spike Cohon 1 Festivities	Olivia Faison		W.4e n	3
Wile-1	Groen Parly	D)	REPRESENTAT GENERAL AS	SEMBLY
ATTORNEY GENERAL (VOTE FOR ONE)	STATE TREASU		78th Dist (VOTE FOR	
Josh Shapiro De grapats	Joe Torsella Democratic	E)	Jesse Topper Republican	
Heather Heidelbaugh Republican	Stacy L Garrity		Witela	
Daniel Wassmer Libertanan	Joe Soloski Libertarian			
Richard L Welss Green Parly	Timothy Runii o	- 6		
Wrem	Writels	-0		
			Members of the Boar Fullon County, Pa	d of Elections



## 13 Appendix B – Ballot Scanning Log





## 14 Appendix C – Ballot Tally & Tracking Template

This is the template used for tracking paper ballots and the paper for the BMD devices which is distributed to each Precinct and then returned to the County offices after the election was completed.

Exact counts are kept ensuring that no paper for the BMD or printed election ballots are unaccounted for.

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## 15 Appendix D – Security Tag Tracking Template

This template is utilized when security tags are removed and then replaced from the ballot carts, BMD devices or supply carts.

#### **ELECTION BOXES TAG CONFIRMATION REPORT**

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## 16 Appendix E – County General Certificate of Results

Official County report of election results signed by all required parties.

# GENERAL CERTIFICATE OF RESULT

OF ALL VOIES CASE

AT THE

2020
GENERAL
ELECTION

November 3, 2020



## CERTIFICATION OF COMPUTATION OF ELECTION RESULTS

## Computation 1 Cover Sheet

The following is the computation of all election day pallots, provisional ballots, military and overseas ballots, and only those civilian absentee and mail-in bullots received by 8.00 pm on November 1, 2020.



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PENNSYLVANIA DEPARTMENT OF STATE

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Page 52 of 93



### Election Summary Report

General Election
Fulton County
November 03, 2020

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

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#### Attorney General (Vote for 1)

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## Representative in Congress 13th Congressional District (Vote for 1)

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#### Representative in the General Assembly 78th Legislative District (Vote for 1)

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#### CERTIFICATION OF COMPUTATION OF ELECTION RESULTS

Computation 2 Cover Sheet

The following is the computation of ballots inclined by mail between November 4, 2020 and Movember 6, 2020, that were postmarked on or before November 3, 2020.



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**Election Summary Report** 

General Election
Fulton County
November 03, 2020

Summary for: All Contests, All Districts, post-election-day mail-in, post-election-day absentee, All Counting Groups

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## Representative in Congress 13th Congressional District (Vote for 1)

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## Representative in the General Assembly 78th Legislative District (Vote for 1)

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#### CERTIFICATION OF COMPUTATION OF ELECTION RESULTS

#### Computation 3

The following is the computation of ballets received by mad between November 4, 2020 and Kovember 6, 2020 that did not bear a posterize

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#### CERTIFICATION OF COMPUTATION OF ELECTION RESULTS

Computation 4

The following is the computation of nations of each toy multipoweer November 3, 2021 and November 5, 2020, where the postmark was riegisted.

Fag: 67 at 13



#### 2020 General Election November 3, 2020

#### Fulton County, Pennsylvania

#### CERTIFICATION OF COMPUTATION OF ELECTION RESULTS

We the undersigned. Clerks appninted to compute the votes cast at the General Flection aforesaid, do thereby certify that the within statement is a correct computation of the votes returned as cast for federal and state offices in the several Election Districts of the County at the General Election helit on the 3rd day of November 2020.

ATTE	STED: (to be signed by all the Clerks)  Patricia X. Heas)  Director of Elections	
-		
SIGNED this	day of November, 2020	
$\dots \cap^{r} \to \mathbb{R}^{3}$	County Board of Elections of	
Thisia	(County) County, Pennsylvania	

#### FINAL CERTIFICATION

And now, five days after the completion of the within computation of votes, no petition for a recount or recanvass having been filed in accordance with the provisions of the Elections code, or in case of petition, the revision directed by the Court of Common Pleas having been made, we certify the within return of votes cast as being true and correct.

SIGNED this 33d day of Hovember, 2020

County Board of Elections of [County] County, Pennsylvania



#### 17 Appendix F - BMD Ballot Printout

The picture below is of a ballot printed from one of Belfast Township Precinct BMD devices. The printed ballot meets all requirements of both the HAVA and Commonwealth statutes.

The only possible concern is that the scanner / tabulator reads the machine readable QR code not the human readable printing.

As long as the BMD is programmed correctly this should not be of concern.

OFFICIAL BALLOT FULTON COUNTY, PENNSYLVANIA GENERAL ELECTION, NOVEMBER 3, 2020 BELFAST TOWNSHIP REPRESENTATIVE IN CONGRESS PRESIDENTIAL ELECTORS
IVate for the randidates of ONE party for 13th District
President and Vice President or insert the Vote FoR ONE)
Party of the Donald Trump
Michael R Pence Republican (REP)
REPRESIDENTATIVE IN CO. REPRESENTATIVE IN THE GENERAL ASSEMBLY 78th District (NOTE FOR ONE) ATTORNEY GENERAL (NOTE FOR ONE) Victe for Heather Heidelbaugh Republican (REP) Vote for Jesse Topper Republican (REP) AUDITOR GENERAL (VOTE FOR CIVE)

Vate for Jeruster Hoore

Expertation (1.18) STATE TREASURER (NOTE FOR ONE) Vote for Stacy & Garrity Republican (REP) 1/1



## 18 Appendix G – County Implementation Attestation Form

This is the form which signifies that the County received all components of the Election Management System from the vendor Dominion when the EMS was installed.

The first three pages are the State's form which was not used and the following sixteen pages are the form that Dominion utilized.





#### **Voting System Implementation Attestation**

System Name:
County:
Date Installed/Upgraded:
The below hardware/software was installed and verified on the system implemented:

System Component	Software or Firmware Version	Hardwara Version	Model	Comments  Offene specify the implementation details anote device (ale skipp Taplop) Offent server (a supplicable)
EMS Election Eyent Designer (FED)	5.5.12.1			THEIR STATE TO AGRICUME
EMS Results Tally and Reporting (RTR)	5.5.12.1			
EMS Application Server	5.5.12.1			
EMS File System Service (FSS	6.5.12.1			
EMS Audio Studio (AS)	5.5.17.1			
EMS Data Center Manager (DCM)	3.5.12.1			
EMS Election Data Translator EDT)	5.8.12.1			
mageCast Voter Activation ICVA)	6.5.12.1			
MS Adjudication	5.5,8.1			



EMS Adjudication Service	5.5.8.1		
Smart Card Helper Service	5 5.12.1		
	5.5.3-0002		
mageCast Precinct			
	5.5.3.000?		
magaCast Central			
	5.5.30		
mageCast X			

Further to the key hardware/software components listed above, any of the COTS software and

Page 12



ancillary components like switches, ballot boxes, charging carts sold on this contract are EAC certified components of the Dominion Democracy Suite 5.5A electronic voting system. (Attach a list of Items sold on this contract.)

Daminion has validated that the systems have been installed and hardened following the EAC certified system hardening instructions and no software other than the voting system software has been installed on any of the companents.

vendor Representative Signature:		
Vendor Representative Name:	Title:	
Telephone:	Emaîl:	
County Researchables Standards		
County Representative Signature:		
County Representative Name:	Title:	



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OFFICIAL BALLOT
General Election
Tuesday, November 3, 2020
Anywhere County

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FAVORITE SPORTS TEAM

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Fig. AH & AUTHOR Vice for Carl Sanburg

FAVORITE MUSICIAN Vote for Kid Rock

FAVORITE AR HST Vete for Egunardo da Vinci

FAVORITE COLLEGE OR UNIVERSITY Valu for Michigan State

STATE GASOLINE TAX Vote for Yes

COUNTY PARK COMMISSION PROPOSAL, Vote for Yes

111



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### 19 Appendix H - Pennsylvania Election Record Retention Rules

The following information is from the Pennsylvania "County Records Manual" which was issued for the County Records Committee by the Pennsylvania Historical and Museum Commission Bureau of the State Archives Harrisburg 2002 Edition. Updated as of March 2017.

#### **ELECTION RECORDS**

#### ADDITIONAL RETENTION REQUIREMENTS

Currently, Federal election records (including all records and papers pertaining to any application, registration or other act requisite to voting) must be retained 22 months from the date of any general, special, or primary election for federal office under the Civil Rights Act of 1960, codified at Title 42, U.S. Code, Sections 1974 through 1974e inclusive.

#### **EL-1 Absentee Ballot Records**

Includes absentee ballots and all related lists, applications, envelopes and files pertaining thereto. Application usually shows personal identification information, reason for request, and elector's signature.

Retain 2 years. (25 P.S. § 3146.9)

#### EL-2 Ballot Box Documents - Miscellaneous

Consists of all official ballots, the contents of ballot boxes, tally papers, numbered list of voters and election officers' oaths placed in ballot box at polling place. (See also EL-24.)

Retain 4 months, unless notified of extension of retention by the county's District Attorney or a judge of a court of record, due to pending prosecution or litigation. (25 P.S. §§ 2649 and 3065(a)). For one year, the minority inspector is required to retain one set of tally papers, one voter list, and one set of election-officer-oaths. (25 P.S. § 3065(b)).

#### **EL-3 Ballot Preparation Workpapers And Candidate Lists**

Includes papers and lists of local candidates' names used to design ballot layout at the county level, based upon ballot position lottery for the primary election, and the primary election results and substitute nominations for the November election.

Retain 11 months. (25 P.S. § 2649).



## **EL-4 Campaign Expense Reports And Statements Filed By Candidates And Political Committees**

Expense report shows name and address of candidate, committee, individual or lobbyist; office sought; summary of receipts and expenditures; signature of person swearing to accuracy of report; summary of contributions and receipts; itemized lists of contributions, receipts and expenditures; unpaid debts and obligations; and in-kind contributions. Statement includes name and address of candidate, committee or lobbyist; office sought; and certification of compliance with the Election Code.

Retain 5 years from date of filing. (25 P.S. § 3259(4)).

#### **EL-5 Candidate Withdrawal Notices**

Notification from candidates of their desire to withdraw from an election. Includes date, office, party, election date and candidate's signature.

Retain 11 months (Counties). (25 P.S. §§ 2649 and 2938).

#### **EL-6 Candidates' Affidavits**

Includes candidate's name and address, office sought, affidavit of eligibility, loyalty oath and ethics affidavit. May be part of nomination petition or separate form filed with petition.

**Retain 11** months (Counties). (25 P.S. §§ 2649 and 2870).

#### **EL-7 Challenge Affidavits**

Consists of challenge affidavit of elector declaring eligibility to vote and supporting affidavit by another qualified elector of the district. Contains names, addresses, date and signatures of elector and supporting elector. Also signed by judge of elections.

Retain 11 months. (25 P.S. §§ 2649 and 3050(d)).

#### **EL-8 County Board Canvass Workpapers**

Preliminary tally compiled by the county board of elections showing candidates' names and vote totals.

Retain 11 months. (25 P.S. §§ 2649 and 3068).

#### **EL-9 Election Certification Affidavits**



Sent after the certification of the returns of any primary or election to the Department of State, Bureau of Elections. The form includes name of county, date, certification of official returns, signatures of county board and clerk of elections, and vote totals for each candidate.

Retain 11 months. (Counties). (25 P.S. §§ 2649 and 3158).

#### EL-10 Election Documents - Miscellaneous

Contains records pertaining to each election such as proof of publication forms and acceptance statements.

Retain 11 months. (Counties). (25 P.S. § 2649).

#### EL-11 Election Officers' Oaths

Consists of sworn statements signed by election officers including judges, inspectors, clerks, machine inspectors and overseers. Excludes oaths contained in ballot box.

Retain 11 months. (25 P.S. §§ 2649 and 2676 - 2680).

#### **EL-12 Election Officials Index**

Listing of district election board members showing names and terms of office.

Retain 11 months. (25 P.S. § 2649).

#### **EL-13 Election Returns**

Compiled by county board for general, municipal and primary elections. Returns generally indicate district number, office, candidates' names and party affiliations, votes received, certification of computation attesting to authenticity of vote, signatures of election officials and date. Also may contain results relating to special referendums and questions.

Retain permanently for administrative and historical purposes. (25 P.S. § 3158).

#### **EL-14 Fiscal Records**

Includes standard accounting and financial records relating to the funds of the Elections Office.



See Financial Records, Payroll Records, and Purchasing Records found in Section 2 for retention guidance.

#### **EL-15 General Return Sheets**

Prepared by district board, return shows number of votes cast for each candidate; total number of ballots received and cast, declared void, spoiled, cancelled and blank; signatures of election officers and clerks; and certification by overseers if applicable.

**Retain** 11 months. (25 P.S. §§ 2649 and 3154).

#### EL-16 Legal Memoranda

Includes legal memoranda respecting a variety of legal issues and matters relating to county elections.

Retain 11 months. (25 P.S. § 2649).

#### EL-17 Minutes Of The Board Of Elections

Record of the Board of Elections meeting including date, names of members present and absent, issues discussed, motions, reports and actions taken.

Retain permanently for administrative, legal and historical purposes.

#### **EL-18 Local Option Petitions**

Petition regarding local option question to be placed on the ballot. Shows issue or question and electors' signatures and addresses.

Retain 2 years. (25 P.S. § 2943).

#### **EL-19 Nomination Certificates**

Used to fill vacancies caused by death or withdrawal of candidate, certificate shows office and district, cause of vacancy, applicable rule, names of committee or caucus members as well as new candidate's name, residence and occupation. Signed by presiding officer and secretary of party committee or members of political body's committee.

Retain 2 years. (25 P.S. §§ 2943 and 2939(a)).

#### **EL-20 Nomination Papers**



Relating to nomination of independent candidates, paper usually indicates name of political body; county and electoral district; candidate's name, occupation, residence as well as office and district for which nominated; names of committee members authorized to fill vacancies; electors' signatures, addresses, occupations and date of signing; circulator's affidavit; and candidate's affidavit, loyalty oath and ethics affidavit.

**Retain** 2 years. (25 P.S. §§ 2943 and 2911(a)).

#### **EL-21 Nomination Petitions**

Usually shows electoral district and political party; candidate's name, address, and profession; election date and office sought; signatures, addresses and occupations of qualified electors and date of signing; circulator's affidavit; and sometimes candidate's affidavit, loyalty oath and ethics affidavit.

Retain 2 years. (25 P.S. §§ 2943 and 2867).

#### **EL-22** Notices Of Nominations To Be Made

Used to assist county board in ascertaining offices to be filled, notices from municipalities and the Secretary of the Commonwealth; usually indicate name of office, number of candidates to be elected and number of years the officer shall serve.

Retain 11 months. (25 P.S. §§ 2649, 2864 and 2865).

#### **EL-23 Numbered Lists Of Voters**

Numerical list of voters used to determine the number who cast ballots in election. Excludes lists contained in ballot box.

Retain 11 months. (25 P.S. §§ 2649 and 3050(a.3)).

#### **EL-24 Official Ballots**

Consists of paper ballots and ballot labels used with voting machines and electronic voting equipment. Includes the following types of ballots:

- (1) Electronic and punch card write-in ballots.
- (2) Official ballot cards-punch card system.
- (3) Mechanical voting machine write-in paper rolls.
- (4) Spoiled and unused ballot cards-punch card system.
- (5) Spoiled and unused paper ballots.



**Retain** 4 months for all official ballots and the contents of ballot boxes, unless notified by the county's district attorney or a judge of a court of record that an extension of retention is required due to pending prosecution or litigation. (25 P.S. §§ 2649, 3031.13(a), 3031.16(a), 3063(a) and 3065(a)).

#### **EL-25 Primary Ballot Position Lottery Workpapers**

Used to draw lots for ballot position for primary elections. Papers relate to local candidates and usually include name, party and office sought.

Retain 11 months. (25 P.S. §§ 2649 and 2875).

#### **EL-26 Proclamations Of Elections**

Issued by county board. Usually lists date of election, offices and candidates, special referendums or questions, and locations of polling places.

Retain 11 months. (25 P.S. §§ 2649 and 3041).

#### **EL-27 Records Of Assisted Voters**

Compiled at polling place. Record indicates municipality, ward and district; date of election; name of voter and reason for assistance; name of person furnishing assistance; and signature of judge of election.

**Retain** 11 months. (25 P.S. §§ 2649 and 3058).

#### **EL-28 Secretary Of The Commonwealth Ballot Certifications**

Includes certifications of Statewide candidates' names to be printed on ballots for the primary and general elections. Sent to county boards by the Secretary and based upon a lottery conducted in Harrisburg.

**Retain 11** months for counties. (25 P.S. §§ 2649 and 2876).

#### EL-29 Specimen Ballots, Specimen Ballot Labels And/Or Voting Machine Diagrams

Contains sample ballots and voting machine diagrams made available to candidates for campaigning purposes and to electors at polling places.

Retain 11 months. (25 P.S. §§ 2649 and 2968).

#### **EL-30 Statements Of Financial Interests**



Required by the State Ethics Commission. Shows name and address, office sought, occupation, names and occupations of spouse and minor dependent children, financial disclosure information and signature.

Retain 5 years. (65 Pa.C.S.A. § 1107(9)).

#### **EL-31 Tally Papers**

Prepared by district board, consists of tally of votes cast for each candidate. Excludes papers contained in ballot box.

Retain 11 months. (25 P.S. §§ 2649 and 3062).

#### **EL-32 Voters' Certificates/Voting Check Lists**

A few counties continue to use a separate Voter's Certificate, which is completed by a voter at the polling place. (However, most county boards of elections have incorporated the Voter's Certificate into the District Register (Poll Book), which must be kept for 5 years and is also addressed at Voter Registration Records entry # VR-8.) The Voters' Certificate, at 25 P.S. § 3043, is a form usually indicating at least the voter's name, address, signature and approval of an election officer. The Voters' Certificate is required by 25 P.S. § 3052 to be inserted into a binder known as the "Voting Check List," which shall constitute the official list of electors voting at each primary and election. 25 P.S. § 3050(a.3) requires the voter's signature on the Voter's Certificate to be compared with the voter's signature in the District Register to confirm eligibility to vote. With the passage of Act 3 of 2002, the District Register is required to be retained for 5 years at 25 Pa.C.S. § 1405(a). Because the Voter's Certificate is signed by the voter and is used in conjunction with the District Register, it should be retained for 5 years as well.

Retain 5 years. (25 P.S. §§ 3043, 3050(a) and (a.3), 3052 and 25 Pa.C.S. § 1405(a)).

#### **EL-33 Voting Machine Lists And Certifications**

Consists of inventory lists showing number of machines, storage locations and registration numbers. Certification form relates to preparation of machines for election and includes custodian's certification that counter is set at zero, that each protective counter has been recorded, and that each machine has been sealed and the seal number recorded. Also shows election, date, and signatures of custodian and deputies.

Retain 11 months. (25 P.S. §§ 2649 and 3011(d)).

#### **EL-34 Voting Machine Proof Sheets**



Relates to voting machines equipped to print paper proof sheets. Printed by district board before and after election and used to check vote totals on each machine.

Retain:11 months. (25 P.S. §§ 2649 and 3067(a)).

# EXHIBIT J

## IN THE PENNSYLVANIA COURT OF COMMON PLEAS OF THE 39<sup>111</sup> JUDICIAL DISTRICT-FULTON COUNTY BRANCH

Witold Walczak and the Complaint in Mandamus

American Civil Liberties Union of

Pennsylvania, No. 5 of 2022 C

Plaintiffs

.

V.

Fulton County, Hon. Shawn D. Meyers

Defendant

#### **DEFENDANT'S DISCOVERY RESPONSES**

COMES NOW the above-named defendant and for its discovery responses provides the following:

#### ANSWERS FOR REQUESTS FOR ADMISSIONS

- 1. Admitted, although Fulton County did not hire or pay Wake TSI.
- 2. Admitted that Wake TSI's performance of the election audit constitutes the performance of a "governmental function." Denied that the County "contracted with" Wake TSI as contemplated under the referenced statute.
- 3. Denied. Fulton County is unaware of what records may be in the possession of third parties.

#### **ANSWERS TO INTERROGATORIES**

1. Stuart L. Ulsh, Fulton County Commissioner, 116 W. Market Street, #203, McConnellsburg, PA 17233, Randy H. Bunch, Fulton County Commissioner, 116 W. Market Street, #203, McConnellsburg, PA 17233, Paula J. Shives, Fulton County Commissioner, 116 W. Market Street, #203, McConnellsburg, PA 17233. Eldon Martin, Fulton County IT director. Same address as commissioners.

- 2. The defendant has not yet determined which documents they will use as exhibits at a hearing in this matter. The defendant reserves the right to supplement this response pursuant to the Pennsylvania Rules of Civil Procedure.
- 3. Objection. This question is overbroad and unduly burdensome. Fulton County cannot speculate on who may have information regarding this matter. Without waving said objection, the County believes that the Fulton County Commissioners referenced above have information regarding the subject matter of this litigation. In addition, the Fulton County IT Director, Eldon Martin, has information regarding responses and documents previously provided. Finally, the Fulton County Director of Elections, Patti Hess, may have limited information regarding the subject matter of this litigation. Lisa Mellott McConahy, the previous Right-To-Know Officer for Fulton County may also have information regarding the subject matter of this litigation.
- 4. None at this time. The defendant reserves the right to supplement this response pursuant to the Rules of Civil Procedure.
  - 5. N/A
- 6. Please see the answer to paragraph 3 above. In addition, the Fulton County Solicitor, James M. Stein, also reviewed responses.
  - 7. Eldon Martin, IT Director for Fulton County.
- 8. Eldon Martin, IT Director for Fulton County. Lisa Mellott McConahy, former Right-To-Know Officer for Fulton County. Each of these individuals was responsible for retrieving records that were responsive to the request.
- 9. The Right-To-Know Law Officer searches for paper records based on her knowledge of the Commissioners' meetings.

- 10. Objection. This question calls for legal conclusions which are not proper subject matter of discovery. Without waving said objection, the plain language of the statute indicates that the denial shall include "1. A description of the record requested." This does not require an identification of records that are exempt.
- 11. Objection, this question calls for legal conclusions which are not proper subject matter of discovery. Without waving said objection, section 708 of the act does not contain any paragraph or language requiring these things.
- 12. Objection, question 12 requests a legal conclusion which is not appropriate in discovery. Without waving said objection, there is no language contained in the Right-to-Know Law requiring said affidavits.
- 13. The Fulton County IT Director entered the key words from the plaintiffs' requests into computer software that searched the Fulton County database.
- 14. The Fulton County IT Director created the parameters that would provide the best response to the request based on individuals who are routinely involved in election matters.
- 15. County email accounts for Stuart Ulsh, Randy Bunch, Paula Shives, Patti Hess, Eldon Martin, Lisa Mellott-McConahy, and Lisa Beatty.
- 16. Because they were the only County employees that had any involvement in the subject matter of the request.
- 17. The basis for this claim is simply the fact that nothing is foolproof and there is always the possibility of human error.
- 18. Objection. Paragraph 18 seeks legal conclusions which are not appropriate in discovery. The basis for plaintiffs' responses in paragraph 43 is contained in that response. Please refer to paragraph 43 of the answer.

- 19. The basis of the privilege is the attorney-client privilege.
- 20. The defendant is unaware of any ability to force third parties to produce documents.
- 21. The County used its best efforts to retrieve documents that complied with the broad search parameters provided by the plaintiff.
- 22. The County is unaware of any documents, other than those already produced, which are in the possession of third parties.
- 23. Objection. This question is overly broad and unduly burdensome. In addition, the portion of the question requesting communication with Wake TSI "regarding the election audit" is not relevant to this litigation and not intended to lead to the discovery of relevant information. Without waving said objection, the defendant has produced all emails in its possession between County officials/employees and Wake TSI.
- 24. Objection. This question is overly broad and unduly burdensome. In addition, the portion of the question requesting communication with the identified senators "regarding the election audit" is not relevant to this litigation and is not intended to lead to the discovery of relevant information. Without waving said objection, the defendant has produced all emails in its possession between County officials/employees and the identified senators.
- 25. All documents regarding this question have already been produced in response to the original request.
- 26. None, other than communications between defense counsel and plaintiffs' counsel which the plaintiffs already have in their possession.
- 27. The defendant received the request and forwarded it to their Solicitor. Upon advice from their Solicitor, they initially denied the request. Following the order from the OOR,

the defendant's Right-to-Know Officer received the request, she gathered all paper documents she believed to be relevant and she forwarded the request to the IT Director. He created search parameters based on the key words in the request and searched the County's electronic records for relevant documents. The defendant then forwarded all documents it believed to be relevant to its Solicitor. Following the Solicitor's review, the defendant released the information to the plaintiffs.

- 28. The defendant has no retention policies.
- 29. All County officials/employees are routinely instructed that they cannot destroy documents.
- 30. The facts supporting these defenses are contained in the answer and counterclaim. The defendant will supplement this answer with an accurate amount of attorney fees as that figure comes into focus prior to trial.
  - 31. Please see the answer to paragraph 27 above.

#### RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

- 1. See all documents already provided in the defendant's original RTK response.
- Objection. This question is overly broad and unduly burdensome. Without waiving said objection, please see all documents already provided in the defendant's original RTK response.
- 3. See all documents already provided in the defendant's original RTK response.
- 4. N/A
- 5. The defendant has not yet determined what exhibits it will use at trial. The defendant reserves the right to update this response prior to trial pursuant to the pre-trial conference rules.

- 6. See all documents already provided in the defendant's original RTK response.
- 7. Please see the attached, which documents have already been provided.
- 8. None exist. Fulton County did not pay for the audit.
- 9. See all documents already provided in the defendant's original RTK response.
- 10. See all documents already provided in the defendant's original RTK response. All communications that defendant had with the OOR were copied to the plaintiffs at the time of said communications.
- 11. All private email communications between Wake TSI and Randy Bunch have already been provided. Stuart Ulsh does not keep his personal emails. He cannot recall, but he does not believe that he had any official communications with anyone from Wake on his personal email.
- 12. See the attached notations from Patti Hess, which have been previously provided.
- 13. See all documents already provided in the defendant's original RTK response.
- 14. None exist, other than documents protected by attorney/client privilege.
- 15. None exist.
- 16. None exist.
- 17. None exist, other than the attached.
- 18. None.
- 19. Please see response to interrogatory number 30 above.

Respectfully submitted,

Ji Ste

James M. Stein, Attorney for Plaintiff
Dick, Stein, Schemel, Wine & Frey, LLP
119 N. Second St.
McConnellsburg, Pennsylvania 17233
(717) 485-4515 PA Bar No. 84026
jim@dsslawyers.com

#### VERIFICATION

I verify that the statements made in the foregoing pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S., Section 4904, relating to unsworn falsification to authorities.

Date: June 4, 2022
Date: June 4, 2022
Date: June 6, 2022

hmissioner, Defendant

Commissioner, Defendant

Commissioner, Defendant

### **PROOF OF SERVICE**

I HEREBY VERIFY that I have served the foregoing document upon counsel of record by mailing via first class mail one copy thereof as follows:

John R. Dixon, Esquire Saul Ewing Arnstein & Lehr LLP Penn National Insurance Plaza 2 N. Second St., 7<sup>th</sup> Floor Harrisburg, PA 17101-1619

Date:

James M. Stein,

Attorney for Plaintiffs

# RESPONSE TO REQUESTS FOR PRODUCTION NUMBERS 7 & 12

## Voting Machine Check

Fulton County, PA December 31, 2020.	FLARL Eugene Kern	is requesting to
check our voting machines and running r Gene Kern	mail-in ballots from our General Elec is with WAVIC	ction on November 3, 2020.
manipulate any equipment.	, and	will not disturb or
PD22		2/31/20
Director of Elections  Election Board Member	Date	
ELLAMANTES MOTER SYSTEM JAKE TSI IS CON 2EPUBLIC A SOLC) 4	STRACTED TO DE	

#### Wake

Stuart called me and asked to let Wake come in and do a check on our 2020 Election. Stuart said since he was asked to do this would I be here for Wake to do a check on the Election.

December 31, 2020, Gene Kerns and staff came in to do a check of the 2020 November election.

Randy Bunch- Commissioner, Eldon Martin-IT Manager, Gene Kerns-Wake, Jeanette Straughn-Wake, Maura Kern-Wake, Gina Kern-Wake, Maryanne Gallo-Wake, Mark Gleason-Wake, and Patti Hess-Director of Election, were present.

I had everyone from Wake sign a paper to say that they would not disturb or manipulate any equipment.

I asked Gene to put on his paper who actually sent him.

Gene and staff followed me down stairs to the election rooms and part of his staff went with Eldon and part of his staff was with me. We used the Election rooms because they all joined together and everything was locked in there.

Eldon was with the Wake staff in his room with the ICC#2 Central Scanner, Randy was in the adjoining room to watch all 3 rooms. Gene asked about the Central Scanner in the middle room and I told him it was not working properly on Election night and that no one could do anything with it until it was checked by Dominion. (No one touched the ICC#1 Central Scanner) I was in the Election Board Room with the staff to do the Mail-in checks.

Wake was never left alone in any room.

I pulled the Mail in ballots and instructed on how they had to keep the ballots in order. I watched as they wrote down on their tally sheet who was voted for and double checked every so often to make sure everything was matching. A picture was taken of each ballot and stacked in order of how they were removed for the box, and I put them back in. This was done to each precinct.

Eldon worked with Wake to get the information they wanted.

We finished at 5:30 Pm. I asked when we would have a report and was told they had more places to check and would be going to possibly Bedford on January 4<sup>th</sup> and to some other counties. Gene said he would get the report to the Commissioners as soon as he could.

Respectfully,

Patti Hess, Director of Elections

Wake Rotes 4ep 9, 2021 Dene came & asked to check some thing: aboute ballots. Staart, Randy, Pauler, Commissioneis, Leme, Wake We all went down stakes of Gene asked questions about procedures + how thing worked, Dene did not have a report yet of said he med the info to doffenish the report. Stuart Randy + Paula answered the questrons of asked a few questions about any thing Dene could say about the report. It ne stated are still working on it an I hour - Hene Daid - Re would he getting back to us + Thank ws.

#### Meeting with Dominion

#### April 27, 2021

#### **Fulton County Commissioners Office**

Attendance: Stuart Ulsh, Randy Bunch, Paula Shives, Lisa McConahy, Lisa Beatty, Senator Judy Ward, Representative Jesse Topper, Jim Stein, Eldon Martin, Frank Dutton, John Hastings, Kay Stimson, Patti Hess.

Kay referring to the letter sent by her and is attached. The question is about the upcoming election and how to move forward.

Dominion will not back the Central Scanning machines from them since, Wake TSI came in and did an audit. The County was asked by government officials like Judy Ward, Doug Mastriano and others to let Wake come in and do the audit. Dominion states that Wake is not a federal accredited auditing company that is state approved and do not know what they could have done to the machines since no report is back yet. We stated that Wake did not touch the equipment that everything that was done was done by Eldon. The only thing is that Wake gave Eldon a USB Stick to download information on. Eldon downloads information to keep for the county on different USB Sticks after each election.

Short term goal is to bring in Loaner equipment to use for the May 18, 2021 primary election. These are to be approved by the state and set up by dominion. Since Dominion states that the state needs to approve what Dominion is supposed to put in to calculate the machines to be adequate for the election, Jesse and Judy sald they would work with the state to get this process approved ASAP.

Dominion states chain of custody of the machines is information goes to the state and they approve the software not the hardware and dominion makes sure it is what is downloaded in the machines.

L & A Testing needs to be done before elections and paperwork from us that we use and from Dominion should be kept to prove everything is working and done properly. Dominion states that they do not keep any copies of this information, that they only give the customer the information. Stuart stated that they as a company should be keeping copies of any information that is given to their customers and it's hard to believe that a company like them working with all the states with voting would not keep copies of all the information. Dominion stated the do not keep copies.

The equipment that is here at Fulton County will remain here until this situation is resolved with Dominion. Eldon has already done a backup of the equipment here.

Kay said she will get with Jonathan Marks and the acting secretary Veronica, from the state to work with them on the loaner equipment.

Jim said that everyone is on the same page to get everything done for this election.

Jim stated that we will discuss the cost at another time and Jesse and Judy said that they would see about getting help to cover things.

Jim stated that when the report from Wake that Dominion is requesting is received we will be making it public and make sure Dominion sees it.

Fulton County is to make sure that only federal accredited companies do audits from here on out and a list is to be on the State web site and Dominion said they will make sure we get a copy.

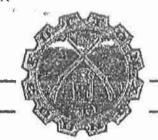
Judy stated that the audit was done to make sure the voters know that everything was up and up with the election and Stuart said that we know that on our part that we have nothing to hide that is why the audit was done to show that everything was done right. Randy said everything in our November was done by the book and when the audit was done we were told everything went well and no problems were found.

Stuart again asked about the attestation and John said that they do not have to do it and have not done it with any county and do not have copy of it or anything else and that Fulton County should have something.

John stated to call the previous Director of Elections and see where the information could be since they gave it to the county.

Dominion to have equipment here to use by next week and L & A testing will be the following week May 10, 2021 at 9:30 am.

Patri



## **Fulton County Elections & Voter Registration**

116 West Market Street, Suite 203, McConnellsburg, PA 17233

Telephone: (717) 485-3691 Fax: (717) 485-9411 Email: electionsdirector@co.fulton.pe.us

Director of Elections
Patti Hess

Stuart L. Ulsh, Chair Randy H. Bunch, Vice-Chair Paula J. Shives

May 4, 2021

Answer to Veronica

Veronica Degraffenreld Acting Secretary of the Commonwealth Room 302 North Office Building 401 North Street Harrisburg, PA 17120

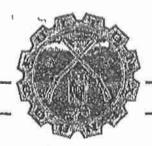
Dear Ms. Degraffenreid,

In answer to the questions in your recent e-mail, we can provide the following information: In December, 2020, various members of the Pennsylvania legislature contacted the Fulton County Election Office and asked if we would allow Wake TSI to do an audit to prove to the voters that the 2020 General Election was run appropriately. Since we believe in transparency, we agreed to let them come in and do the audit. Upon coming to Fulton County, everyone that was involved by Wake in the audit in any way, signed a paper that stated that they would not disturb or manipulate any equipment, as well as giving copies of their photo ID's. Wake was never by themselves with any of the equipment or ballots.

I was with the ballots at all times and our IT director Eldon Martin, was with the equipment at all times. Randy Bunch, one of our three Election Board members, was between both rooms where our election scanner #1 is located, to make sure nothing was done to interfere with any of our equipment or ballots.

Wake had 3 people in the room I opened the first sealed ballot box and handed the first person the mali-in ballots. She wrote down who was voted for on the ballot and then handed it to the second person whom also wrote down who was voted for on the ballot and handed the ballot to the third person, who took a picture of the ballot and laid it back on the table in the order that they received to ballots so they were not out of order of how I handed the ballots to them. After the manual tally of these ballots were complete, I counted 300 of the mall-in ballots and handed them to Mr. Bunch and he gave them to our IT person. The ballots were scanned by our IT director using one of our central scan units. A results report was printed and given to Wake staff. The results data from this scan was not transferred to our election server, and therefore, these results were not comingled with the official results from the 2020 general election. I placed the ballots back in the appropriate township ballot boxes and sealed the boxes again.

Under supervision of our IT Director, Wake employees took backups of key data on the computers used in the ballot counting process. These backups included the election database, results files, and Windows system logs. In addition, Wake TSI used a system imaging tool to take complete hard drive images of these computers to be able to perform further examination. They also obtained complete images of two USB thumb drives that had been used on election night to transfer results files from the election computers to the computer we used to upload results to the SURE portal.



## **Fulton County Elections & Voter Registration**

116 West Market Street, Suite 203, McConnellsburg, PA 17233

Telephone: (717) 485-3691 Fax: (717) 485-9411 Email: electionsdirector@co.fulton.pa.us

<u>Director of Elections</u> Patti Hess COUNTY COMMISSIONERS

Stuart L. Ulsh, Chair Randy H. Bunch, Vice-Chair Paula J. Shives

The central scanner #1, was never touched. All reports and back-ups were taken from the election server and central scanner #2.

Our staff was with Wake in the rooms at all times.

We will greatly appreciate any assistance that you can give us.

Sincerely,

Patti Hess Elections Director

County of Fulton