

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 3 MAP 2022

**COUNTY OF FULTON, FULTON COUNTY BOARD OF ELECTIONS,
STUART L. ULSH, IN HIS OFFICIAL CAPACITY AS COUNTY
COMMISSIONER OF FULTON COUNTY AND IN HIS CAPACITY AS A
RESIDENT, TAXPAYER AND ELECTOR IN FULTON COUNTY, AND
RANDY H. BUNCH, IN HIS OFFICIAL CAPACITY AS COUNTY
COMMISSIONER OF FULTON COUNTY AND IN HIS CAPACITY AS
RESIDENT, TAXPAYER AND ELECTOR OF FULTON COUNTY,**

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

Appeal from the January 14, 2022
Single-Judge Order of the Commonwealth Court (Leavitt, J.),
No. 277 M.D. 2021

**THE SECRETARY'S ANSWER IN OPPOSITION TO FULTON
COUNTY'S EMERGENCY APPLICATION TO ENJOIN DEPOSITIONS**

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(Additional counsel on signature pages)

Respondent/Appellant, the Acting Secretary of the Commonwealth (the “Secretary”), respectfully submits this Answer in opposition to Respondent Appellee Fulton County’s Emergency Application for a Preliminary Injunction to Enjoin Depositions Scheduled for November 7, 2022 and to Have Special Master Rule on Fulton County’s Legal Issues Raised in Its Motion Objecting to Discovery.

I. INTRODUCTION

Put simply, Petitioners’ Application is a meritless, bad-faith attempt to continue defying the Special Master’s Orders and frustrating her ability to develop the evidentiary record and make the factual findings required by this Court. The Application should be summarily denied.

II. RELEVANT PROCEDURAL HISTORY

By Order dated October 21, 2022, this Court appointed the President Judge of the Commonwealth Court, the Honorable Renée Cohn Jubelirer, as Special Master to “develop an evidentiary record on the averments” in the Secretary’s application for an order holding Petitioners in contempt and imposing sanctions for Petitioners’ willful violation of this Court’s January 27, 2022 Injunction. The Court also directed the Special Master to “prepare a report containing proposed findings of fact and recommendations concerning the relief sought, which the Special Master shall file with this Court on or before November 18, 2022.”

From the beginning of the proceedings before the Special Master, Petitioners have repeatedly refused to provide any discovery whatsoever. On October 28, 2022, after receiving briefing and hearing oral argument by the parties, the Special Master issued a Rule to Show Cause “endeavoring to give the parties as much time as possible to prepare their respective cases” within the time constraints established by this Court’s October 21 Order. To that end, the Special Master set forth procedures and a schedule for all parties to propound their own discovery and to respond and object to discovery by other parties. The Secretary complied with that schedule, timely serving requests for production of documents, interrogatories, requests for admission, and proposed deposition questions in accordance with the Special Master’s directives. Petitioners, however, did not comply with the Special Master’s Rule to Show Cause, which directed them to serve responses and objections (and produce documents) by noon on November 2, 2022.

Instead, late on November 1, Petitioners filed an Emergency Application asking this Court “to enjoin discovery in Special Master Proceeding and to Compel Legal Rulings Preceding Said Discovery.” In a single-justice Order entered at approximately 11:43 a.m. on November 2, Petitioners’ Application was temporarily granted pending expedited consideration by the full Court. This had the effect of excusing Petitioners from complying with the noon deadline for service of their discovery responses and objections. At approximately 5:21 p.m.

that afternoon, this Court entered an Order declining to grant Petitioners relief, referring Petitioners' Application to the Special Master, and generally re-imposing the Special Master's discovery schedule. Because the temporary grant of relief entered earlier in the day had "interfered with the Special Master's October 28, 2022 Order with respect to the parties' discovery production deadline," this Court extended the deadline for Petitioners' discovery responses and objections to noon on November 3, 2022. *See* November 2, 2022 Order.

On November 3, 2022, the Special Master issued an Order stating, *inter alia*, that because "the Special Master's role is to make a recommendation as part of her report to the Supreme Court following development of an evidentiary record," the Special Master would not grant Petitioners' request for a ruling on their purported legal defenses before the parties could conduct discovery or the Special Master could develop an evidentiary record. Instead, "Fulton County may adequately protect its interests in this issue by raising its legal arguments as to the scope of the Injunction Orders in accordance with the Rule to Show Cause." *See* Special Master's November 3, 2022 Order.

The Special Master's Order further provided that "[t]o the extent [Petitioners'] Emergency Application requests evidentiary determinations on the various asserted privileged and other evidentiary protections on a global basis, the Special Master will not issue such an order but will entertain any and all

unresolved objections in accordance with Paragraph 5(d) and (e) of [the Special Master's] Rule to Show Cause," which required Petitioners to serve specific objections to the Secretary's discovery requests and to serve a privilege log identifying responsive documents and information that Petitioners were withholding based on a claim of privilege. *See* Special Master's November 3, 2022 Order.

The Special Master's Order then granted Petitioners *another* extension of the deadline to serve proper responses and objections to the Secretary's discovery requests, moving that deadline from noon to 8:00 p.m. on November 3, 2022. The Special Master directed that any discovery motions be filed by noon on November 4, 2022, and scheduled a status conference for 2:00 p.m. on November 4, 2022.

Petitioners did not comply with the Special Master's directions. Indeed, Petitioners failed to provide *any* meaningful responses to the Secretary's written discovery requests. Instead, Petitioners continued to deny the legitimacy of the discovery process altogether, in defiance of this Court's clear Order directing the Special Master to develop an evidentiary record concerning the issues raised in the Secretary's Application for Contempt. Petitioners continued to assert meritless blanket objections and failed to provide any privilege log. Accordingly, on November 4, 2022, the Secretary filed a timely motion asking the Special Master to impose discovery sanctions. (*See* Exhibit 1.)

At 2:00 p.m. on November 4, 2022, the parties appeared before the Special Master for the scheduled status conference. A transcript of that proceeding is attached as Exhibit 2 hereto. During the status conference, Petitioners’ counsel made clear that Petitioners had no intention of providing discovery. Petitioners’ counsel also stated, for the first time, that Fulton County Commissioner Stuart Ulsh (who is named as a petitioner in both his official and individual capacities) would be going out of state for a pre-planned vacation starting on November 8 (Election Day), and would therefore be unable to attend the evidentiary hearing beginning November 9, 2022—notwithstanding that the hearing date had been set forth in the Special Master’s October 28, 2022 Rule to Show Cause, and that the Secretary had already served each of the three Fulton County Commissioners with a Notice to Appear. (See Exhibit 2, at 26:18-27:5, 33:25-34:10.)

Later that same day, November 4, 2022, the Special Master issued an Order that, *inter alia*, (1) denied Petitioners’ bid to avoid discovery; (2) held that “[w]hile the Secretary timely served Fulton County with proposed deposition questions, written interrogatories, requests for admissions, and requests for production, ... [Petitioners] failed to object in accordance with the Special Master’s Rule to Show Cause and subsequent order”; (3) overruled Petitioners’ “blanket claims of privilege ... based on [their] failure to assert them with sufficient specificity”; (4) “compel[led] Fulton County to make the Commissioners available for

deposition on November 7, and/or 8, 2022,” in accordance with any Notices of Deposition to be served by the Secretary; (5) held the Secretary’s application for discovery sanctions “in abeyance pending the conclusion of the evidentiary hearing”; and (6) cautioned that the Special Master “expects all Commissioners to comply with properly served Notices to Attend.” (Exhibit 3.)

The Secretary timely served deposition notices scheduling the deposition of Fulton County Commissioner Ulsh for 9:30 a.m. on November 7; the deposition of Commissioner Bunch for 2:30 p.m. on November 7; and the deposition of Commissioner Shives for 10:00 a.m. on November 8. (*See* Exhibit 4.)

At approximately 8:05 a.m. on November 7, Petitioners’ counsel sent the Secretary’s counsel an email stating that the Commissioners would not be appearing for the scheduled depositions, and implying that the Commissioners would also not comply with the Secretary’s Notices to Attend directing them to appear at the evidentiary hearing scheduled to begin on November 9, 2022. (*See* Exhibit 5.) Petitioners also filed the Emergency Application currently before this Court. The Secretary’s counsel responded to Petitioners’ counsel’s email, stating that the Secretary would appear at the 9:30 a.m. deposition of Commissioner Ulsh as scheduled—and would seek all available relief if Petitioners failed to comply with the Secretary’s deposition notice and the Special Master’s November 4 Order compelling the Commissioners to appear for deposition. (*See* Exhibit 6.)

III. PETITIONERS' APPLICATION SHOULD BE SUMMARILY DENIED

Petitioners' latest Application is a meritless pretext for continuing to defy the Special Master's Orders and attempting to avoid a reckoning with the allegations in the Secretary's Application for an Order Holding Petitioners in Contempt and Imposing Sanctions. For the most part, Petitioners' Application simply rehashes the arguments they raised in their November 1 Application to this Court. (*See* redline comparison of Petitioners' present Application and their November 1 Application, attached as Exhibit 7 hereto). The Special Master thoroughly, fairly, and correctly disposed of those arguments in her November 4 Order.

To the extent Petitioners now assert that there are unable to attend depositions or the evidentiary hearing because of the election to be conducted on November 8, their arguments are meritless—and, once again, a transparent pretext. The evidentiary hearing has been scheduled to occur on November 9, 2022, since October 28, yet Petitioners did not raise any scheduling issue until now. Moreover, according to Petitioners' own counsel, Commissioner Ulsh, the Chair of the Fulton County Commissioners and Board of Elections, *was previously scheduled to be out of the state on a vacation starting on Election Day*. (See Exhibit 2, at 26:18-27:5.) Finally, to the extent Petitioners try to contrive an excuse based on an issue with the SURE system over the weekend, their gambit is without merit. Notably, they

provide no explanation whatsoever regarding how this issue prevents their compliance with the Special Master's Orders. Their argument is a red herring. *See* Affidavit of Jonathan Marks (attached hereto).

IV. CONCLUSION

The Secretary respectfully requests that this Court summarily deny Petitioners' Emergency Application so that the Special Master can consider and dispose of the Secretary's forthcoming application for sanctions and other appropriate relief.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: November 7, 2022

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CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127

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

Dated: November 7, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

No. 277 MD 2021

No. 3 MAP 2022

[PROPOSED] ORDER

AND NOW, this _____ day of November, 2022, upon consideration of the Secretary's Application for Discovery Sanctions, and any response thereto, it is hereby **ORDERED** that the Application for Discovery Sanctions is **GRANTED**.

IT IS FURTHER ORDERED that, for the purposes of this action, (1) each matter of which an admission was requested in the Secretary's Requests for Admissions is deemed admitted; and (2) the following facts are taken to be established:

- Petitioners, including Commissioners Ulsh and Bunch individually, as well as Speckin, were aware of the Supreme Court's January 27, 2022 Injunction and the Secretary's pending appeal in this action at all relevant times, including during any deliberations concerning whether and how to conduct the Speckin Inspection, and whether and how to notify anyone of the Speckin Inspection before or after it occurred.
- Commissioners Ulsh and Bunch were aware and believed before the Speckin Inspection occurred that the Speckin Inspection would violate the terms of the Injunction.

- While each of the Petitioners (but not Commissioner Shives) authorized and permitted the Speckin Inspection, the idea, planning, and funding for the Speckin Inspection came from an external source.
- Deliberations concerning whether and how to allow the Speckin Inspection to proceed were conducted behind closed doors, and without public notice or participation.
- The decision to allow the Speckin Inspection did not stem from a vote of all three Fulton County Commissioners.
- Commissioner Shives was not informed of the Speckin Inspection before it occurred.
- The Speckin Inspection itself was conducted behind closed doors, and without public notice or participation.
- The Voting Machines are at an ongoing risk of further harm if left in the hands of Petitioners.
- The Speckin Inspection rendered it impossible to tell whether, and if so, how, the information on the impacted electronic voting machines has been altered.
- Attorney Stephanie Lambert has represented Petitioners in connection with this action.
- Attorneys Lambert and Carrol are being paid by a source other than Fulton County for the legal services they have and are providing to Petitioners in connection with this action.

BY THE COURT:

J.

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COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

No. 277 MD 2021

No. 3 MAP 2022

**THE SECRETARY'S APPLICATION FOR
DISCOVERY SANCTIONS
AND INCORPORATED MEMORANDUM OF LAW**

Respondent/Appellant, the Acting Secretary of the Commonwealth (the “Secretary”), respectfully submits this Application for Discovery Sanctions to remedy Petitioners’ obdurate and vexatious failure to participate in discovery in good faith. Despite repeated opportunities and directives to do so, Petitioners have failed to provide *any* meaningful responses to the Secretary’s written discovery requests. Instead, Petitioners continue to deny the legitimacy of the discovery process altogether, in defiance of the Supreme Court’s clear Order directing the Special Master to develop an evidentiary record concerning the issues raised in the Secretary’s Application for Contempt.

The Supreme Court declined to grant Petitioners’ bid to avoid discovery, refusing to grant the relief requested in Petitioners’ Emergency Application to Enjoin Discovery and re-imposing the Special Master’s discovery deadlines in light of its October 21, 2022 Order “charg[ing the Special Master], *inter alia*, with developing an evidentiary record.” (November 2, 2022 Order). And the Special Master has similarly rejected Petitioners’ position, providing that “[to] the extent the Emergency Application [to Enjoin Discovery] requests evidentiary determinations on the various asserted privileges and other evidentiary protections on a global basis, the Special Master will not issue such an order but will entertain any and all unresolved objections in according with Paragraph 5(d) and (e) of this Court’s Rule to Show Cause.” (November 3, 2022 Order, ¶ 4). The Special Master

even granted Petitioners an *additional* extension of time to respond to the Secretary's discovery, beyond the extension already precipitated by the delay caused by Petitioners' failed Emergency Application to Enjoin Discovery. But to no avail.

Regrettably, instead of using that extra time to serve good-faith responses in accordance with the direction of the Supreme Court and the Special Master, Petitioners have failed to supplement or amend the wholly deficient "responses" and "objections" they served before the Special Master's extension.

Given the tight schedule imposed by the Supreme Court, and Petitioners' squandering of numerous opportunities to participate in discovery, sanctions are now in order. Specifically, because Petitioners failed to provide good-faith answers or objections to the Secretary's discovery, the Special Master should find all of Petitioners' objections waived pursuant to Paragraph 5(d) of the Scheduling Order, as amended; deem admitted all of the matters for which the Secretary sought an admission; and take as established in the Secretary's favor all of the factual issues regarding which the Secretary served interrogatories and requests for production.¹ These sanctions are fair and appropriate, particularly because Petitioners'

¹ The Secretary also hereby renews her request for the relief sought in her Emergency Application to Compel Depositions (November 3, 2022), which is incorporated herein by reference. The depositions of Commissioners Ulsh, Bunch, and Shives are all the more pressing given Petitioners' refusal to provide *any* documents or information in response to other forms of discovery.

misconduct has severely obstructed the Secretary’s (and, for that matter, the Special Master’s) ability to build the evidentiary record upon which her Application will be decided.

I. BACKGROUND

A. The Secretary’s Efforts to Develop an Evidentiary Record Regarding Her Application for Contempt

On October 28, the Special Master entered an Order (the “Scheduling Order”) providing, *inter alia*, that “[d]iscovery in advance of the [evidentiary] hearing shall proceed **strictly**” as set forth in the Order (emphasis added). The Scheduling Order directed the Secretary to serve any requests for production of documents on Fulton County no later than October 28, 2022, at 8:00 p.m.; for the parties to serve written interrogatories, requests for admission, and proposed deposition questions (excluding follow-up questions) no later than October 31, 2022, at 12:00 noon; and for responses, production, and objections to the aforementioned discovery requests to be completed and returned to the requesting party no later than November 2, 2022, at 12:00 noon. The Scheduling Order further provided that “[t]o the extent objections are raised on privilege grounds, the party asserting privilege shall simultaneously serve a privilege log identifying [certain specified information].”

On October 28, 2022, the Secretary timely served on all parties Requests for

Production of Documents Directed to Petitioners (“RFPs”), a copy of which is attached as Exhibit 1. On October 31, 2022, the Secretary timely served on all parties (1) Proposed Deposition Questions Directed to Petitioners; (2) Notices of Remote Video Depositions for each of three Fulton County Commissioners; (3) Interrogatories Directed to Petitioners; and (4) Requests for Admission (“RFAs”) Directed to Petitioners. The Secretary’s Proposed Deposition Questions are attached as Exhibit 2; the Secretary’s Interrogatories and RFAs are attached as Exhibits 3 and 4, respectively.

On November 2, 2022, the Supreme Court entered an Order that, *inter alia*, pushed back the deadline for responses, productions, and objections to discovery requests from 12:00 p.m. on November 2 to 12:00 p.m. on November 3.

B. Petitioners’ Discovery Responses

Just before noon on November 3rd, Petitioners served purported responses and objections to the Secretary’s Requests for Production, Interrogatories, and Requests for Admission. These responses and objections are attached as Exhibits 5 through 7, respectively. Petitioners did not serve any responses or objections to the Secretary’s Proposed Deposition Questions.

C. The Special Master’s November 3, 2022 Order

Shortly after Petitioners’ responses were served, the Secretary notified the Special Master of the grossly deficient nature of the responses and indicated the

Secretary's intent to file an appropriate motion shortly.

Later on November 3, 2022, the Special Master issued an Order that, *inter alia*, made clear that the Court would not entertain privilege and other objections to discovery “on a global basis” but would entertain such objections only in accordance with Paragraphs 5(d) and (e) of the Special Master’s Scheduling Order. Those Paragraphs required, *inter alia*, any privilege objections to be accompanied by a privilege log identifying each assertedly privileged document or communication. The Special Master’s November 3 Order extended the deadline for the completion and return of responses, productions, and objections to discovery requests to 8:00 p.m. on November 3rd, effectively providing the Petitioners with yet another opportunity to comply with their discovery obligations as established by the Special Master’s orders. The November 3 Order reiterated that “[f]ailure to timely return objections to discovery requests to the other parties will result in waiver of any such objections, and no untimely discovery-related motions will be considered.”

The 8:00 p.m. deadline came and went with no additional discovery responses or objections served by Petitioners.²

² The only correspondence the Secretary received from Petitioners was an email at approximately 5:24 p.m. on November 3, re-transmitting the same discovery responses sent earlier that day.

D. The Secretary's Unsuccessful Attempts to Resolve the Discovery Dispute Without Involving the Court

At approximately 9:23 p.m., counsel for the Secretary contacted counsel for Petitioners via email in a good-faith attempt to meet and confer. The Secretary noted that Petitioners' discovery responses were wholly deficient, asked Petitioners to produce full and complete responses to the Secretary's discovery requests by 9:30 a.m. the next morning (given the strict deadline of noon for the filing of any discovery motions), and asked whether counsel for Petitioners was willing to schedule a call to discuss what discovery Petitioners would be willing to produce. A copy of this email is attached as Exhibit 8.

Petitioners' counsel responded in an email sent at 9:32 a.m. this morning. Petitioners' counsel did not agree to provide any supplemental discovery responses and did not accept the Secretary's invitation to participate in a meet and confer to address Petitioners' deficient responses. A copy of this email is attached as Exhibit 9.

II. ARGUMENT

A. The Secretary Served Narrowly Tailored Discovery Requests

The Secretary's discovery requests were carefully crafted to obtain information of core relevance to the Secretary's pending Application for an Order Holding [Petitioners] in Contempt and Imposing Sanctions. The Secretary

identified twelve narrowly drawn categories of documents necessary for the prosecution of her Application for Contempt. Specifically, the Secretary sought documents sufficient to shed light on how the Speckin Inspection came to pass (RFPs 1, 5 & 6); what actually happened during the Speckin Inspection (RFPs 9-11); Petitioners' *mens rea* with respect to the Speckin Inspection and its relationship to the Supreme Court's Injunction (RFP 2); Petitioners' claim to have acted openly and in good faith (RFPs 3, 4 & 12); and the damage caused by the Speckin Inspection and risk of future harm (RFP 7). The documents sought speak directly to Petitioners' liability, the appropriate sanctions for Petitioners' conduct, and the need for the voting machines to be returned to Dominion.

The Secretary also served twenty-one targeted interrogatories, which similarly focused on Petitioners' liability and degree of culpability. The Secretary also served standard requests for information concerning Petitioners' potential witnesses and the basis for any denial of the Secretary's Requests for Admission.

The Secretary's Requests for Admission were equally focused, seeking what should have been unobjectionable acknowledgement that Petitioners were aware of the relevant developments in the proceedings before the Supreme Court (RFAs 1-5), as well as confirmation that the decision to undertake the Speckin Inspection was not, in fact, done in an open and public manner (RFAs 6-12). The Secretary also sought Petitioners' confirmation that the Speckin Inspection occurred as

described in the Speckin Report (RFAs 13-18), and that the Speckin Inspection was performed with Petitioners' permission (RFAs 20-22). Finally, the Secretary sought to confirm Speckin's identity as a third party not involved in the conduct of elections (RFAs 23-27), and requested that Petitioners' stipulate to the authenticity of various exhibits attached to the Application for Contempt (RFAs 28-30).

Each of the Secretary's requests is directly relevant to these proceedings, but Petitioners did not serve a good-faith response to any of them.

B. Petitioners' Global Objections are Meritless and Contravene the Special Master's Order

Petitioners open each of their responses with the same meritless global objections they raised in different forms at the earlier Status Conference, their Separate Scheduling Proposal, and their Emergency Application to Enjoin Discovery. Petitioners argue that their participation in any discovery in these proceedings "would constitute automatic and immediate waiver of Fulton County's right to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County."

These objections are improper. Petitioners have not explained how any of the Secretary's *specific* requests—or any part of those requests—implicates any of the cited privileges or protections. Nor could they, as the Secretary's requests do not seek privileged material, and are instead focused on specific, highly relevant, non-privileged materials. Moreover, to the extent Petitioners actually assert that the

requests trespass on privileged ground, the Special Master specifically directed the service of a privilege log to allow the parties and the Special Master to assess those claims. Petitioners failed to do so, and thus waived any purported privileges.

Petitioners' twelve-page recitation of global objections is particularly improper given the Special Master's directive that any objections must be raised and disposed of in reference to specific discovery requests, and not by way of general, wholesale objection to the discovery process. Petitioners continue to defy judicial orders.

C. Petitioners' Specific Objections are Meritless

To the extent Petitioners interposed objections or otherwise responded to the Secretary's specific requests, these responses are equally meritless—and often incoherent. In the interest of time, the Secretary illustrates the deficiencies in Petitioners' responses by way of example.

For instance, to assess what actually happened during the Speckin Inspection, the Secretary requested that Petitioners produce “[a]ll video and audio recordings and photographs of the Speckin Inspection.” (RFP 9). In response, Petitioners wrote:

In addition to the standard response noted above, and to the extent a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the

standard objection above, this request is overly broad and burdensome in that its **reference to communication between Fulton County** (and presumably all members, employees, attorneys, consultants, and/or experts) and **any other person is absurdly onerous**.

(Pets. Response to RFP 9 (emphasis altered)).

Petitioners' response bears no relation to the Secretary's request. The italicized portion is in turns incoherent and irrelevant, and the bolded portion takes issue with a "reference" found nowhere in the request. Petitioners interposed the same, identical "objection" to RFPs seeking, among other things, "chain of custody logs and other documents identifying or evidencing who has had access to the Voting Machines since January 14, 2022" (RFP 8), "documents reflecting or addressing the specific activities to be performed, or that were performed, as part of the Speckin Inspection" (RFP 10), and "documents identifying or reflecting the names of the persons (or any of them) who attended or witnessed or were invited to attend or witness the Speckin Inspection" (RFP 11). These requests do not seek or refer to "communications between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person"—they, of course, do not seek or refer to communications *at all*.

Petitioners' responses and objections to the Secretary's Interrogatories fare no better. Petitioners interposed the same objection to each of the Secretary's twenty-one interrogatories, save one (Interrogatory 11), to which Petitioners' substitute a reference to "the pleadings and public records in the underlying

litigation and in the other litigation in which Fulton County is involved with Dominion” for a reference to the Speckin Report. Needless to say, the Interrogatories are not limited to seeking information concerning communications, and Petitioners’ “objections” are meritless.

Petitioners have taken effectively the same bad-faith approach in responding to the Secretary’s Requests for Admission. Petitioners open with three evasive, deficient responses. RFA 1 seeks an admission that “*on or about January 14, 2022*, Petitioners received notice of the Order that Justice Wecht entered in this Action on January 14, 2022.” (Emphasis added). Subject to the “standard response”—*i.e.*, Petitioners’ 12-page global objections—Petitioners state that “Petitioners received Notice of the January 14, 2022 order.” Petitioners’ response completely ignores the italicized language in the RFA. The timing of Petitioners’ knowledge is obviously of direct relevance to this contempt proceeding.

Petitioners repeat this approach to the Secretary’s second and fourth Requests for admission, admitting that “Petitioners received Notice of the January 27, 2022 order,” but not responding to the Secretary’s assertion that Petitioners received that notice “on or about January 27, 2022” (RFA 2), and admitting that “Petitioners were aware of the underlying litigation in this case,” without responding to the Secretary’s assertion that Petitioners were specifically “aware in July 2022”—when the Speckin Inspection occurred—“that the Secretary’s appeal

in this action remained pending.”

After asserting that the Secretary’s third Request is repetitive, which it is not,³ Petitioners go on to interpose, in response to the next twenty-three Requests for Admission, the same objection found throughout their responses to the Secretary’s Requests for Production and Interrogatories—invoking the Speckin Report and arguing that the requests are “absurdly onerous” in “referenc[ing] communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person.” Put simply, this is not a good-faith attempt to respond to the Secretary’s targeted, relevant requests for admission.

D. Petitioners’ Discovery Misconduct Warrants Sanctions

Petitioners’ obstructive non-responses to the Secretary’s targeted discovery exemplify dilatory, obdurate, vexatious, and bad-faith litigation conduct. *See* 42 P.S. § 2503. Moreover, Petitioners simply have not “serve[d] sufficient answers or objections” to the Secretary’s discovery requests. Pa.R.Civ.P. 4019. The appropriate sanction is “an order that the matters regarding which the questions

³ RFA 3 seeks an admission that “before July 2022, Petitioners had received notice of the Order that the Supreme Court of Pennsylvania entered in this Action on January 27, 2022.” Had Petitioners denied RFA 2—that is, denied that they received notice at or around the time the order was issued—it would remain relevant whether Petitioners nonetheless had notice of the order before allowing the Speckin Inspection to go forward in July 2022.

were asked . . . or any other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.” Pa.R.Civ.P. 4019(a)(1)(i),(viii),(c)(1); *see* Pa.R.Civ.P. 4014(c) (“If the court determines that an answer does not comply with the requirements of this rule, it may order . . . that the matter be admitted . . .”).

As a sanction for Petitioners’ failure to respond in good faith to the Secretary’s discovery requests, and in addition to the deemed admission of each of the Secretary’s Requests for Admission, the following “fact[s] should be taken to be established for the purposes of [this] action”:

- Petitioners, including Commissioners Ulsh and Bunch individually, as well as Speckin, were aware of the Supreme Court’s January 27, 2022 Injunction and the Secretary’s pending appeal in this action at all relevant times, including during any deliberations concerning whether and how to conduct the Speckin Inspection, and whether and how to notify anyone of the Speckin Inspection before or after it occurred. (*See* RFP 1, 2; Interrogatories 11, 14).
- Commissioners Ulsh and Bunch were aware and believed before the Speckin Inspection occurred that the Speckin Inspection would violate the terms of the Injunction. (*See* RFP 2; Interrogatory 11).
- While each of the Petitioners (but not Commissioner Shives) authorized and permitted the Speckin Inspection, the idea, planning, and funding for the Speckin Inspection came from an external source. (*See* RFP 1; Interrogatories 1, 10, 12, 13, 15, 16).
- Deliberations concerning whether and how to allow the Speckin Inspection to proceed were conducted behind closed doors, and without public notice or participation. (*See* RFP 3, 4, 12; Interrogatory 3).

- The decision to allow the Speckin Inspection did not stem from a vote of all three Fulton County Commissioners. (*See* RFP 12; Interrogatory 2).
- Commissioner Shives was not informed of the Speckin Inspection before it occurred. (*See* RFP 12; Interrogatory 2).
- The Speckin Inspection itself was conducted behind closed doors, and without public notice or participation. (*See* RFP 11; Interrogatory 8-9).
- The Voting Machines are at an ongoing risk of further harm if left in the hands of Petitioners. (*See* RFP 7, 8).
- The Speckin Inspection rendered it impossible to tell whether, and if so, how, the information on the impacted electronic voting machines has been altered. (*See* RFP 9-11; Interrogatories 4-8).
- Attorney Stephanie Lambert has represented Petitioners in connection with this action. (*See* Interrogatory 17).
- Attorneys Lambert and Carrol are being paid by a source other than Fulton County for the legal services they have and are providing to Petitioners in connection with this action. (*See* Interrogatory 18).

III. CONCLUSION

The Secretary's ability to develop the evidentiary record should not be prejudiced by Petitioners' outright refusal to participate in discovery. The Rules of Civil Procedure consider the possibility of such conduct, and provide a clear corrective in the form of the relief sought here.

WHEREFORE, for the foregoing reasons, the Secretary respectfully requests that this Court enter an Order in the form submitted herewith and direct

that, for the purposes of this action, each of the Secretary's Requests for Admissions is deemed admitted, and the facts identified above are taken to be established.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: November 4, 2022

By: /s/ Robert A. Wiygul
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TUCKER LAW GROUP, LLC

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(215) 982-2280

Counsel for Respondent/Appellant

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

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

Dated: November 4, 2022

/s/ Robert A. Wiygul
Robert A. Wiygul

EXHIBIT 1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**THE SECRETARY’S REQUESTS FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PETITIONERS**

Pursuant to Pennsylvania Rules of Civil Procedure 4009.11,
Respondent/Appellant, the Acting Secretary of the Commonwealth (the
“Secretary”) propounds the following Requests for Production of Documents on
Petitioners/Appellees County of Fulton; Fulton County Board of Elections; Stuart
L. Ulsh, in his official capacity as a Fulton County Board of Elections
Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton
County; and Randy H. Bunch, in his official capacity as a Fulton County
Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton
County (together, “Petitioners”). Pursuant to the Order dated October 28, 2022,
Petitioners shall respond to these Requests and produce all responsive documents
by 12:00 noon on November 2, 2022.

DEFINITIONS

1. “You” or “your” mean Petitioners, and each of them, and their employees, agents, attorneys, affiliates, members, representatives, and any other person who has acted or purported to act on their behalf.

2. “Petitioners” means Petitioners/Appellees County of Fulton; the Fulton County Board of Elections; Stuart L. Ulsh, in his official capacity as a Fulton County Board of Elections Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County; and Randy H. Bunch, in his official capacity as a Fulton County Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County.

3. The “Secretary” means the Acting Secretary of the Commonwealth.

4. The “Fulton County Complaint” means the Complaint and Jury Demand filed on or about September 21, 2022, in the Fulton County Court of Common Pleas, in the case captioned *County of Fulton et al. v. Dominion Voting Systems, Inc.*, No. 232-2022.

5. “Speckin Forensics” means an entity called Speckin Forensics, LLC, a Florida Limited Liability Company with a principal place of business located at 110 East Broward Boulevard, 1700, Fort Lauderdale, Florida 33301, and any related corporate entity, as well as its employees, agents, attorneys, affiliates,

members, representatives, and any other person who has acted or purported to act on its behalf or at its behest.

6. The “Speckin Report” means the document attached as Exhibit E to the Fulton County Complaint.

7. The “Speckin Inspection” means the activities conducted by Speckin Forensics described in the Speckin Report and any other examination, analysis, imaging, or manipulation of—or physical contact with—the Voting Machines by Speckin Forensics.

8. The “Injunction” means either or both of the Orders entered by the Pennsylvania Supreme Court on January 14, 2022, and January 27, 2022, in the above-captioned matter.

9. “Document” has the broadest meaning permitted under Pennsylvania Rule of Civil Procedure 4009.1 *et seq.*, and includes without limitation any papers, writings, communications or records of any type in your possession, custody or control, including all correspondence, wherever located, however produced or reproduced, or whether a draft, an original, or a copy in whatever form, including but not limited to paper, all electronic media, magnetic tapes or videos. Document also includes text messages, emails, or any document in electronic format.

10. “Relating to” or “relate to” mean constituting, mentioning, recording, discussing, describing, reflecting, identifying, dealing with, consisting of,

explaining, referring to, referencing, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.

11. “Communication” means the transmission of messages, information, or ideas by speech, writing, or electronic means, as well as the messages, information, or ideas so expressed or exchanged. Communication includes all documents evidencing communications.

12. “Person” means any natural person or any entity, including, without limitation, an association, partnership, corporation, limited liability company, joint venture, group, firm, organization, governmental or quasigovernmental entity or unit, and every other organization of whatever sort.

13. “Voting Machines” means any and all components of the voting system that Fulton County leased from Dominion Voting Systems and used in the November 2020 election, regardless of whether the specific component was used in the November 2020 election.

14. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

15. The word “any” shall include “all” and vice versa.

16. The singular shall include the plural and vice versa, and the conjunctive shall include the disjunctive and vice versa, in order to give these requests their broadest scope.

INSTRUCTIONS

1. These requests call for the production of documents that are known or available to you, including all documents in your possession, custody, or control, or otherwise available to you, or in the possession, custody, or control of your agents, employees, affiliates, members, subsidiaries, directors, independent contractors, attorneys, consultants, accountants, investigators, analysts, representatives or any other person acting or purporting to act on your behalf or under your direction or control.

2. Each document shall be produced in its entirety, without abbreviation, redaction or expurgation, including all translations, attachments, appendices, exhibits, lists, schedules or other matters at any time affixed thereto.

3. The documents requested shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with a particular request.

4. Documents originally generated or received in electronic format shall be produced in the form in which they are ordinarily maintained or in a reasonably usable form.

5. If no documents exist that are responsive to a particular request, state so in writing.

6. If objection(s) is/are made to any request or part thereof, state with specificity the reasons for each objection and the part of the request to which the objection is made, state whether you are withholding any responsive documents on the basis of such objection, respond to the remainder of the request to the extent you are not objecting to it, and produce document(s) and information relating to the remaining part(s) of the request.

7. Any copy of a document that varies in any way from the original or any other copy of the document shall constitute a separate document and must be produced, regardless of whether the original of such document is within your possession, custody, or control.

8. If you claim that any document or communication responsive to these requests is privileged or otherwise non-discoverable, you must identify each document or communication in a separate log to be furnished at the same time as your response to these requests. This log shall include, with respect to each document or communication: (1) the date of the document or communication; (2) its author or speaker; (3) all persons receiving the document or communication and any copies; (4) the nature and form of the document or communication (*e.g.*, letter, memorandum, phone call, etc.); (5) the subject matter identified in the

document or communication; and (6) the specific privilege claimed and the basis for such claim or other reason the document or communication is asserted to be non-discoverable.

9. If any document or communication requested herein is known to have existed and cannot be located or has been deleted, lost or destroyed, you are requested to submit a written statement which: describes in detail the nature of the document or communication, including a summary of its contents; identifies the person who prepared or authored the document or communication and, if applicable, any persons to whom the document or communication was sent or shown; specifies the date on which the document or communication was prepared, transmitted, or both; specifies the date on which the document or communication was deleted, lost or destroyed; if deleted or destroyed, describes the reasons for the deletion or destruction of the document or communication; as to lost or misplaced documents or communications, describes the efforts made to locate such documents or communications; identifies the persons requesting and performing the deletion or destruction of the document or communication; and identifies the last known custodian of the document or communication.

10. These requests are continuing in nature and require supplementation in accordance with Rule 4007.4 of the Pennsylvania Rule of Civil Procedure.

REQUESTS FOR PRODUCTION

1. All documents and communications relating to the retention of Speckin Forensics to perform the Speckin Inspection, including:
 - a. all documents and communications relating to the decision to conduct the Speckin Inspection or any other actual or potential examination, testing, analysis, or imaging of the Voting Machines at any point after January 14, 2022;
 - b. all documents and communications relating to the selection of Speckin Forensics to conduct the Speckin Inspection or to otherwise examine, test, analyze, or image the Voting Machines;
 - c. all documents and communications reflecting or addressing the amount Speckin Forensics would be or was paid for services related to the Speckin Inspection;
 - d. all documents and communications reflecting or addressing who would or did pay Speckin Forensics for services related to the Speckin Inspection; and
 - e. all contractual documents, bills, and invoices relating to Speckin Forensics' performance of the Speckin Inspection.

RESPONSE:

2. All communications among Petitioners or between any Petitioner and any other person referencing or addressing the Injunction.

RESPONSE:

3. All communications to the public or other public notices concerning the Speckin Inspection made or sent before September 21, 2022 (regardless of whether such communications or public notices were made or sent before or after the Speckin Inspection occurred).

RESPONSE:

4. All documents and communications concerning whether to notify the public, Dominion, and/or the Secretary of the Speckin Inspection, whether made or sent before or after the Speckin Inspection occurred.

RESPONSE:

5. All communications between you and Speckin Forensics.

RESPONSE:

6. All communications concerning the Speckin Inspection or Speckin Report, including but not limited to any such communications between you and Speckin Forensics, between any person and Speckin Forensics, and between you and any other person.

RESPONSE:

7. All documents and communications related to the current status and condition of the hardware and software referenced in the Speckin Report, including documents sufficient to identify where the hardware and software are currently being held, and under what protection.

RESPONSE:

8. All chain-of-custody logs and other documents identifying or evidencing who has had access to the Voting Machines since January 14, 2022.

RESPONSE:

9. All video and audio recordings and photographs of the Speckin Inspection.

RESPONSE:

10. All documents reflecting or addressing the specific activities to be performed, or that were performed, as part of the Speckin Inspection.

RESPONSE:

11. All documents identifying or reflecting the names of the persons (or any of them) who attended or witnessed or were invited to attend or witness the Speckin Inspection.

RESPONSE:

12. All documents reflecting any plan for the Fulton County Board of Elections to deliberate about or vote upon whether to permit any inspection of the Voting Machines occurring after January 14, 2022.

RESPONSE:

Dated: October 28, 2022

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By: 
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Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 28th day of October 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

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Counsel for Intervenor



Robert A. Wiygul

EXHIBIT 2

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**THE SECRETARY’S PROPOSED DEPOSITION QUESTIONS
DIRECTED TO PETITIONERS**

Pursuant to the Order dated October 28, 2022 (the “Order”), Respondent/Appellant, the Acting Secretary of the Commonwealth (the “Secretary”), identifies the following deposition questions that the Secretary proposes to ask of each of the Fulton County Commissioners (Stuart L. Ulsh, Randy H. Bunch, and Paula J. Shives). In accordance with the Order, the Secretary reserves the right to ask additional follow-up questions. Pursuant to the Order, Petitioners shall serve any objections to these proposed deposition questions by 12:00 noon on November 2, 2022.

DEFINITIONS

1. “Petitioners” means Petitioners/Appellees County of Fulton; the Fulton County Board of Elections; Stuart L. Ulsh, in his official capacity as a Fulton County Board of Elections Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County; and Randy H. Bunch, in his official capacity as a Fulton County Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County.
2. The “Secretary” means the Acting Secretary of the Commonwealth.
3. The “Action” means the case captioned *County of Fulton et al. v. Secretary of the Commonwealth*, No. 277 MD 2021, pending before the Commonwealth Court of Pennsylvania, and the appeal related thereto, No. 3 MAP 2022, pending before the Supreme Court of Pennsylvania.
4. The “Fulton County Complaint” means the Complaint and Jury Demand filed on or about September 21, 2022, in the Fulton County Court of Common Pleas, in the case captioned *County of Fulton et al. v. Dominion Voting Systems, Inc.*, No. 232-2022.
5. “Speckin Forensics” means an entity called Speckin Forensics, LLC, a Florida Limited Liability Company with a principal place of business located at 110 East Broward Boulevard, 1700, Fort Lauderdale, Florida 33301, and any related corporate entity, as well as its employees, agents, attorneys, affiliates,

members, representatives, and any other person who has acted or purported to act on its behalf or at its behest.

6. The “Speckin Report” means the document attached as Exhibit E to the Fulton County Complaint.

7. The “Speckin Inspection” means the activities conducted by Speckin Forensics described in the Speckin Report and any other examination, analysis, imaging, or manipulation of—or physical contact with—the Voting Machines by Speckin Forensics.

8. The “Injunction” means the injunction referenced in the Pennsylvania Supreme Court’s Order dated January 27, 2022, in this Action.

9. The “Secretary’s Application Holding Appellees in Contempt and Imposing Sanctions” means Appellant’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions, which the Secretary filed in this Action on October 18, 2022.

10. “Voting Machines” means any and all components of the voting system that Fulton County leased from Dominion Voting Systems and used in the November 2020 election, regardless of whether the specific component was used in the November 2020 election.

11. “Communication” means the transmission of messages, information, or ideas by speech, writing, or electronic means, as well as the messages,

information, or ideas so expressed or exchanged. Communication includes all documents evidencing communications.

12. “Person” means any natural person or any entity, including, without limitation, an association, partnership, corporation, limited liability company, joint venture, group, firm, organization, governmental or quasigovernmental entity or unit, and every other organization of whatever sort.

13. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatories all responses that might otherwise be construed to be outside of its scope.

14. The word “any” shall include “all” and vice versa.

15. The singular shall include the plural and vice versa, and the conjunctive shall include the disjunctive and vice versa, in order to give these interrogatories their broadest scope.

PROPOSED DEPOSITION QUESTIONS

1. When and how did you first learn about a proposed inspection of the Voting Machines by Wake TSI?

RESPONSE:

2. Did the Fulton County Board of Elections vote on whether to allow an inspection of the Voting Machines by Wake TSI in 2020 and/or 2021? If so, when and where? Who was present? How did each member vote?

RESPONSE:

3. Was any public notice that Wake TSI was going to conduct an inspection of the Voting Machines provided before any such inspection occurred?

RESPONSE:

4. Who paid or otherwise compensated Wake TSI for its inspection of the Voting Machines or any other aspect of its work resulting in the report attached as Exhibit D to the Fulton County Complaint?

RESPONSE:

5. Who entered into a contract with Wake TSI relating to its inspection of the Voting Machines or any other aspect of its work resulting in the report attached as Exhibit D to the Fulton County Complaint?

RESPONSE:

6. When did you learn that the Secretary was seeking to enjoin Petitioners from permitting Envoy Sage LLC from inspecting or imaging the Voting Machines?

RESPONSE:

7. When did you receive notice of the Order that Justice Wecht entered in this Action on January 14, 2022?

RESPONSE:

8. When did you receive notice of the Order that the Supreme Court of Pennsylvania entered in this Action on January 27, 2022?

RESPONSE:

9. What is your understanding of the status of the Secretary's appeal in this Action?

RESPONSE:

10. Whose idea was it to image and/or inspect the contents of hard drives from the Voting Machines after January 14, 2022?

RESPONSE:

11. When and how (and, if applicable, from whom) did you become aware of any proposal to examine, test, analyze, inspect, or image the Voting Machines after January 14, 2022?

RESPONSE:

12. How was Speckin Forensics selected to conduct the Speckin Inspection? Who recommended that Speckin Forensic be selected to conduct the Speckin Inspection? When was that recommendation made? On what basis was that recommendation made?

RESPONSE:

13. Did the Fulton County Board of Elections vote on whether to allow the Speckin Inspection? If so, when and where? Who was present? How did each member vote?

RESPONSE:

14. Who decided the Speckin Inspection would be conducted?

RESPONSE:

15. Was any public notice of the Speckin Inspection provided before September 21, 2022?

RESPONSE:

16. Please name all persons who, to your knowledge, were aware of the planned Speckin Inspection before it took place.

RESPONSE:

17. Did you approve the decision to allow the Speckin Inspection to occur? Why or why not?

RESPONSE:

18. When did the Speckin Inspection take place?

RESPONSE:

19. Where did the Speckin Inspection take place?

RESPONSE:

20. Who was invited to attend the Speckin Inspection? Who actually attended?

RESPONSE:

21. Who are the specific Speckin Forensics employees and/or agents who participated in the performance of the Speckin Inspection? What actions did each such person take?

RESPONSE:

22. What persons or entities other than Speckin Forensics participated in the performance of, or otherwise took actions to enable, the Speckin Inspection? What specific actions did each such person or entity take?

RESPONSE:

23. What directions, instructions, or protocols did Speckin Forensics receive regarding the Speckin Inspection? Who gave Speckin Forensics those directions, instructions, or protocols?

RESPONSE:

24. When did you first learn that the Speckin Inspection would occur? How did you learn that?

RESPONSE:

25. What was your understanding of why the Speckin Inspection was proposed? What was your understanding of what the scope of the Speckin Inspection would be? What was your understanding regarding what, if anything, Speckin Forensics would produce following the Speckin Inspection?

RESPONSE:

26. At the time the Speckin Inspection occurred, what was your understanding of the scope of the Injunction?

RESPONSE:

27. With whom have you communicated regarding the Order entered by the Supreme Court of Pennsylvania in this Action on January 14, 2022, the Order entered by the Supreme Court of Pennsylvania in this Action on January 27, 2022, or the Injunction? When did any such communication take place?

RESPONSE:

28. With respect to any communications you have had with persons other than counsel for Petitioners regarding the Order entered by the Supreme Court of Pennsylvania in this Action on January 14, 2022, the Order entered by the Supreme Court of Pennsylvania in this Action on January 27, 2022, or the Injunction, what was the substance of each such communication?

RESPONSE:

29. With whom have you communicated regarding the Speckin Inspection? When did those communications take place?

RESPONSE:

30. With respect to any communications you have had with persons other than counsel for Petitioners regarding the Speckin Inspection, what was the substance of each such communication?

RESPONSE:

31. Did Speckin Forensics receive notice of the Injunction before the Speckin Inspection was performed?

RESPONSE:

32. Who entered into a contract with Speckin Forensics relating to the Speckin Inspection? What are the terms of any such contract?

RESPONSE:

33. Who paid or otherwise compensated Speckin Forensics, or is expected to pay or compensate Speckin Forensics, in connection with the Speckin Inspection?

RESPONSE:

34. Have Petitioners ever engaged Speckin Forensics to perform any services other than those performed in conjunction with the Speckin Inspection or Speckin Report?

RESPONSE:

35. What attorneys have represented or otherwise provided legal advice to Petitioners in connection with this Action on or after January 14, 2022? Who has paid or is expected to pay those attorneys for their services?

RESPONSE:

36. At some point after January 14, 2022, did Petitioners remove the law firm of Dillon McCandless King Coulter & Graham LLP as counsel for Petitioners in this Action? If so, when? Did you vote in favor of that decision?

RESPONSE:

37. At some point after January 14, 2022, did Petitioners appoint the Law Office of Stefanie L. Lambert PLLL, Attorney Stefanie L. Lambert, and Attorney Thomas J. Carroll to represent them in this Action? If so, when? Did you vote in favor of that decision?

RESPONSE:

38. Did Petitioners, or any of them, have any communications with anyone other than their counsel regarding the potential appointment of the Law Office of Stefanie L. Lambert PLLL, Stefanie L. Lambert, and/or Attorney Thomas J. Carroll as Petitioners' counsel? If so, with whom, when, and what was the substance of those communications?

RESPONSE:

39. Did you know, at the time that Petitioners appointed Stefanie L. Lambert to represent them as counsel, that she had been sanctioned under the name "Stefanie Lynn Junttila" by a federal district judge in litigation entitled *King v. Whitmer*, No. 2:20-13134 (E.D. Mich.)?

RESPONSE:

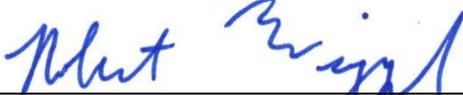
40. Did you know, at the time that Petitioners appointed Stefanie L. Lambert to represent them as counsel, that that the Governor, Attorney General, and Secretary of State of Michigan had filed a grievance against her seeking her disbarment based on her conduct in the litigation entitled *King v. Whitmer*, No. 2:20-13134 (E.D. Mich.)?

RESPONSE:

41. Has Stefanie L. Lambert provided legal services to Petitioners in connection with this Action and/or in connection with Petitioners' response to the Secretary's Application for an Order Holding Appellees in Contempt and Imposing Sanctions?

RESPONSE:

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By:  _____

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(215) 982-2280

Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 31st day of October 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

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Counsel for Intervenor



Robert A. Wiygul

EXHIBIT 3

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**THE SECRETARY’S INTERROGATORIES DIRECTED TO
PETITIONERS**

Pursuant to the Order dated October 28, 2022 (the “Order”), and Pennsylvania Rule of Civil Procedure 4005, Respondent/Appellant, the Acting Secretary of the Commonwealth (the “Secretary”), propounds the following Interrogatories on Petitioners/Appellees County of Fulton; Fulton County Board of Elections; Stuart L. Ulsh, in his official capacity as a Fulton County Board of Elections Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County; and Randy H. Bunch, in his official capacity as a Fulton County Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County (together, “Petitioners”). Pursuant to the Order, Petitioners shall respond to these Interrogatories by 12:00 noon on November 2, 2022.

DEFINITIONS

1. “You” or “your” mean Petitioners, and each of them, and their employees, agents, attorneys, affiliates, members, representatives, and any other person who has acted or purported to act on their behalf.

2. “Petitioners” means Petitioners/Appellees County of Fulton; the Fulton County Board of Elections; Stuart L. Ulsh, in his official capacity as a Fulton County Board of Elections Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County; and Randy H. Bunch, in his official capacity as a Fulton County Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County.

3. The “Secretary” means the Acting Secretary of the Commonwealth.

4. The “Action” means the case captioned *County of Fulton et al. v. Secretary of the Commonwealth*, No. 277 MD 2021, pending before the Commonwealth Court of Pennsylvania, and the appeal related thereto, No. 3 MAP 2022, pending before the Supreme Court of Pennsylvania.

5. The “Fulton County Complaint” means the Complaint and Jury Demand filed on or about September 21, 2022, in the Fulton County Court of Common Pleas, in the case captioned *County of Fulton et al. v. Dominion Voting Systems, Inc.*, No. 232-2022.

6. “Speckin Forensics” means an entity called Speckin Forensics, LLC, a

Florida Limited Liability Company with a principal place of business located at 110 East Broward Boulevard, 1700, Fort Lauderdale, Florida 33301, and any related corporate entity, as well as its employees, agents, attorneys, affiliates, members, representatives, and any other person who has acted or purported to act on its behalf or at its behest.

7. The “Speckin Report” means the document attached as Exhibit E to the Fulton County Complaint.

8. The “Speckin Inspection” means the activities conducted by Speckin Forensics described in the Speckin Report and any other examination, analysis, imaging, or manipulation of—or physical contact with—the Voting Machines by Speckin Forensics.

9. The “Injunction” means the injunction referenced in the Pennsylvania Supreme Court’s Order dated January 27, 2022, in this Action.

10. The “Secretary’s Application Holding Appellees in Contempt and Imposing Sanctions” means Appellant’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions, which the Secretary filed in this Action on October 18, 2022.

11. “Voting Machines” means any and all components of the voting system that Fulton County leased from Dominion Voting Systems and used in the November 2020 election, regardless of whether the specific component was used

in the November 2020 election.

12. “Describe in detail” means to: (a) describe fully by reference to underlying facts rather than by conclusions of fact or law; (b) particularize as to time, place and manner; and (c) identify all persons with knowledge of and all documents and communications relating to the matter to be described.

13. “Identify,” when used in reference to a document, means to state:

- (a) the title of the document;
- (b) the subject matter of the document;
- (c) who prepared the document;
- (d) when the document was prepared;
- (e) who received the document or a copy of it;
- (f) who the custodian of the document is; and
- (g) where the document is located.

14. “Identify,” when used in reference to an individual, means to state his or her:

- (a) full name and any aliases;
- (b) present or last known address and phone number;
- (c) employment, title, and job description at all times relevant to this proceeding;
- (d) present or last known employment, title and job description; and
- (e) relation, if any, to any party to this proceeding.

15. “Identify,” when used in connection with an artificial person such as a corporation or partnership, means to state:

- (a) its full name;
- (b) all names under which it is known or operates;
- (c) its form of organization;
- (d) the address of its principal office;
- (e) its relationship to any other party in the matters involved in this proceeding; and
- (f) the name and address of each of the agents who acted for it with respect to the matters involved.

16. “Identify,” when used in reference to a communication, means to state:

- (a) the date on which such communication occurred;
- (b) the identity of the person(s) by whom it was made;
- (c) in the case of an oral communication, the place at which it was made;
- (d) in the case of an oral communication, the identity of all persons in attendance, or before whom it was made; and
- (e) a description of its contents.

17. “Relating to” or “relate to” mean constituting, mentioning, recording, discussing, describing, reflecting, identifying, dealing with, consisting of, explaining, referring to, referencing, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.

18. “Communication” means the transmission of messages, information, or ideas by speech, writing, or electronic means, as well as the messages,

information, or ideas so expressed or exchanged. Communication includes all documents evidencing communications.

19. “Person” means any natural person or any entity, including, without limitation, an association, partnership, corporation, limited liability company, joint venture, group, firm, organization, governmental or quasigovernmental entity or unit, and every other organization of whatever sort.

20. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatories all responses that might otherwise be construed to be outside of its scope.

21. The word “any” shall include “all” and vice versa.

22. The singular shall include the plural and vice versa, and the conjunctive shall include the disjunctive and vice versa, in order to give these interrogatories their broadest scope.

INSTRUCTIONS

1. These Interrogatories call for the production of all information that is known or available to you, including all information in your possession, custody, or control, or otherwise available to you, or in the possession, custody, or control of your agents, employees, affiliates, members, subsidiaries, directors, independent contractors, attorneys, consultants, accountants, investigators, analysts, representatives or any other person acting or purporting to act on your behalf or

under your direction or control.

2. If objection(s) is/are made to any interrogatory or part thereof, state with specificity the reasons for each objection and the part of the interrogatory to which the objection is made, state whether you are withholding any responsive information on the basis of such objection, respond to the remainder of the interrogatory to the extent you are not objecting to it, and produce information relating to the remaining part(s) of the interrogatory.

3. If you claim that any information responsive to these interrogatories is privileged or otherwise non-discoverable, you must identify the nature of such claimed privilege in a separate log to be furnished at the same time as your response to these interrogatories. This log shall include, with respect to each element of information sought: (1) the date of the information; (2) each person who communicated the information; (3) all persons to whom the information has been communicated; (4) all persons who otherwise have knowledge of the information; (5) the general subject matter of the information, and; (6) the specific privilege claimed and each fact necessary to establish the applicability of the privilege or doctrine claimed.

4. These interrogatories are continuing in nature and require supplementation in accordance with Rule 4007.4 of the Pennsylvania Rule of Civil Procedure.

INTERROGATORIES

1. Describe in detail how it was decided that Speckin Forensics would conduct the Speckin Inspection, including by identifying who decided that an inspection, examination, analysis, and/or imaging of the Voting Machines should be performed after January 14, 2022, who recommended that Speckin Forensic be selected to conduct the Speckin Inspection, when that recommendation was made, on what basis that recommendation was made, and who selected Speckin Forensics to conduct the Speckin Inspection.

RESPONSE:

2. Did the Fulton County Board of Elections vote on whether to allow the Speckin Inspection? If so, identify:

- a) The date of the vote.
- b) Where the vote occurred.
- c) Whether the vote took place as part of a publicly noticed meeting of the Board of Election.
- d) All individuals who witnessed the vote.
- e) The specific members of the Board of Elections who participated in the vote.

- f) How each such member of the Board of Elections voted (*i.e.*, to allow the Speckin Inspection or not to allow the Speckin Inspection).

RESPONSE:

3. Was any public notice of the Speckin Inspection provided before September 21, 2022? If so, identify the date of any such notice. For each such date, describe the form and content of the notice provided on that date and identify who provided the notice.

RESPONSE:

4. Identify the date or dates on which the Speckin Inspection took place. If the Speckin Inspection took place over multiple dates, describe the specific activities that took place on each such date.

RESPONSE:

5. Identify all locations at which the Speckin Inspection took place. If the Speckin Inspection took place at multiple locations, describe the specific activities that took place at each such location.

RESPONSE:

6. Describe in detail everything that Speckin Forensics did as part of the Speckin Inspection.

RESPONSE:

7. Identify the specific Speckin Forensics employees and/or agents who participated in the performance of the Speckin Inspection, and describe the specific actions each such person took.

RESPONSE:

8. Identify all persons or entities other than Speckin Forensics who participated in the performance of, or otherwise took actions to enable, the Speckin Inspection, and describe the specific actions each such person or entity took.

RESPONSE:

9. Identify all individuals who witnessed the Speckin Inspection or any part of it.

RESPONSE:

10. For each of Commissioner Ulsh, Commissioner Bunch, and Commissioner Shives, identify the date the Commissioner first learned that the Speckin Inspection would occur. If the Commissioner was not aware of the impending Speckin Inspection prior to its occurrence, so state, and identify the date that the Commissioner first learned that the Speckin Inspection had occurred. To the extent it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

11. For each of Commissioner Ulsh, Commissioner Bunch, and Commissioner Shives, identify all persons, including but not limited to attorneys, with whom that Commissioner has communicated regarding the Order entered by the Supreme Court of Pennsylvania in this Action on January 14, 2022, the Order entered by the Supreme Court of Pennsylvania in this Action on January 27, 2022, or the Injunction (including but not limited to communications with one or more of the other two Commissioners) and the date on which each such communication took place. If it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

12. For each of Commissioner Ulsh, Commissioner Bunch, and Commissioner Shives, identify all persons, including but not limited to attorneys, with whom that Commissioner has communicated regarding the Speckin Inspection (whether before or after it took place) and the date on which each such communication took place. If it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

13. Identify all individuals who communicated, directly or indirectly, with Speckin Forensics on behalf of any of the Petitioners, and the date on which each such communication took place. If it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

14. Did Speckin Forensics receive notice of the Injunction before the Speckin Inspection was performed? If so, identify the date(s) Speckin Forensics received notice of the Injunction, the form of that notice, the specific individual(s) who received that notice, and, if applicable, the specific individual(s) who provided that notice.

RESPONSE:

15. Identify all persons who entered into a contract with Speckin Forensics relating to the Speckin Inspection. Identify all individuals who signed any such contract and, if applicable, the entity on behalf of which each such individual signed.

RESPONSE:

16. Identify all sources of funding for the Speckin Inspection, including by identifying all persons who paid or otherwise compensated Speckin Forensics, or from whom Speckin Forensics expects or is owed payment, in connection with the Speckin Inspection.

RESPONSE:

17. Identify all attorneys who have represented or otherwise provided legal advice to Petitioners in connection with this Action on or after January 14, 2022, regardless of whether such attorneys have entered an appearance in this Action. For each such attorney, identify the period of time during which the attorney has represented or otherwise provided legal advice to Petitioners in connection with this Action.

RESPONSE:

18. For each attorney identified in your answer to Question 17 above, state whether that attorney has been, or is expecting to be, paid by any person for his or her representation of Petitioners or any legal advice he or she has provided to Petitioners, and if so, identify all persons from which that attorney has received any such payment(s) or from which that attorney expects to receive any such payment(s).

RESPONSE:

19. Identify each and every person with information that Petitioners may use to their support their defenses to the Secretary's Application for an Order Holding Appellees in Contempt and Imposing Sanctions and the subjects of the information each such individual has.

RESPONSE:

20. Identify each person you expect to call as an expert witness at the evidentiary hearing before the Special Master in this Action, which is currently scheduled to begin on November 9, 2022. As to each such expert witness, state:

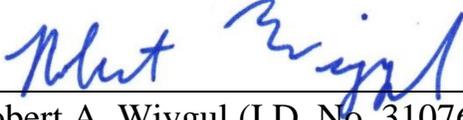
- (a) the schools the expert has attended, including years of attendance and degrees received;
- (b) the professional designations, licenses or certifications that the expert holds;
- (c) the professional associations to which the expert belongs;
- (d) the expert's employment experience related to particular field(s) of expertise, including names and addresses of all employers and the years of employment;
- (e) all publications authored by the expert;
- (f) every case in which the expert witness has testified as an expert at trial, in a court or administrative hearing, or by deposition;
- (g) the subject matter to which the witness is expected to testify;
- (h) the substance of the facts to which the witness is expected to testify;
- (i) the substance of the opinions to which the witness is expected to testify;
and
- (j) a summary of the grounds for each opinion to which the witness is expected to testify.

RESPONSE:

21. For each Request for Admission in the Secretary's Requests for Admission that you denied or admitted with qualification, identify and describe in detail each and every basis for your denial or qualified admission.

RESPONSE:

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By:  _____

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Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 31st day of October 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

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Counsel for Intervenor



Robert A. Wiygul

EXHIBIT 4

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**THE SECRETARY’S REQUESTS FOR ADMISSION DIRECTED TO
PETITIONERS**

Pursuant to the Order dated October 28, 2022 (the “Order”), and Pennsylvania Rule of Civil Procedure 4014, Respondent/Appellant, the Acting Secretary of the Commonwealth (the “Secretary”), propounds the following Requests for Admission on Petitioners/Appellees County of Fulton; Fulton County Board of Elections; Stuart L. Ulsh, in his official capacity as a Fulton County Board of Elections Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County; and Randy H. Bunch, in his official capacity as a Fulton County Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County (together, “Petitioners”). Pursuant to the Order, Petitioners shall respond to these Requests by 12:00 noon on November 2, 2022. In accordance with Pennsylvania Rule of Civil Procedure 4014(b), to the extent Petitioners fail to respond to these Requests by that time, the Requests will be deemed admitted.

DEFINITIONS

1. “You” or “your” mean Petitioners, and each of them, and their employees, agents, attorneys, affiliates, members, representatives, and any other person who has acted or purported to act on their behalf.

2. “Petitioners” means Petitioners/Appellees County of Fulton; the Fulton County Board of Elections; Stuart L. Ulsh, in his official capacity as a Fulton County Board of Elections Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County; and Randy H. Bunch, in his official capacity as a Fulton County Commissioner, and in his capacity as a resident, taxpayer and elector of Fulton County.

3. The “Secretary” means the Acting Secretary of the Commonwealth.

4. The “Action” means the case captioned *County of Fulton et al. v. Secretary of the Commonwealth*, No. 277 MD 2021, pending before the Commonwealth Court of Pennsylvania, and the appeal related thereto, No. 3 MAP 2022, pending before the Supreme Court of Pennsylvania.

5. The “Secretary’s Application Holding Appellees in Contempt and Imposing Sanctions” means Appellant’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions, which the Secretary filed in this Action on October 18, 2022.

6. The “Fulton County Complaint” means the Complaint and Jury Demand filed on or about September 21, 2022, in the Fulton County Court of Common Pleas, in the case captioned *County of Fulton et al. v. Dominion Voting Systems, Inc.*, No. 232-2022.

7. “Speckin Forensics” means an entity called Speckin Forensics, LLC, a Florida Limited Liability Company with a principal place of business located at 110 East Broward Boulevard, 1700, Fort Lauderdale, Florida 33301, and any related corporate entity, as well as its employees, agents, attorneys, affiliates, members, representatives, and any other person who has acted or purported to act on its behalf or at its behest.

8. The “Speckin Report” means the document attached as Exhibit E to the Fulton County Complaint.

9. The “Speckin Inspection” means the activities conducted by Speckin Forensics described in the Speckin Report and any other examination, analysis, imaging, or manipulation of—or physical contact with—the Voting Machines by Speckin Forensics.

10. The “Injunction” means the injunction referenced in the Pennsylvania Supreme Court’s Order dated January 27, 2022, in this Action.

11. “Voting Machines” means any and all components of the voting system that Fulton County leased from Dominion Voting Systems and used in the

November 2020 election, regardless of whether the specific component was used in the November 2020 election.

12. “Relating to” or “relate to” mean constituting, mentioning, recording, discussing, describing, reflecting, identifying, dealing with, consisting of, explaining, referring to, referencing, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.

13. “Communication” means the transmission of messages, information, or ideas by speech, writing, or electronic means, as well as the messages, information, or ideas so expressed or exchanged. Communication includes all documents evidencing communications.

14. “Person” means any natural person or any entity, including, without limitation, an association, partnership, corporation, limited liability company, joint venture, group, firm, organization, governmental or quasigovernmental entity or unit, and every other organization of whatever sort.

15. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatories all responses that might otherwise be construed to be outside of its scope.

16. The word “any” shall include “all” and vice versa.

17. The singular shall include the plural and vice versa, and the conjunctive shall include the disjunctive and vice versa, in order to give these interrogatories their broadest scope.

INSTRUCTIONS

1. If you claim that any information responsive to these Requests is privileged or otherwise non-discoverable, you must identify the nature of such claimed privilege in a separate log to be furnished at the same time as your response to these interrogatories. This log shall include, with respect to each element of information sought: (1) the date of the information; (2) each person who communicated the information; (3) all persons to whom the information has been communicated; (4) all persons who otherwise have knowledge of the information; (5) the general subject matter of the information; and (6) the specific privilege claimed and each fact necessary to establish the applicability of the privilege or doctrine claimed.

2. These Request are continuing in nature and require supplementation in accordance with Rule 4007.4 of the Pennsylvania Rule of Civil Procedure.

REQUESTS FOR ADMISSION

1. Admit that, on or about January 14, 2022, Petitioners received notice of the Order that Justice Wecht entered in this Action on January 14, 2022.

RESPONSE:

2. Admit that, on or about January 27, 2022, Petitioners received notice of the Order that the Supreme Court of Pennsylvania entered in this Action on January 27, 2022.

RESPONSE:

3. Admit that, before July 2022, Petitioners had received notice of the Order that the Supreme Court of Pennsylvania entered in this Action on January 27, 2022.

RESPONSE:

4. Admit that Petitioners were aware in July 2022 that the Secretary's appeal in this action remained pending.

RESPONSE:

5. Admit that Petitioners were aware at the time the Speckin Inspection occurred that the Injunction remained in effect.

RESPONSE:

6. Admit that Petitioner Ulsh participated in the decision to allow the Speckin Inspection to occur and approved that decision.

RESPONSE:

7. Admit that Petitioner Bunch participated in the decision to allow the Speckin Inspection to occur and approved that decision.

RESPONSE:

8. Admit that Petitioners did not provide any public notice of the Speckin Inspection before it occurred.

RESPONSE:

9. Admit that Petitioners did not provide any public notice of the Speckin Inspection before September 21, 2022.

RESPONSE:

10. Admit that Petitioners did not notify Dominion Voting Systems or the Secretary of the Speckin Inspection before it occurred.

RESPONSE:

11. Admit that Petitioners did not notify Dominion Voting Systems or the Secretary of the Speckin Inspection before September 21, 2022.

RESPONSE:

12. Admit that the Fulton County Board of Elections did not vote on whether to conduct or allow the Speckin Inspection.

RESPONSE:

13. Admit that all of the actions that the Speckin Report states that Speckin Forensics performed as part of the Speckin Inspection were in fact performed by Speckin Forensics as part of the Speckin Inspection.

RESPONSE:

14. Admit that, as part of the Speckin Inspection, Speckin Forensics removed six hard drives from the Voting Machines.

RESPONSE:

15. Admit that, as part of the Speckin Inspection, Speckin Forensics connected external devices to each of the six hard drives removed from the Voting Machines.

RESPONSE:

16. Admit that, as part of the Speckin Inspection, Speckin Forensics copied five of the hard drives removed from the Voting Machines and thereby created an image of each hard drive, which was saved on a separate drive.

RESPONSE:

17. Admit that, after imaging each of the five hard drives, Speckin Forensics removed the images it had created from Pennsylvania.

RESPONSE:

18. Admit that all of the actions described in Request Nos. 14-17 above were performed in July 2022.

RESPONSE:

19. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Ulsh's authorization.

RESPONSE:

20. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Ulsh's permission.

RESPONSE:

21. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Bunch's authorization.

RESPONSE:

22. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Bunch's permission.

RESPONSE:

23. Admit that Speckin Forensics is a private entity.

RESPONSE:

24. Admit that, prior to January 14, 2022, Fulton County had never contracted with Speckin Forensics or otherwise engaged Speckin Forensics to perform any services.

RESPONSE:

25. Admit that Speckin Forensics has not been directly involved in Fulton County's conduct of any elections.

RESPONSE:

26. Admit that Speckin Forensics is not a Voting System Test Lab accredited by the U.S. Election Assistance Commission.

RESPONSE:

27. Admit that Speckin Forensics is not a National Laboratory utilized by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency.

RESPONSE:

28. Admit that the document attached as Exhibit B to the Secretary’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions is a true and correct copy of an Opinion and Order entered in *King v. Whitmer*, No. 2:20-13134 (E.D. Mich.) on August 25, 2021.

RESPONSE:

29. Admit that the document attached as Exhibit E to the Secretary’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions is a true and correct copy of a grievance that the Governor, Attorney General, and Secretary of State of Michigan filed seeking the disbarment of “Stefanie Lynn Junttila”—who is the same person as Stefanie L. Lambert—based on her conduct in the litigation entitled *King v. Whitmer*, No. 2:20-13134 (E.D. Mich.).

RESPONSE:

30. Admit that the document attached as Exhibit D to the Secretary's Application for an Order Holding Appellees in Contempt and Imposing Sanctions is a true and correct copy of the official meeting minutes for the Meeting of the Fulton County Commissioners that took place on April 12, 2022.

RESPONSE:

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

By: 

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-and-

PENNSYLVANIA DEPARTMENT OF STATE

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TUCKER LAW GROUP, LLC

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(215) 982-2280

Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 31st day of October 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

Thomas J. Carroll, Esquire
224 King Street
Pottstown, PA 19464
tom@thomasjcarrolllaw.com
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EXHIBIT 5

IN THE SUPREME COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**FULTON COUNTY'S RESPONSE TO THE SECRETARY'S REQUESTS
FOR PRODUCTION OF DOCUMENTS**

INTRODUCTION

Fulton County hereby asserts a standard objection and response, which applies to all of the Secretary's requests below. Where necessary, specific responses to the individual requests are provided in the response section below the number, and supplement, but do not substitute for, nor in any way waive, any of the objections, exemptions, exclusions, privileges, or protections asserted by Fulton County (and necessarily by its individual members, employees, attorneys, experts, and/or consultants) in the standard objection.

Standard Blanket Objections and Responses

Fulton County's ostensible production of documents, disclosures and/or testimony under the discovery that has been propounded by the Secretary and Intervenor Dominion would constitute automatic and immediate waiver of Fulton County's rights to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County, as follows:

- i. in the underlying litigation in this case in matters unrelated to the current application for contempt;
- ii. under Pennsylvania's Right to Know Law (RTKL), 65 Pa. Stat. Ann. § 67.101, et seq.;
- iii. in the currently pending breach of contract and breach of warranty action by and between Fulton County and Dominion (**ATTACHMENT A**, Notice of Removal of Fulton County's Breach of Contract Action, filed October 18, 2022, U.S.D.C. Middle Dist. Pa., Case No. 1:22-cv-01639-SHR);
- iv. in the currently pending administrative appeal by Fulton County concerning Intervenor Dominion's request for information under the aforementioned RTKL **ATTACHMENT B**, Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).

Underlying Litigation

Fulton County's underlying lawsuit (277 MD 2021) contains five counts: (1) the Secretary unlawfully decertified Fulton County's two electronic voting machines; (2) the Pennsylvania Election Code (Election Code) expressly authorized the County to inspect its electronic voting devices as part of its statutory duty to ensure the safe and honest conducting of elections in the County; (3) a directive of the Secretary, which purported to prohibit all county boards of elections from inspecting their electronic voting devices with the assistance of a third-party consultant, violated Section 302 of the Election Code, 25 P.S. §2642; (4) the Secretary unlawfully withheld funding from the County that it needs to acquire replacement electronic voting devices; and (5) a request for injunctive relief to restore the status quo that existed prior to the Secretary's unlawful decertification of the county's voting machines.

The discovery sought from Fulton County in this proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying matter. This would include communications and consultations made in "closed door" conferences and meetings in which Fulton County discussed with legal counsel and consultants all aspects of the instant appeal, including all communications and consultations made prior to the filing of the underlying lawsuit, the instant appeal, and the contempt application. The underlying litigation remains pending.

The discovery sought from Fulton County in this proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying litigation.

Any and all exemptions, exclusions, privileges, and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this

exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise these exemptions, exclusions, protections, and/or privileges, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

Right to Know Privileges and Protections

Fulton County is a "local agency" within the meaning of the Pennsylvania's "Right to Know Law." 65 Pa. Stat. Ann. § 67.101, et seq. "Local agency" is defined as "[a]ny of the following: (1) Any political subdivision.... 65 Pa. Stat. Ann. § 67.102.

Under Section 305(a) of the RTKL, information in an agency's possession is presumed to be public record unless: (1) it is exempt under Section 708 of the RTKL; (2) it is protected by a privilege; or (3) it is exempt from disclosure under any other federal or state law or regulation or judicial order or decree. 65 P.S. § 67.305(a). 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 Pa. Stat. Ann. § 67.708. Once an exemption, exclusion, protection, or privilege is asserted and established, the burden is on the requesting party to prove that there is no privilege. See, e.g., *Office of the Governor v. Davis*, 122 A.3d 1185, 2015 Pa. Commw. LEXIS 363 (Pa. Commw. Ct. 2015), citing 65 Pa. Stat. Ann. § 67.102.

In other words, the local agency has prima facie due process rights to benefit from the burdens of proof that would be placed on the party requesting records from a public agency and the applicable presumptions once a particular exemption, exclusion, protection, or privilege is asserted and established.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County under the RTKL.

Fulton County has the right to object to all requests made under Pennsylvania's Right to Know Law (RTKL), and has subsequent administrative, legal and appellate rights with respect to any preliminary objections and refusals to provide such information that may be included in such requests. As such, these administrative and legal rights and Fulton County's right to due process in the RTKL context cannot be circumvented and destroyed by the required disclosure of such information to the extent that it demands any and all such information that would be subject to full panoply of protections afforded to Fulton County's under the RTKL.

Fulton County also has the benefit of certain exemptions and exclusions from public disclosure under Pennsylvania's Right to Know Law (RTKL), 65 P.S. § 67.101 et seq. These exemptions and exclusions are not only relevant to Fulton County's existing rights to protect certain information from public disclosure on an ongoing basis, in other words, information that may be disclosed during the proposed discovery that would otherwise not be available under one or more exemptions in the RTKL, but as explained below, to the exemptions and protections it has asserted in the ongoing RTKL appeal involving Intervenor Dominion. (Court of Common Pleas of Fulton County, Case No. 204 of 2022-C; OOR Docket No. AP 2022-1542). See also ATTACHMENT B, Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).

In addition to Fulton County's rights to preserve its due process in any current or future RTKL proceeding, Fulton County also has the right to preserve its ability to raise any and all exemptions and/or exclusions from public disclosure which would otherwise be available to it under the RTKL.

Any and all written production, documents, information, and/or testimony that Fulton County might divulge in this proceeding in response to the Secretary's and Intervenor Dominion's discovery requests is prima facie protected and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

The Special Master's October 24 Order envisions a public hearing aired on public television in which these issues and the evidence ostensibly to be gleaned during her ordered discovery will be immediately publicized.

Such information, which if disclosed in the course and scope of the discovery sought (information, documents, written responses, answers, and testimony), and which are and would be exempt and excluded from Fulton County's *preliminary and absolute* rights to object to said disclosures under the RTKL, are equally protected in the

instant case to the same extent, as such sought after information would become available as “public information” contrary to Fulton County’s legal rights and responsibilities to protect said information from public disclosure, both preliminarily and absolutely, under the RTKL.

Moreover, Fulton County is currently prosecuting an appeal in a case in which Dominion is the requester of information under the RTKL.

A. Statutory and Common Law Exemptions, Privileges and Protections Under the RTKL

The following is a non-exhaustive list of the statutory and common-law exemptions, exclusions, privileges, and protections afforded to a local agency under the RTKL.

Any and all exemptions, exclusions, privileges, and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise these exemptions, exclusions, protections, and/or privileges, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

1. Personal Information

The RTKL law creates exemptions for certain information contained in public records related to personal information. The RTKL exempts the disclosure of a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” Section 708(b)(1)(ii) of the Right-to-Know Law, 65 P.S. § 67.708(b)(1)(ii). See also, Pa. State Educ. Ass’n ex rel. Wilson v. Pa. Office of Open Records, 4 A.3d 1156, 1160 (Pa. Cmwlth. 2010). Specifically, § 708(b)(6)(i)(A) identifies exemptions for the

following information: (A) A record containing *all or part* of a person's...home, cellular or personal telephone numbers, [and] personal e-mail addresses.... (emphasis added). *Id.* To the extent that discovery in this proceeding would include any two-way communications with or by or from or to individuals that are part of the discovery sought, such communications are subject to the exemption in subsection (b)(6)(i)(A).

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

2. Records Relating to Fulton County Employees

Section 708(b)(7) of the RTKL exempts from access by a requester certain "records relating to an agency employee." *Office of Gen. Counsel v. Bumsted*, 247 A.3d 71, 77 (Pa. Cmwlth. 2021).

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

3. Security Measures, Practices and Procedures and Safety

Subsection (b)(3) and (4) of the RTKL exempts:

[R]ecords, the disclosure of which creates a *reasonable likelihood* of endangering the safety or the physical security of... information storage system[s], which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including...technology, [and] communication...systems[,] and

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security. 65 Pa. Stat. Ann. § 67.708(b)(3) and (4).

To the extent that the discovery sought in this proceeding contains a demand for communications and/or documentation and/or information that is protected from disclosure because it relates to or touches upon a public body's ongoing security measures, methods, practices, and procedures, and/or regarding security and safety of persons, property, confidentiality, integrity, and/or availability of computer and information systems, such is protected from disclosure to the same extent as the RTKL, would protect such information.

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

4. Other Statutory and Common-Law Privileges and Protections

The statutory privileges in the RTKL itself are also copasetic with common-law jurisprudence regarding certain privileges and protected work-product and deliberative processes.

Section 102 of the RTKL generally defines "privilege" as: "The attorney work-product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court incorporating the laws of this Commonwealth." See *Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 414 (Pa. Cmwlth. 2014).

The attorney-client and work-product privileges implicate rights rooted in public policy concerns and that the claims will be irreparably lost if review is postponed. *Brown v. Greyhound Lines, Inc.*, 2016 PA Super 108, 142 A.3d 1, 8

a. Attorney-Client Privileged

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

b. Work-Product Protection

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

c. Deliberative Processes Privilege

In addition, the work-product / deliberative processes protections, while closely related to the attorney-client privilege, provides *broader protections*. *Levy v. Senate of Pa. (Levy III)*, 94 A.3d 436 (Pa. Cmwlth. 2014); *Dages v. Carbon Cnty.*, 44 A.3d 89 (Pa. Cmwlth. 2012). Confidential information flows from the client to the attorney, and vice versa, in the attorney-client relationship. *Gillard v. AIG Ins. Co.*, 609 Pa. 65, 15 A.3d 44 (Pa. 2011). The attorney-client privilege protects such confidential communications. *Id.* By contrast, work-product privilege applies to records that are the work-product of an attorney, and so, extend to the product of an attorney's representative secured in anticipation of litigation. *Rittenhouse v. Bd. of Sup'rs*, 41 A.3d 975, 2012 Pa. Comwlth. Unpub. LEXIS 248 (2012) (applying Pa.

R.C.P. No. 4003.3 (work product extends to investigator's reports prepared for litigation).

Subsection 708(b)(10), 65 Pa. Stat. Ann. § 67.708(b)(10), exempts communications and information concerning “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.” (emphasis added).

Information that constitutes “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice” is protected as “deliberative.” *In re Interbranch Comm’n on Juvenile Justice*, 605 Pa. 224, 238, 988 A.2d 1269, 1277-78 (2010) (quoting plurality opinion in *Commonwealth v. Vartan*, 557 Pa. 390, 399, 733 A.2d 1258, 1263 (1999)).

This exemption would extend to privileged communications by and between Fulton County and individuals and entities whose reports and information have been or will be used by the County to formulate policies and procedures; and, specifically, with respect analyzing past elections and conducting future elections.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

d. Investigatory Protection

Section 708(b)(17), 65 Pa. Stat. Ann. § 67.708(b)(10), provides another “statutory privilege;” an exemption for records of an agency relating to a noncriminal investigation, including: (i) complaints; investigative materials, notes, correspondence and reports; records that include the identity of confidential sources, including whistle-blowers; a record that includes information made confidential by law; and any work papers underlying an audit.

Fulton County has a duty to pursue and is pursuing an ongoing active, non-criminal investigation into the conducting of the 2020 election, which necessarily implicates and bears upon the County’s proper and lawful conducting of future election cycles. It must also do this in confidence. Such information falls within not only the common-law attorney-client and work-product privileges, but also the statutory privileges identified in (b)(10) and (b)(17) of the RTKL. Disclosure of these matters, which are within the scope of the Secretary’s and Intervenor’s Dominion’s discovery requests would violate the statutory privilege and potentially disclose protected information about said ongoing investigations.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

e. Fifth Amendment Privilege

The proposed discovery would potentially violate the individual constitutional rights of the proposed deponents and of other Fulton County members, employees,

attorneys, consultants, and experts, whether identified or who would be identified through the disclosure of communications by and between same.

The Secretary and Dominion seek information from the individual proposed deponents, and have propounded additional questions concerning communications, identities, and decision-making that if divulged in the Special Master's proposed discovery proceeding could expose these individuals to investigations. Given the fact that current statements and information available by the Attorney General of Pennsylvania and the United States Department of Justice (DOJ) have characterized certain substantive statements and speech as "misinformation," and as such other intentional and unintentional communications, speech, and/or statements (oral or written) are being "targeted" as potentially criminally punishable by potential prosecution, certain disclosures as sought here could potentially violate the constitutional rights of the proposed individual witnesses / deponents, including, but not limited to those under the Fifth Amendment of the United States Constitution and Article I § 9 of the Constitution of the Commonwealth of Pennsylvania.

To be clear, Fulton County asserts that these protections apply not only to the proposed individual defendant members of the Fulton County Board of Commissioners (the proposed "deponents"), but also to any and all those whose communication and statements may have been received by individual employees, agents, part-time and full-time contractors and subcontractors, including attorneys and experts, such that same would be protected by the Fifth Amendment to the extent that disclosure of such statements and communications (to the extent that they are not protected by other evidentiary exceptions, e.g., hearsay, etc., which Fulton County would specifically assert and which would be the subject of objection and/or additional exclusionary motions) would necessarily provoke an invocation of that privilege by such aforementioned individuals.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

REQUESTS FOR PRODUCTION

1. All documents and communications relating to the retention of Speckin Forensics to perform the Speckin Inspection, including:
 - a. all documents and communications relating to the decision to conduct the Speckin Inspection or any other actual or potential examination, testing, analysis, or imaging of the Voting Machines at any point after January 14, 2022;
 - b. all documents and communications relating to the selection of Speckin Forensics to conduct the Speckin Inspection or to otherwise examine, test, analyze, or image the Voting Machines;
 - c. all documents and communications reflecting or addressing the amount Speckin Forensics would be or was paid for services related to the Speckin Inspection;
 - d. all documents and communications reflecting or addressing who would or did pay Speckin Forensics for services related to the Speckin Inspection; and

- e. all contractual documents, bills, and invoices relating to Speckin Forensics' performance of the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

2. All communications among Petitioners or between any Petitioner and any other person referencing or addressing the Injunction.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

3. All communications to the public or other public notices concerning the Speckin Inspection made or sent before September 21, 2022 (regardless of whether such communications or public notices were made or sent before or after the Speckin Inspection occurred).

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to

having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

4. All documents and communications concerning whether to notify the public, Dominion, and/or the Secretary of the Speckin Inspection, whether made or sent before or after the Speckin Inspection occurred.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

5. All communications between you and Speckin Forensics.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

6. All communications concerning the Speckin Inspection or Speckin Report, including but not limited to any such communications between you and Speckin Forensics, between any person and Speckin Forensics, and between you and any other person.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous

7. All documents and communications related to the current status and condition of the hardware and software referenced in the Speckin Report, including documents sufficient to identify where the hardware and software are currently being held, and under what protection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

8. All chain-of-custody logs and other documents identifying or evidencing who has had access to the Voting Machines since January 14, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly

onerous.

9. All video and audio recordings and photographs of the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous

10. All documents reflecting or addressing the specific activities to be performed, or that were performed, as part of the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous

11. All documents identifying or reflecting the names of the persons (or any of them) who attended or witnessed or were invited to attend or witness the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

12. All documents reflecting any plan for the Fulton County Board of Elections to deliberate about or vote upon whether to permit any inspection of the Voting Machines occurring after January 14, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

Respectfully submitted by:

/s/ Thomas J Carroll

Attorney ID: 53296

Attorney for Petitioners

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Date: November 3, 2022

EXHIBIT 6

IN THE SUPREME COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

No.: 277 M.D. 2021

No.: 3 MAP 2022

**FULTON COUNTY'S RESPONSES TO THE SECRETARY'S
INTERROGATORIES**

INTRODUCTION

Fulton County hereby asserts a standard objection and response, which applies to all of the Secretary's Interrogatories below. Where necessary, specific responses to the individual interrogatories are provided in the response section below the number, and supplement, but do not substitute for, nor in any way waive, any of the objections, exemptions, exclusions, privileges, or protections asserted by Fulton County (and necessarily by its individual members, employees, attorneys, experts, and/or consultants) in the standard objection.

Standard Blanket Objections and Responses

Fulton County's ostensible production of documents, disclosures and/or testimony under the discovery that has been propounded by the Secretary and Intervenor Dominion would constitute automatic and immediate waiver of Fulton County's rights to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County, as follows:

- i. in the underlying litigation in this case in matters unrelated to the current application for contempt;
- ii. under Pennsylvania's Right to Know Law (RTKL), 65 Pa. Stat. Ann. § 67.101, et seq.;
- iii. in the currently pending breach of contract and breach of warranty action by and between Fulton County and Dominion (**ATTACHMENT A**, Notice of Removal of Fulton County's Breach of Contract Action, filed October 18, 2022, U.S.D.C. Middle Dist. Pa., Case No. 1:22-cv-01639-SHR);
- iv. in the currently pending administrative appeal by Fulton County concerning Intervenor Dominion's request for information under the aforementioned RTKL **ATTACHMENT B**, Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).

Underlying Litigation

Fulton County's underlying lawsuit (277 MD 2021) contains five counts: (1) the Secretary unlawfully decertified Fulton County's two electronic voting machines; (2) the Pennsylvania Election Code (Election Code) expressly authorized the County to inspect its electronic voting devices as part of its statutory duty to ensure the safe and honest conducting of elections in the County; (3) a directive of the Secretary, which purported to prohibit all county boards of elections from inspecting their electronic voting devices with the assistance of a third-party consultant, violated Section 302 of the Election Code, 25 P.S. §2642; (4) the Secretary unlawfully withheld funding from the County that it needs to acquire replacement electronic voting devices; and (5) a request for injunctive relief to restore the status quo that existed prior to the Secretary's unlawful decertification of the county's voting machines.

The discovery sought from Fulton County in this proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying matter. This would include communications and consultations made in "closed door" conferences and meetings in which Fulton County discussed with legal counsel and consultants all aspects of the instant appeal, including all communications and consultations made prior to the filing of the underlying lawsuit, the instant appeal, and the contempt application. The underlying litigation remains pending.

The discovery sought from Fulton County in this proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying litigation.

Any and all exemptions, exclusions, privileges, and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of

its rights to due process and to its rights to raise these exemptions, exclusions, protections, and/or privileges, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

Right to Know Privileges and Protections

Fulton County is a “local agency” within the meaning of the Pennsylvania’s “Right to Know Law.” 65 Pa. Stat. Ann. § 67.101, et seq. “Local agency” is defined as “[a]ny of the following: (1) Any political subdivision.... 65 Pa. Stat. Ann. § 67.102.

Under Section 305(a) of the RTKL, information in an agency’s possession is presumed to be public record unless: (1) it is exempt under Section 708 of the RTKL; (2) it is protected by a privilege; or (3) it is exempt from disclosure under any other federal or state law or regulation or judicial order or decree. 65 P.S. § 67.305(a). 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 Pa. Stat. Ann. § 67.708. Once an exemption, exclusion, protection, or privilege is asserted and established, the burden is on the requesting party to prove that there is no privilege. See, e.g., *Office of the Governor v. Davis*, 122 A.3d 1185, 2015 Pa. Commw. LEXIS 363 (Pa. Commw. Ct. 2015), citing 65 Pa. Stat. Ann. § 67.102.

In other words, the local agency has prima facie due process rights to benefit from the burdens of proof that would be placed on the party requesting records from a public agency and the applicable presumptions once a particular exemption, exclusion, protection, or privilege is asserted and established.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County under the RTKL.

Fulton County has the right to object to all requests made under Pennsylvania’s Right to Know Law (RTKL), and has subsequent administrative, legal and appellate rights with respect to any preliminary objections and refusals to provide such information that may be included in such requests. As such, these administrative and legal rights and Fulton County’s right to due process in the RTKL context cannot be circumvented and destroyed by the required disclosure of such information to the extent that it demands any and all such information that would be subject to full panoply of protections afforded to Fulton County’s under the RTKL.

Fulton County also has the benefit of certain exemptions and exclusions from public disclosure under Pennsylvania’s Right to Know Law (RTKL), 65 P.S. § 67.101 et seq. These exemptions and exclusions are not only relevant to Fulton County’s existing rights to protect certain information from public disclosure on an ongoing basis, in other words, information that may be disclosed during the proposed discovery that would otherwise not be available under one or more exemptions in the RTKL, but as explained below, to the exemptions and protections it has asserted in the ongoing RTKL appeal involving Intervenor Dominion. (Court of Common Pleas of Fulton County, Case No. 204 of 2022-C; OOR Docket No. AP 2022-1542). See also ATTACHMENT B, Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).

In addition to Fulton County’s rights to preserve its due process in any current or future RTKL proceeding, Fulton County also has the right to preserve its ability to raise any and all exemptions and/or exclusions from public disclosure which would otherwise be available to it under the RTKL.

Any and all written production, documents, information, and/or testimony that Fulton County might divulge in this proceeding in response to the Secretary’s and Intervenor Dominion’s discovery requests is prima facie protected and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

The Special Master’s October 24 Order envisions a public hearing aired on public television in which these issues and the evidence ostensibly to be gleaned during her ordered discovery will be immediately publicized.

Such information, which if disclosed in the course and scope of the discovery sought (information, documents, written responses, answers, and testimony), and which are and would be exempt and excluded from Fulton County’s *preliminary and absolute* rights to object to said disclosures under the RTKL, are equally protected in the instant case to the same extent, as such sought after information would become available as “public information” contrary to Fulton County’s legal rights and responsibilities to protect said information from public disclosure, both preliminarily and absolutely, under the RTKL.

Moreover, Fulton County is currently prosecuting an appeal in a case in which Dominion is the requester of information under the RTKL.

A. Statutory and Common Law Exemptions, Privileges and Protections Under the RTKL

The following is a non-exhaustive list of the statutory and common-law exemptions, exclusions, privileges, and protections afforded to a local agency under the RTKL.

Any and all exemptions, exclusions, privileges, and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise these exemptions, exclusions, protections, and/or privileges, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

1. Personal Information

The RTKL law creates exemptions for certain information contained in public records related to personal information. The RTKL exempts the disclosure of a record that "would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual." Section 708(b)(1)(ii) of the Right-to-Know Law, 65 P.S. § 67.708(b)(1)(ii). See also, Pa. State Educ. Ass'n ex rel. Wilson v. Pa. Office of Open Records, 4 A.3d 1156, 1160 (Pa. Cmwlth. 2010). Specifically, § 708(b)(6)(i)(A) identifies exemptions for the following information: (A) A record containing *all or part* of a person's...home, cellular or personal telephone numbers, [and] personal e-mail addresses.... (emphasis added). *Id.* To the extent that discovery in this proceeding would include any two-way communications with or by or from or to individuals that are part of the discovery sought, such communications are subject to the exemption in subsection (b)(6)(i)(A).

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

2. Records Relating to Fulton County Employees

Section 708(b)(7) of the RTKL exempts from access by a requester certain “records relating to an agency employee.” *Office of Gen. Counsel v. Bumsted*, 247 A.3d 71, 77 (Pa. Cmwlth. 2021).

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

3. Security Measures, Practices and Procedures and Safety

Subsection (b)(3) and (4) of the RTKL exempts:

[R]ecords, the disclosure of which creates a *reasonable likelihood* of endangering the safety or the physical security of . . . information storage system[s], which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including...technology, [and] communication...systems[,] and

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security. 65 Pa. Stat. Ann. § 67.708(b)(3) and (4).

To the extent that the discovery sought in this proceeding contains a demand for communications and/or documentation and/or information that is protected from disclosure because it relates to or touches upon a public body's ongoing security measures, methods, practices, and procedures, and/or regarding security and safety of persons, property, confidentiality, integrity, and/or availability of computer and information systems, such is protected from disclosure to the same extent as the RTKL, would protect such information.

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

4. Other Statutory and Common-Law Privileges and Protections

The statutory privileges in the RTKL itself are also copasetic with common-law jurisprudence regarding certain privileges and protected work-product and deliberative processes.

Section 102 of the RTKL generally defines “privilege” as: “The attorney work-product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court incorporating the laws of this Commonwealth.” See *Bagwell v. Pa. Dep’t of Educ.*, 103 A.3d 409, 414 (Pa. Cmwlth. 2014).

The attorney-client and work-product privileges implicate rights rooted in public policy concerns and that the claims will be irreparably lost if review is postponed. *Brown v. Greyhound Lines, Inc.*, 2016 PA Super 108, 142 A.3d 1, 8

a. Attorney-Client Privileged

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

b. Work-Product Protection

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

c. Deliberative Processes Privilege

In addition, the work-product / deliberative processes protections, while closely related to the attorney-client privilege, provides *broader protections*. *Levy v. Senate of Pa. (Levy III)*, 94 A.3d 436 (Pa. Cmwlth. 2014); *Dages v. Carbon Cnty.*, 44 A.3d 89 (Pa. Cmwlth. 2012). Confidential information flows from the client to the attorney, and vice versa, in the attorney-client relationship. *Gillard v. AIG Ins. Co.*, 609 Pa. 65, 15 A.3d 44 (Pa. 2011). The attorney-client privilege protects such confidential communications. *Id.* By contrast, work-product privilege applies to records that are the work-product of an attorney, and so, extend to the product of an attorney's representative secured in anticipation of litigation. *Rittenhouse v. Bd. of Sup'rs*, 41 A.3d 975, 2012 Pa. Comwlth. Unpub. LEXIS 248 (2012) (applying Pa. R.C.P. No. 4003.3 (work product extends to investigator's reports prepared for litigation)).

Subsection 708(b)(10), 65 Pa. Stat. Ann. § 67.708(b)(10), exempts communications and information concerning “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.” (emphasis added).

Information that constitutes “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice” is protected as “deliberative.” *In re Interbranch Comm'n on Juvenile Justice*, 605 Pa. 224, 238, 988 A.2d 1269, 1277-78 (2010) (quoting plurality opinion in *Commonwealth v. Vartan*, 557 Pa. 390, 399, 733 A.2d 1258, 1263 (1999)).

This exemption would extend to privileged communications by and between Fulton County and individuals and entities whose reports and information have been or will be used by the County to formulate policies and procedures; and, specifically, with respect analyzing past elections and conducting future elections.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

d. Investigatory Protection

Section 708(b)(17), 65 Pa. Stat. Ann. § 67.708(b)(10), provides another “statutory privilege;” an exemption for records of an agency relating to a noncriminal investigation, including: (i) complaints; investigative materials, notes, correspondence and reports; records that include the identity of confidential sources, including whistle-blowers; a record that includes information made confidential by law; and any work papers underlying an audit.

Fulton County has a duty to pursue and is pursuing an ongoing active, non-criminal investigation into the conducting of the 2020 election, which necessarily implicates and bears upon the County's proper and lawful conducting of future election cycles. It must also do this in confidence. Such information falls within not only the common-law attorney-client and work-product privileges, but also the statutory privileges identified in (b)(10) and (b)(17) of the RTKL. Disclosure of these matters, which are within the scope of the Secretary's and Intervenor's Dominion's discovery requests would violate the statutory privilege and potentially disclose protected information about said ongoing investigations.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

e. Fifth Amendment Privilege

The proposed discovery would potentially violate the individual constitutional rights of the proposed deponents and of other Fulton County members, employees, attorneys, consultants, and experts, whether identified or who would be identified through the disclosure of communications by and between same.

The Secretary and Dominion seek information from the individual proposed deponents, and have propounded additional questions concerning communications, identities, and decision-making that if divulged in the Special Master's proposed discovery proceeding could expose these individuals to investigations. Given the fact that current statements and information available by the Attorney General of Pennsylvania and the United States Department of Justice (DOJ) have characterized certain substantive statements and speech as "misinformation," and as such other intentional and unintentional communications, speech, and/or statements (oral or written) are being "targeted" as potentially criminally punishable by potential prosecution, certain disclosures as sought here could potentially violate the constitutional rights of the proposed individual witnesses / deponents, including, but not limited to those under the Fifth Amendment of the United States Constitution and Article I § 9 of the Constitution of the Commonwealth of Pennsylvania.

To be clear, Fulton County asserts that these protections apply not only to the proposed individual defendant members of the Fulton County Board of Commissioners (the proposed "deponents"), but also to any and all those whose communication and statements may have been received by individual employees, agents, part-time and full-

time contractors and subcontractors, including attorneys and experts, such that same would be protected by the Fifth Amendment to the extent that disclosure of such statements and communications (to the extent that they are not protected by other evidentiary exceptions, e.g., hearsay, etc., which Fulton County would specifically assert and which would be the subject of objection and/or additional exclusionary motions) would necessarily provoke an invocation of that privilege by such aforementioned individuals.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

APPELLANT SECRETARY'S INTERROGATORIES

1. Describe in detail how it was decided that Speckin Forensics would conduct the Speckin Inspection, including by identifying who decided that an inspection, examination, analysis, and/or imaging of the Voting Machines should be performed after January 14, 2022, who recommended that Speckin Forensic be selected to conduct the Speckin Inspection, when that recommendation was made, on what basis that recommendation was made, and who selected Speckin Forensics to conduct the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

2. Did the Fulton County Board of Elections vote on whether to allow the Speckin Inspection? If so, identify:

- a) The date of the vote.
- b) Where the vote occurred.
- c) Whether the vote took place as part of a publicly noticed meeting of the Board of Election.
- d) All individuals who witnessed the vote.
- e) The specific members of the Board of Elections who participated in the vote
- f) How each such member of the Board of Elections voted (*i.e.*, to allow the Speckin Inspection or not to allow the Speckin Inspection).

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

3. Was any public notice of the Speckin Inspection provided before September 21, 2022? If so, identify the date of any such notice. For each such date, describe the form and content of the notice provided on that date and identify who provided the notice.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

4. Identify the date or dates on which the Speckin Inspection took place. If the Speckin Inspection took place over multiple dates, describe the specific activities that took place on each such date.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

5. Identify all locations at which the Speckin Inspection took place. If the Speckin Inspection took place at multiple locations, describe the specific activities

that took place at each such location.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous

6. Describe in detail everything that Speckin Forensics did as part of the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous

7. Identify the specific Speckin Forensics employees and/or agents who participated in the performance of the Speckin Inspection, and describe the specific actions each such person took.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication

between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

8. Identify all persons or entities other than Speckin Forensics who participated in the performance of, or otherwise took actions to enable, the Speckin Inspection, and describe the specific actions each such person or entity took.

RESPONSE:

To the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

9. Identify all individuals who witnessed the Speckin Inspection or any part of it.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

10. For each of Commissioner Ulsh, Commissioner Bunch, and Commissioner Shives, identify the date the Commissioner first learned that the Speckin Inspection would occur. If the Commissioner was not aware of the impending Speckin Inspection prior to its occurrence, so state, and identify the date

that the Commissioner first learned that the Speckin Inspection had occurred. To the extent it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

11. For each of Commissioner Ulsh, Commissioner Bunch, and Commissioner Shives, identify all persons, including but not limited to attorneys, with whom that Commissioner has communicated regarding the Order entered by the Supreme Court of Pennsylvania in this Action on January 14, 2022, the Order entered by the Supreme Court of Pennsylvania in this Action on January 27, 2022, or the Injunction (including but not limited to communications with one or more of the other two Commissioners) and the date on which each such communication took place. If it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the pleadings and public records in the underlying litigation and in the other litigation in which Fulton County is involved with Dominion speaks for itself, and in addition to the standard response above, this request is overly broad and burdensome in that its reference to communication between Fulton County(and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

12. For each of Commissioner Ulsh, Commissioner Bunch, and Commissioner Shives, identify all persons, including but not limited to attorneys, with whom that Commissioner has communicated regarding the Speckin Inspection (whether before or after it took place) and the date on which each such communication took place. If it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

13. Identify all individuals who communicated, directly or indirectly, with Speckin Forensics on behalf of any of the Petitioners, and the date on which each such communication took place. If it is not possible to specify an exact date, provide an approximate date with as much specificity as possible.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication

between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

14. Did Speckin Forensics receive notice of the Injunction before the Speckin Inspection was performed? If so, identify the date(s) Speckin Forensics received notice of the Injunction, the form of that notice, the specific individual(s) who received that notice, and, if applicable, the specific individual(s) who provided that notice.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

15. Identify all persons who entered into a contract with Speckin Forensics relating to the Speckin Inspection. Identify all individuals who signed any such contract and, if applicable, the entity on behalf of which each such individual signed.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

16. Identify all sources of funding for the Speckin Inspection, including by identifying all persons who paid or otherwise compensated Speckin Forensics, or from whom Speckin Forensics expects or is owed payment, in connection with the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

17. Identify all attorneys who have represented or otherwise provided legal advice to Petitioners in connection with this Action on or after January 14, 2022, regardless of whether such attorneys have entered an appearance in this Action. For each such attorney, identify the period of time during which the attorney has represented or otherwise provided legal advice to Petitioners in connection with this Action.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

18. For each attorney identified in your answer to Question 17 above, state whether that attorney has been, or is expecting to be, paid by any person for his or her representation of Petitioners or any legal advice he or she has provided to Petitioners, and if so, identify all persons from which that attorney has received any such payment(s) or from which that attorney expects to receive any such payment(s).

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

19. Identify each and every person with information that Petitioners may use to their support their defenses to the Secretary's Application for an Order Holding Appellees in Contempt and Imposing Sanctions and the subjects of the information each such individual has.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

20. Identify each person you expect to call as an expert witness at the evidentiary hearing before the Special Master in this Action, which is currently scheduled to begin on November 9, 2022. As to each such expert witness, state:

- (a) the schools the expert has attended, including years of attendance and degrees received;
- (b) the professional designations, licenses or certifications that the expert holds;
- (c) the professional associations to which the expert belongs;
- (d) the expert's employment experience related to particular field(s) of expertise, including names and addresses of all employers and the years of employment;
- (e) all publications authored by the expert;
- (f) every case in which the expert witness has testified as an expert at trial, in a court or administrative hearing, or by deposition;
- (g) the subject matter to which the witness is expected to testify;
- (h) the substance of the facts to which the witness is expected to testify;
- (i) the substance of the opinions to which the witness is expected to testify; and
- (j) a summary of the grounds for each opinion to which the witness is expected to testify.

RESPONSE:

In addition to the standard response noted above, and to ,and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and

that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

21. For each Request for Admission in the Secretary's Requests for Admission that you denied or admitted with qualification, identify and describe in detail each and every basis for your denial or qualified admission.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

Respectfully submitted by:

/s/ Thomas J Carroll
Attorney ID: 53296
Attorney for Petitioners
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Date: November 3, 2022

EXHIBIT 7

IN THE SUPREME COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**FULTON COUNTY'S RESPONSE TO THE
SECRETARY'S REQUESTS TO ADMIT**

INTRODUCTION

Fulton County hereby asserts a standard objection and response, which applies to all of the Secretary's Requests to Admit below. Where necessary, specific responses to the individual requests are provided in the response section below the number, and supplement, but do not substitute for, nor in any way waive, any of the objections, exemptions, exclusions, privileges, or protections asserted by Fulton County (and necessarily by its individual members, employees, attorneys, experts, and/or consultants) in the standard objection.

Standard Blanket Objections and Responses

Fulton County's ostensible production of documents, disclosures and/or testimony under the discovery that has been propounded by the Secretary and Intervenor Dominion would constitute automatic and immediate waiver of Fulton County's rights to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County, as follows:

- i. in the underlying litigation in this case in matters unrelated to the current application for contempt;
- ii. under Pennsylvania's Right to Know Law (RTKL), 65 Pa. Stat. Ann. § 67.101, et seq.;
- iii. in the currently pending breach of contract and breach of warranty action by and between Fulton County and Dominion (**ATTACHMENT A**, Notice of Removal of Fulton County's Breach of Contract Action, filed October 18, 2022, U.S.D.C. Middle Dist. Pa., Case No. 1:22-cv-01639-SHR);
- iv. in the currently pending administrative appeal by Fulton County concerning Intervenor Dominion's request for information under the aforementioned RTKL **ATTACHMENT B**, Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).

Underlying Litigation

Fulton County's underlying lawsuit (277 MD 2021) contains five counts: (1) the Secretary unlawfully decertified Fulton County's two electronic voting machines; (2) the Pennsylvania Election Code (Election Code) expressly authorized the County to inspect its electronic voting devices as part of its statutory duty to ensure the safe and honest conducting of elections in the County; (3) a directive of the Secretary, which purported to prohibit all county boards of elections from inspecting their electronic voting devices with the assistance of a third-party consultant, violated Section 302 of the Election Code, 25 P.S. §2642; (4) the Secretary unlawfully withheld funding from the County that it needs to acquire replacement electronic voting devices; and (5) a request for injunctive relief to restore the status quo that existed prior to the Secretary's unlawful decertification of the county's voting machines.

The discovery sought from Fulton County in this proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying matter. This would include communications and consultations made in "closed door" conferences and meetings in which Fulton County discussed with legal counsel and consultants all aspects of the instant appeal, including all communications and consultations made prior to the filing of the underlying lawsuit, the instant appeal, and the contempt application. The underlying litigation remains pending.

The discovery sought from Fulton County in this proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying litigation.

Any and all exemptions, exclusions, privileges, and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this

exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise these exemptions, exclusions, protections, and/or privileges, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

Right to Know Privileges and Protections

Fulton County is a "local agency" within the meaning of the Pennsylvania's "Right to Know Law." 65 Pa. Stat. Ann. § 67.101, et seq. "Local agency" is defined as "[a]ny of the following: (1) Any political subdivision.... 65 Pa. Stat. Ann. § 67.102.

Under Section 305(a) of the RTKL, information in an agency's possession is presumed to be public record unless: (1) it is exempt under Section 708 of the RTKL; (2) it is protected by a privilege; or (3) it is exempt from disclosure under any other federal or state law or regulation or judicial order or decree. 65 P.S. § 67.305(a). 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 Pa. Stat. Ann. § 67.708. Once an exemption, exclusion, protection, or privilege is asserted and established, the burden is on the requesting party to prove that there is no privilege. See, e.g., *Office of the Governor v. Davis*, 122 A.3d 1185, 2015 Pa. Commw. LEXIS 363 (Pa. Commw. Ct. 2015), citing 65 Pa. Stat. Ann. § 67.102.

In other words, the local agency has prima facie due process rights to benefit from the burdens of proof that would be placed on the party requesting records from a public agency and the applicable presumptions once a particular exemption, exclusion, protection, or privilege is asserted and established.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise exemptions, exclusions, protections, and/or privileges which would otherwise be available to Fulton County under the RTKL.

Fulton County has the right to object to all requests made under Pennsylvania's Right to Know Law (RTKL), and has subsequent administrative, legal and appellate rights with respect to any preliminary objections and refusals to provide such information that may be included in such requests. As such, these administrative and legal rights and Fulton County's right to due process in the RTKL context cannot be circumvented and destroyed by the required disclosure of such information to the extent that it demands any and all such information that would be subject to full panoply of protections afforded to Fulton County's under the RTKL.

Fulton County also has the benefit of certain exemptions and exclusions from public disclosure under Pennsylvania's Right to Know Law (RTKL), 65 P.S. § 67.101 et seq. These exemptions and exclusions are not only relevant to Fulton County's existing rights to protect certain information from public disclosure on an ongoing basis, in other words, information that may be disclosed during the proposed discovery that would otherwise not be available under one or more exemptions in the RTKL, but as explained below, to the exemptions and protections it has asserted in the ongoing RTKL appeal involving Intervenor Dominion. (Court of Common Pleas of Fulton County, Case No. 204 of 2022-C; OOR Docket No. AP 2022-1542). See also ATTACHMENT B, Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).

In addition to Fulton County's rights to preserve its due process in any current or future RTKL proceeding, Fulton County also has the right to preserve its ability to raise any and all exemptions and/or exclusions from public disclosure which would otherwise be available to it under the RTKL.

Any and all written production, documents, information, and/or testimony that Fulton County might divulge in this proceeding in response to the Secretary's and Intervenor Dominion's discovery requests is prima facie protected and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

The Special Master's October 24 Order envisions a public hearing aired on public television in which these issues and the evidence ostensibly to be gleaned during her ordered discovery will be immediately publicized.

Such information, which if disclosed in the course and scope of the discovery sought (information, documents, written responses, answers, and testimony), and which are and would be exempt and excluded from Fulton County's *preliminary and absolute* rights to object to said disclosures under the RTKL, are equally protected in the

instant case to the same extent, as such sought after information would become available as “public information” contrary to Fulton County’s legal rights and responsibilities to protect said information from public disclosure, both preliminarily and absolutely, under the RTKL.

Moreover, Fulton County is currently prosecuting an appeal in a case in which Dominion is the requester of information under the RTKL.

A. Statutory and Common Law Exemptions, Privileges and Protections Under the RTKL

The following is a non-exhaustive list of the statutory and common-law exemptions, exclusions, privileges, and protections afforded to a local agency under the RTKL.

Any and all exemptions, exclusions, privileges, and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise these exemptions, exclusions, protections, and/or privileges, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

1. Personal Information

The RTKL law creates exemptions for certain information contained in public records related to personal information. The RTKL exempts the disclosure of a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” Section 708(b)(1)(ii) of the Right-to-Know Law, 65 P.S. § 67.708(b)(1)(ii). See also, Pa. State Educ. Ass’n ex rel. Wilson v. Pa. Office of Open Records, 4 A.3d 1156, 1160 (Pa. Cmwlth. 2010). Specifically, § 708(b)(6)(i)(A) identifies exemptions for the

following information: (A) A record containing *all or part* of a person's...home, cellular or personal telephone numbers, [and] personal e-mail addresses.... (emphasis added). *Id.* To the extent that discovery in this proceeding would include any two-way communications with or by or from or to individuals that are part of the discovery sought, such communications are subject to the exemption in subsection (b)(6)(i)(A).

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

2. Records Relating to Fulton County Employees

Section 708(b)(7) of the RTKL exempts from access by a requester certain "records relating to an agency employee." *Office of Gen. Counsel v. Bumsted*, 247 A.3d 71, 77 (Pa. Cmwlth. 2021).

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

3. Security Measures, Practices and Procedures and Safety

Subsection (b)(3) and (4) of the RTKL exempts:

[R]ecords, the disclosure of which creates a *reasonable likelihood* of endangering the safety or the physical security of... information storage system[s], which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including...technology, [and] communication...systems[,] and

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security. 65 Pa. Stat. Ann. § 67.708(b)(3) and (4).

To the extent that the discovery sought in this proceeding contains a demand for communications and/or documentation and/or information that is protected from disclosure because it relates to or touches upon a public body's ongoing security measures, methods, practices, and procedures, and/or regarding security and safety of persons, property, confidentiality, integrity, and/or availability of computer and information systems, such is protected from disclosure to the same extent as the RTKL, would protect such information.

Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this exemption and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

4. Other Statutory and Common-Law Privileges and Protections

The statutory privileges in the RTKL itself are also copasetic with common-law jurisprudence regarding certain privileges and protected work-product and deliberative processes.

Section 102 of the RTKL generally defines "privilege" as: "The attorney work-product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court incorporating the laws of this Commonwealth." See *Bagwell v. Pa. Dep't of Educ.*, 103 A.3d 409, 414 (Pa. Cmwlth. 2014).

The attorney-client and work-product privileges implicate rights rooted in public policy concerns and that the claims will be irreparably lost if review is postponed. *Brown v. Greyhound Lines, Inc.*, 2016 PA Super 108, 142 A.3d 1, 8

a. Attorney-Client Privileged

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

b. Work-Product Protection

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

c. Deliberative Processes Privilege

In addition, the work-product / deliberative processes protections, while closely related to the attorney-client privilege, provides *broader protections*. *Levy v. Senate of Pa. (Levy III)*, 94 A.3d 436 (Pa. Cmwlth. 2014); *Dages v. Carbon Cnty.*, 44 A.3d 89 (Pa. Cmwlth. 2012). Confidential information flows from the client to the attorney, and vice versa, in the attorney-client relationship. *Gillard v. AIG Ins. Co.*, 609 Pa. 65, 15 A.3d 44 (Pa. 2011). The attorney-client privilege protects such confidential communications. *Id.* By contrast, work-product privilege applies to records that are the work-product of an attorney, and so, extend to the product of an attorney's representative secured in anticipation of litigation. *Rittenhouse v. Bd. of Sup'rs*, 41 A.3d 975, 2012 Pa. Comwlth. Unpub. LEXIS 248 (2012) (applying Pa.

R.C.P. No. 4003.3 (work product extends to investigator's reports prepared for litigation).

Subsection 708(b)(10), 65 Pa. Stat. Ann. § 67.708(b)(10), exempts communications and information concerning “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.” (emphasis added).

Information that constitutes “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice” is protected as “deliberative.” *In re Interbranch Comm’n on Juvenile Justice*, 605 Pa. 224, 238, 988 A.2d 1269, 1277-78 (2010) (quoting plurality opinion in *Commonwealth v. Vartan*, 557 Pa. 390, 399, 733 A.2d 1258, 1263 (1999)).

This exemption would extend to privileged communications by and between Fulton County and individuals and entities whose reports and information have been or will be used by the County to formulate policies and procedures; and, specifically, with respect analyzing past elections and conducting future elections.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

d. Investigatory Protection

Section 708(b)(17), 65 Pa. Stat. Ann. § 67.708(b)(10), provides another “statutory privilege;” an exemption for records of an agency relating to a noncriminal investigation, including: (i) complaints; investigative materials, notes, correspondence and reports; records that include the identity of confidential sources, including whistle-blowers; a record that includes information made confidential by law; and any work papers underlying an audit.

Fulton County has a duty to pursue and is pursuing an ongoing active, non-criminal investigation into the conducting of the 2020 election, which necessarily implicates and bears upon the County’s proper and lawful conducting of future election cycles. It must also do this in confidence. Such information falls within not only the common-law attorney-client and work-product privileges, but also the statutory privileges identified in (b)(10) and (b)(17) of the RTKL. Disclosure of these matters, which are within the scope of the Secretary’s and Intervenor’s Dominion’s discovery requests would violate the statutory privilege and potentially disclose protected information about said ongoing investigations.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County’s disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

e. Fifth Amendment Privilege

The proposed discovery would potentially violate the individual constitutional rights of the proposed deponents and of other Fulton County members, employees,

attorneys, consultants, and experts, whether identified or who would be identified through the disclosure of communications by and between same.

The Secretary and Dominion seek information from the individual proposed deponents, and have propounded additional questions concerning communications, identities, and decision-making that if divulged in the Special Master's proposed discovery proceeding could expose these individuals to investigations. Given the fact that current statements and information available by the Attorney General of Pennsylvania and the United States Department of Justice (DOJ) have characterized certain substantive statements and speech as "misinformation," and as such other intentional and unintentional communications, speech, and/or statements (oral or written) are being "targeted" as potentially criminally punishable by potential prosecution, certain disclosures as sought here could potentially violate the constitutional rights of the proposed individual witnesses / deponents, including, but not limited to those under the Fifth Amendment of the United States Constitution and Article I § 9 of the Constitution of the Commonwealth of Pennsylvania.

To be clear, Fulton County asserts that these protections apply not only to the proposed individual defendant members of the Fulton County Board of Commissioners (the proposed "deponents"), but also to any and all those whose communication and statements may have been received by individual employees, agents, part-time and full-time contractors and subcontractors, including attorneys and experts, such that same would be protected by the Fifth Amendment to the extent that disclosure of such statements and communications (to the extent that they are not protected by other evidentiary exceptions, e.g., hearsay, etc., which Fulton County would specifically assert and which would be the subject of objection and/or additional exclusionary motions) would necessarily provoke an invocation of that privilege by such aforementioned individuals.

Any and all privileges and/or protections that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected by this privilege or protection, and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding.

Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to due process and to its rights to raise this exemption, exclusion, protection, and/or privilege, which would otherwise be available to Fulton County under the RTKL, in this proceeding, as well as in the pending RTKL appeal and breach of contract action involving Intervenor Dominion.

REQUESTS FOR ADMISSION

1. Admit that, on or about January 14, 2022, Petitioners received notice of the Order that Justice Wecht entered in this Action on January 14, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, Petitioners received Notice of the January 14, 2022 order.

2. Admit that, on or about January 27, 2022, Petitioners received notice of the Order that the Supreme Court of Pennsylvania entered in this Action on January 27, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, Petitioners received Notice of the January 27, 2022 order

3. Admit that, before July 2022, Petitioners had received notice of the Order that the Supreme Court of Pennsylvania entered in this Action on January 27, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, this request is repetitive.

4. Admit that Petitioners were aware in July 2022 that the Secretary's appeal in this action remained pending.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, Petitioners were aware of the underlying litigation in this case.

5. Admit that Petitioners were aware at the time the Speckin Inspection occurred that the Injunction remained in effect.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

6. Admit that Petitioner Ulsh participated in the decision to allow the Speckin Inspection to occur and approved that decision.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

7. Admit that Petitioner Bunch participated in the decision to allow the Speckin Inspection to occur and approved that decision.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

8. Admit that Petitioners did not provide any public notice of the Speckin Inspection before it occurred.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

9. Admit that Petitioners did not provide any public notice of the Speckin Inspection before September 21, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

10. Admit that Petitioners did not notify Dominion Voting Systems or the Secretary of the Speckin Inspection before it occurred.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication

between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

11. Admit that Petitioners did not notify Dominion Voting Systems or the Secretary of the Speckin Inspection before September 21, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

12. Admit that the Fulton County Board of Elections did not vote on whether to conduct or allow the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

13. Admit that all of the actions that the Speckin Report states that Speckin Forensics performed as part of the Speckin Inspection were in fact performed by Speckin Forensics as part of the Speckin Inspection.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to

having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

14. Admit that, as part of the Speckin Inspection, Speckin Forensics removed six hard drives from the Voting Machines.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

15. Admit that, as part of the Speckin Inspection, Speckin Forensics connected external devices to each of the six hard drives removed from the Voting Machines.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

16. Admit that, as part of the Speckin Inspection, Speckin Forensics copied five of the hard drives removed from the Voting Machines and thereby created an image of each hard drive, which was saved on a separate drive.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

17. Admit that, after imaging each of the five hard drives, Speckin Forensics removed the images it had created from Pennsylvania.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

18. Admit that all of the actions described in Request Nos. 14-17 above were performed in July 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of

its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

19. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Ulsh's authorization.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

20. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Ulsh's permission.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

21. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Bunch's authorization.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

22. Admit that all of the actions that Speckin Forensics performed as part of the Speckin Inspection were performed with Commissioner Bunch's permission.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

23. Admit that Speckin Forensics is a private entity.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

24. Admit that, prior to January 14, 2022, Fulton County had never contracted with Speckin Forensics or otherwise engaged Speckin Forensics to perform any services.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

25. Admit that Speckin Forensics has not been directly involved in Fulton County's conduct of any elections.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

26. Admit that Speckin Forensics is not a Voting System Test Lab accredited by the U.S. Election Assistance Commission.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to

communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

27. Admit that Speckin Forensics is not a National Laboratory utilized by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the Speckin Report has already been produced in the breach of contract action, and that action explains the purpose of the Speckin Report, and Fulton County having already admitted to having the Speckin Report prepared in the normal course of its due diligence and in execution of its duties and responsibilities, and that speaks for itself, and in addition to the standard objection above, this request is overly broad and burdensome in that its reference to communication between Fulton County (and presumably all members, employees, attorneys, consultants, and/or experts) and any other person is absurdly onerous.

28. Admit that the document attached as Exhibit B to the Secretary's Application for an Order Holding Appellees in Contempt and Imposing Sanctions is a true and correct copy of an Opinion and Order entered in *King v. Whitmer*, No. 2:20-13134 (E.D. Mich.) on August 25, 2021.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the public record speaks for itself.

29. Admit that the document attached as Exhibit E to the Secretary's Application for an Order Holding Appellees in Contempt and Imposing Sanctions is a true and correct copy of a grievance that the Governor, Attorney General, and Secretary of State of Michigan filed seeking the disbarment of "Stefanie Lynn

Junttila”—who is the same person as Stefanie L. Lambert—based on her conduct in the litigation entitled *King v. Whitmer*, No. 2:20-13134 (E.D. Mich.).

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the public record speaks for itself.

30. Admit that the document attached as Exhibit D to the Secretary’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions is a true and correct copy of the official meeting minutes for the Meeting of the Fulton County Commissioners that took place on April 12, 2022.

RESPONSE:

In addition to the standard response noted above, and to the extent that a response is required, the public record speaks for itself.

Respectfully submitted by:

/s/ Thomas J Carroll

Attorney ID: 53296

Attorney for Petitioners

LAW OFFICE OF THOMAS J CARROLL

224 King Street

Pottstown, PA, 19464

(610)419-6981

tom@thomasjcarrolllaw.com

Date: November 3, 2022

EXHIBIT 8

From: Wiygul, Robert A.
To: ["tom@thomasicarrolllaw.com"](mailto:tom@thomasicarrolllaw.com); ["libertylawyertjc"](mailto:libertylawyertjc)
Cc: ["Gallagher, Shawn N."](mailto:Gallagher, Shawn N.); Hill, John B.; Dimitrios Mavroudis; ["Boyer, Jacob B."](mailto:Boyer, Jacob B.); ["Fischer, Michael J."](mailto:Fischer, Michael J.); Romano, Karen M.; Kagedan, Eitan G.; ["jim@dsslawyers.com"](mailto:jim@dsslawyers.com)
Subject: RE: County of Fulton v. Secretary of the Commonwealth, Nos. 277 MD 2021, 3 MAP 2022 [IWOV-HASP1.FID141330]
Date: Thursday, November 3, 2022 9:22:58 PM

Mr. Carroll:

I write regarding Petitioners' responses to the Secretary's discovery requests. As pointed out in the Notice we filed this afternoon, Petitioners' responses are wholly deficient and do not reflect a good-faith effort to engage in discovery. Petitioners have refused to produce any documents, refused to admit or deny any of the Secretary's requests for admission, and refused to provide any substantive information in response to the Secretary's interrogatories. All of the Secretary's discovery requests were narrowly drawn to focus on issues of core relevance to this contempt proceeding.

As directed by the Special Master, I am writing in an effort to resolve these deficiencies without having to further involve the Court, while bearing in mind the strict deadline of noon tomorrow for filing any discovery motions. To that end, I request that Petitioners produce full and complete responses to the Secretary's interrogatories, answer the Secretary's requests for admission, and produce all documents responsive to the Secretary's requests for production by no later than 9:30 a.m. tomorrow morning. Please let me know if you are willing to schedule a call to discuss what discovery Petitioners are willing to produce. Thank you.

Best regards,
Rob

Robert A. Wiygul
[Hangley Aronchick Segal Pudlin & Schiller](#)
One Logan Square, 27th Floor
Philadelphia, PA 19103
(215) 496-7042 (phone)
(215) 568-0300 (fax)

EXHIBIT 9

From: tom@thomasjcarrolllaw.com
To: Wiygul, Robert A.
Subject: RE: County of Fulton v. Secretary of the Commonwealth, Nos. 277 MD 2021, 3 MAP 2022 [IWOV-HASP1.FID141330]
Date: Friday, November 4, 2022 9:32:19 AM

[EXTERNAL EMAIL - This message originated outside Hanglely Aronchick.]

Good morning Bob:

As you know I am working to meet all the court deadlines. I disagree with your assertions regarding Petitioner's responses. I'll get back to you as soon as possible.

Tom

From: Wiygul, Robert A. <raw@hanglely.com>
Sent: Thursday, November 3, 2022 9:23 PM
To: 'tom@thomasjcarrolllaw.com' <tom@thomasjcarrolllaw.com>; 'libertylawyertjc' <libertylawyertjc@protonmail.com>
Cc: 'Gallagher, Shawn N.' <shawn.gallagher@bipc.com>; Hill, John B. <jbh@hanglely.com>; Dimitrios Mavroudis <DMavroudis@tlgattorneys.com>; 'Boyer, Jacob B.' <jboyer@attorneygeneral.gov>; 'Fischer, Michael J.' <mfischer@attorneygeneral.gov>; Romano, Karen M <kromano@attorneygeneral.gov>; Kagedan, Eitan G. <egk@hanglely.com>; 'jim@dsslawyers.com' <jim@dsslawyers.com>
Subject: RE: County of Fulton v. Secretary of the Commonwealth, Nos. 277 MD 2021, 3 MAP 2022 [IWOV-HASP1.FID141330]

Mr. Carroll:

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Best regards,
Rob

Robert A. Wiygul
[Hanglely Aronchick Segal Pudlin & Schiller](#)

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(215) 496-7042 (phone)
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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

PROOF OF SERVICE

I hereby certify that this 4th day of November, 2022, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Service

Served: Brendan Patrick Lucas
Service Method: eService
Email: brendan.lucas@bipc.com
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Representing: Intervenor Dominion Voting Systems, Inc.

Served: James M. Stein
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Petitioner Fulton County Board of Elections
Petitioner Randy H. Bunch
Petitioner Stuart L. Ulsh

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

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Petitioner Fulton County Board of Elections
Petitioner Randy H. Bunch
Petitioner Stuart L. Ulsh

/s/ Robert Andrew Wiygul

(Signature of Person Serving)

Person Serving: Wiygul, Robert Andrew
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Address: Hangle Aronchick Et Al
18TH Cherry Sts Fl 27
Philadelphia, PA 19103
Representing: Respondent Secretary of the Commonwealth

EXHIBIT 2

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

County of Fulton, Fulton County)
 Board of Elections, Stuart L.)
 Ulsh, in his official capacity)
 as County Commissioner of)
 Fulton County and in his) No. 277 M.D. 20201
 capacity as a resident,) No. 3 MAP 2022
 taxpayer and elector in Fulton)
 County, and Randy H. Bunch, in)
 his official capacity as County)
 Commissioner of Fulton County)
 and in his capacity as a)
 resident, taxpayer and elector)
 of Fulton County,)
 Petitioners/Appellees,)
)
 vs.)
)
 Secretary of the Commonwealth.)
 Respondent/Appellant)
)

Remote videoconference hearing held in the above matter on Friday, November 4, 2022, before Renee Cohn Jubelirer, President Judge of the Commonwealth Court of Pennsylvania Appointed as Special Master (participating via videoconference), commencing at 2:00 p.m.

Stenographically recorded and transcribed by Lisa Taylor, Registered Professional Reporter, Pennsylvania Notary Public, and eNotary (participating via videoconference).

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1 COURT PROCEEDING - NOVEMBER 4, 2022

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COURT PROCEEDING - NOVEMBER 4, 2022

E X A M I N A T I O N I N D E X

WITNESS:

PAGE:

(No Witnesses)

E X H I B I T I N D E X

EXHIBIT: DESCRIPTION:

PAGE:

(None Marked)

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 (Remote videoconference hearing
3 commences, 2:00 p.m.)

4 - - -

5 THE COURT: Okay. Good. Can you hear me?

6 MR. CARROLL: Yes, Your Honor.

7 THE COURT: Good. Thank you. Just having
8 a couple little tech issues, but I think I should
9 be okay now.

10 So we have counsel; our court reporter,
11 Lisa Taylor -- thank you very much -- some staff
12 attorneys; counsel for Secretary, counsel for the
13 County; counsel for Dominion.

14 And Attorney Boyer, you are...?

15 MR. BOYER: I'm also counsel for the
16 secretary. Although, Mr. Wiygul will be handling
17 the hearing. So unless Your Honor has a need to
18 hear me, I will not otherwise be speaking.

19 THE COURT: Wonderful. Thank you. Then
20 welcome.

21 I wanted to have this -- this kind of
22 status conference to go over where we are
23 currently given the filings that we've seen, the
24 orders for discovery that we've had, and -- and I
25 knew that we were expecting some documents to be

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 filed today at noon.

3 So where to begin.

4 We have in front of us both the
5 Secretary's application for discovery sanctions
6 as well as a filing from the County that -- well,
7 again, a motion for predicate legal rulings.

8 You know, I'm going to first maybe talk
9 with counsel Attorney Carroll. If I could
10 (dropped audio) to ask -- well, I guess we'll
11 start out with why haven't you complied with the
12 order that you've been -- that has been issued?

13 I think we had already indicated that the
14 global challenges and predicate legal ruling
15 can't and aren't going to occur.

16 MR. CARROLL: Yeah, you're -- for me,
17 you're breaking up a lot, Your Honor.

18 THE COURT: So you're unable to hear me?

19 MR. CARROLL: It broke up a lot as you're
20 speaking.

21 THE COURT: So let's get the IT.

22 (Off the record.)

23 THE COURT: If you can't hear me, please
24 somebody say something. As I say, I'm using a
25 different -- I'm using a different piece of

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 technology because the camera on my other didn't
3 work.

4 Okay. Well, then let me start with still
5 asking Attorney Carroll, you had been ordered to
6 provide -- can you -- can you hear me?

7 MR. CARROLL: It's still breaking up very
8 badly.

9 THE COURT: Ms. Taylor, can you hear me,
10 or is it still breaking up?

11 COURT REPORTER: It's breaking up a
12 little.

13 THE COURT: Okay. Let me stay very still
14 and not move.

15 If I sit still, can you hear me better?

16 MR. CARROLL: Yeah, it seems to be.

17 THE COURT: Attorney Carroll, you've
18 requested sort of legal -- legal determinations.
19 You think that there are issues of law here as
20 opposed to issues of fact, but the Supreme Court
21 has ordered an evidentiary record to be made not
22 once but twice.

23 MR. CARROLL: And my response would be
24 that we provided responses, we logged our
25 objections, and we filed a motion explaining our

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 position as to why we have responded in the way
3 we did.

4 THE COURT: So you've -- you've filed
5 objections. Did you file a privilege log?

6 MR. CARROLL: We filed that in the motion
7 of (garbled audio) --

8 COURT REPORTER: Hold on. Hold on. Hold
9 on. Hold on. You're breaking up.

10 MR. CARROLL: I can't hear you either.

11 (Off the record.)

12 THE COURT: Okay. I will try to talk and
13 keep my face still so I don't move anything.

14 Okay. Attorney Carroll, you were going to
15 explain that you have -- your explanation is that
16 you have in fact -- okay.

17 And this is a good suggestion. If you're
18 not speaking -- I think almost everybody is mute
19 if they're not speaking.

20 MR. CARROLL: You continue to break --

21 THE COURT: (Indiscernible due to
22 overtalking) as well.

23 MR. CARROLL: -- up.

24 You could -- Your Honor, I'm hearing,
25 like, every third word.

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2 COURT REPORTER: Off the record.

3 (Off the record.)

4 THE COURT: Mr. Carroll, I'll let you
5 explain.

6 MR. CARROLL: You said you asked me
7 something, but I didn't hear what you asked.

8 THE COURT: I asked what you -- you -- you
9 say you've complied with our order. I'd like to
10 get more specifics with regard to that.

11 MR. CARROLL: I would say the privilege
12 logs occur after we learn what discovery still
13 is, which we can only determine after legal
14 rulings on Fulton County's legal rights vis-a-vis
15 Dominion in the underlying litigation as well as
16 the other pending matters in which Dominion is an
17 adverse party.

18 There are several cases, including a
19 breach of contract case, that Dominion is
20 involved with (garbled audio) --

21 COURT REPORTER: Hold on. Hold on. Hold
22 on. Hold on. You are breaking up. I don't know
23 if it's because you're talking super fast. I'm
24 having a hard time understanding you.

25 MR. CARROLL: On -- on the other side,

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2 when you were just speaking, every other word
3 comes in.

4 COURT REPORTER: Yeah, this is -- I mean,
5 as far as a record, this is just not going to
6 work from my perspective.

7 (Off the record.)

8 THE COURT: Thank you.

9 I guess I should say that we're here to
10 discuss today County of Fulton, Fulton County
11 Board of Elections, Stuart L. Ulsh, in his
12 official capacity as County Commissioner of
13 Fulton County, et al., Petitioners and Appellees,
14 versus the Secretary of the Commonwealth
15 Respondent/Appellant, and it's in numbers 277
16 M.D. 2021 and 3 MAP 2022.

17 And this is a status conference that we
18 are having really to see where we are at this
19 date when -- in accordance with our rule to show
20 cause and the dates therein as they have been
21 extended and amended by both the Pennsylvania
22 Supreme Court and this Court and as we proceed
23 toward developing, as the Supreme Court has
24 ordered, not once but twice, the creation of an
25 evidentiary record as well as recommendations

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 that I am to prepare for them in my role as
3 Master in this matter.

4 And so today we received two filings: the
5 Secretary's application for discovery sanctions
6 and Fulton County's motion for predicate legal
7 rulings and to exclude certain discovery
8 requested by the Secretary.

9 And so I wanted to ask Mr. Carroll if he
10 could please explain in what way he believes his
11 responses have been in compliance with our order
12 and -- and as amended by both us and the Supreme
13 Court.

14 MR. CARROLL: Yes, Your Honor, thank you.

15 It would be our position that you can --
16 we cannot provide a privilege log where there are
17 matters -- other matters pending involving
18 Dominion, who is the intervener here, and even a
19 privilege log would potentially prejudice Fulton
20 County's rights in all of those underlying cases.

21 We're asking for a motion for a stepped
22 approach. Otherwise, there's really no way we
23 can properly disclose, without violating our
24 client's rights in all those other cases, to --
25 to deserve this -- I think we deserve legal

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2 rulings before we agree to this.

3 We also challenge the scope of the Supreme
4 Court's order appointing the Master and because
5 legal rulings are automatically appealable.

6 We have predicate legal questions that
7 have to be resolved, in our opinion.

8 THE COURT: Could you please be more
9 specific and explain how.

10 I mean, you know that you did request --
11 you believed that there were issues of law. You
12 went to the Supreme Court, and they sent it back
13 to me and reiterated the discovery schedule and
14 reiterated the need to comply with that discovery
15 schedule.

16 So could you please explain to me how and
17 very specifically what issues and what questions
18 are going to create prejudice for your clients.

19 I'm not hearing anything.

20 Is Mr. Carroll still there?

21 MR. CARROLL: Yes. I'm sorry, Your Honor.
22 I'm just -- I was just looking at something here
23 in terms of trying to answer you.

24 Our clients would be tremendously priv- --
25 prejudiced by even these questions being asked

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 with all this underlying litigation going on.

3 The scope of the discovery on this matter
4 should be very limited to this -- this -- I'm
5 sorry. I -- I misspoke there.

6 But the Supreme Court sent it back without
7 prejudice. So they sent it back without
8 prejudice, so there was -- there's no reason why
9 we shouldn't have been able to argue that these
10 positions, these requests for discovery are
11 basically putting our clients into a position of
12 violating their client privilege, the work
13 product privilege, and they are underlying
14 involving litigation with Fulton County a breach
15 of contract case that Dominion has -- has been
16 filed against Dominion.

17 And by the way, it was the Secretary of
18 State who decided to try to bring a motion to
19 dismiss an unrelated case in his filings this
20 first time.

21 I believe the Master can rule on those --
22 on those questions of law that we have raised and
23 we briefed them. I know we just submitted that
24 today. I mean, this has been a very quick
25 process.

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2 THE COURT: Well, your first argument I
3 see is there is no factual issue in the contempt
4 proceeding requiring discovery, and yet the
5 Supreme Court, not once but twice, told us to
6 create an evidentiary record in order to resolve
7 that very -- that very issue.

8 How can you argue that there's no factual
9 issue?

10 MR. CARROLL: I think at this point you
11 have -- oh, no. Did I just lose you?

12 Okay. This has moved really beyond a
13 status conference, in my opinion, and a full
14 hearing, and I think we would need time to brief
15 these things in terms of how this has developed.

16 Most of these discovery requests overlap
17 protected and privileged information, and our
18 clients have a right to assert that privilege in
19 terms of these -- this litigation.

20 They're just trying to open up the door on
21 other cases that are unrelated to their request
22 for this.

23 THE COURT: Okay. I gave you -- in our
24 order, we set forth the way you were supposed to
25 give effect to your objections. It was not to be

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 global. It was to be specific, question by
3 question, and you did not avail yourself of that
4 opportunity.

5 MR. CARROLL: Even -- even a privilege log
6 would -- would reveal privileges. That's my
7 objection. There's inherent -- there's an
8 inherent conflict of interest in all of this.

9 THE COURT: Okay. I am -- yes, and let me
10 ask you how.

11 MR. CARROLL: Because Dominion cannot be
12 the beneficiary of discovery from -- from this
13 process through a waiver of their -- of Fulton
14 County's rights because of this process in these
15 underlying cases.

16 THE COURT: That sounds very general to
17 me. Can you be more specific?

18 What we're looking at is purely whether or
19 not an order of the Supreme Court -- whether your
20 clients complied with an order of the Supreme
21 Court.

22 Let me talk with the Secretary's attorney.

23 You filed a motion requesting discovery
24 sanctions, and I see that you've asked for facts
25 to be established as deemed admitted, deemed as

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 to be admissions.

3 And, well, if you want to make some
4 arguments as to why you believe they have not
5 complied with our orders.

6 MR. WIYGUL: Yes. Thank you, Your Honor.
7 Let me -- let me ask first, in light of the
8 earlier technical difficulties, is everyone able
9 to hear me okay?

10 Okay. Thank you.

11 I think our -- our papers probably speak
12 for themselves and speak adequately on this, but
13 very briefly, it -- it -- we have concluded with
14 regret that Petitioners are simply unwilling to
15 participate in the discovery process.

16 MR. CARROLL: I'm having -- I'm having a
17 hard time hearing Mr. Wiygul at this point.

18 THE COURT: I can hear him.

19 Ms. Taylor, can you hear him?

20 COURT REPORTER: Yes.

21 MR. CARROLL: Can -- can he restate that
22 for me?

23 THE COURT: Yes.

24 COURT REPORTER: Maybe just go slow. That
25 seems to help a little.

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2 MR. WIYGUL: I will try to keep that in
3 mind. Thank you.

4 The Secretary has concluded with regret,
5 based on Petitioner's repeated failures to comply
6 with the Special Master's order or the Supreme
7 Court's order and their failure to provide any
8 meaningful discovery whatsoever in response to
9 the Secretary's discovery requests,
10 notwithstanding the repeated extensions that have
11 been granted to Petitioners, Petitioners are
12 unwilling to engage in discovery in good faith.

13 And I would be happy to go through the
14 discovery requests and objections or responses
15 individually, but I think they speak for
16 themselves.

17 Petitioners have continued to make global
18 assertions of privilege without explaining how
19 any specific discovery request calls for the
20 production of privileged information.

21 And if I could just note a few, Your
22 Honor, for the record, because I think that -- I
23 hope that it is clear that the Secretary crafted
24 her discovery requests mindful of the elements of
25 contempt and the elements of the other types of

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 sanctions that the Secretary is seeking in her
3 applications and also mindful of the potential
4 privilege issues.

5 So, for example, when we ask for the
6 substance of communications that Petitioners had
7 had with respect to both the Supreme Court's
8 injunction and the Speckin inspection, matters
9 that I think are indisputably of core relevance
10 to this proceeding, we specifically excluded the
11 substance of any communications between
12 Petitioners and their counsel. So we were very
13 mindful of that.

14 We also -- and I think putting that aside,
15 even though we were careful with respect to
16 subject areas that could potentially trench on
17 privilege to try to avoid that, most of our
18 requests come any- -- come nowhere near any
19 privilege issue.

20 Again, just by way of example, if I can
21 cite to a few, I'm looking at Fulton County's
22 response to the Secretary's request for
23 production of documents which was attached as an
24 exhibit to our filing today.

25 And I'm going to start with request number

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 3, and maybe if Your Honor wouldn't mind letting
3 us know when she has it in front of her.

4 THE COURT: Thank you. I'm looking at it
5 now. Let's see. And that's on which page of
6 your --

7 MR. WIYGUL: It's -- I'm looking at --

8 THE COURT: Page 7? Page 8?

9 MR. WIYGUL: I'm looking at Fulton
10 County's responses, Your Honor, and I'm --

11 THE COURT: Oh.

12 MR. WIYGUL: And their response to request
13 number 3 starts at page 15.

14 THE COURT: Okay. And which exhibit is
15 that?

16 MR. WIYGUL: That is a good question. Let
17 me ask my colleague here --

18 THE COURT: That's okay.

19 MR. WIYGUL: -- if he can let me know.

20 I can tell you in just a moment. I have a
21 tabbed version here.

22 MR. CARROLL: Your Honor, while he's doing
23 that, I would respectfully object to all of this
24 at this point.

25 This is turning into a full-fledged

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 hearing where we should be -- have an opportunity
3 to brief all of this and argue it in person in
4 front of the Court.

5 This is really well beyond the scope of a
6 status conference at this point, and I would
7 object to all of this for that reason.

8 And, you know, bottom line is Dominion is
9 simply -- I mean, the Secretary of State is
10 acting as a surrogate for Dominion and sitting
11 there saying that they can't assert privilege.

12 Our clients can assert privilege on all of
13 the underlying cases that they're trying to get
14 into here --

15 THE COURT: Excuse me, Counsel. Thank
16 you.

17 MR. CARROLL: -- (indiscernible due to
18 overtalking) to the question of what happened on
19 an order in January.

20 THE COURT: We appreciate -- I appreciate
21 your objection, but I'm trying -- we don't have a
22 lot of time, as you know, before we need to
23 prepare our report.

24 You've had the ability to challenge these
25 on an individual basis and knew that this was

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2 going to be required of you.

3 I'm giving the Secretary an opportunity to
4 discuss these requests and your responses.

5 And I see here it is Exhibit 5, and I am
6 sure you are familiar with this because you will
7 have filed it.

8 And I'm asking for some background
9 information, and I will give you an opportunity
10 to respond.

11 Counsel Wiygul, are we looking -- we're
12 looking at page 17?

13 MR. WIYGUL: Page 15, Your Honor, and --

14 THE COURT: Page 15. Thank you.

15 MR. WIYGUL: -- request number 3.

16 And thank you for finding the -- the
17 correct exhibit number.

18 So this request asks for all
19 communications to the public or other public
20 notices concerning the Speckin inspection made
21 after -- made or sent before the date that the
22 complaint disclosing the inspection was filed.

23 So by its terms, this request cannot seek
24 privileged information. It's asking for public
25 notices, and, yet, we got essentially a

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 cookie-cutter nonresponse of the sort that was
3 cut and pasted in response to most of the
4 discovery requests --

5 MR. CARROLL: I object to his connotations
6 that --

7 MR. WIYGUL: -- and no -- and no --

8 COURT REPORTER: Hold on. Hold on. Hold
9 on. I cannot write you both --

10 MR. CARROLL: (Indiscernible due to
11 overtalking.)

12 COURT REPORTER: Hold on. Hold on. I
13 didn't get any of that because you were talking
14 at the same time and I was trying to stop you,
15 because when you're both talking, I can't
16 understand anybody.

17 MR. CARROLL: I apologize.

18 I object to his characterization of
19 "cookie and cut and pasted document."

20 We complied --

21 THE COURT: Okay. Thank you, Counsel.

22 MR. CARROLL: -- with these orders, Your
23 Honor. They were complex --

24 THE COURT: Counsel --

25 MR. CARROLL: -- and they just got filed

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 minutes ago.

3 THE COURT: I --

4 MR. CARROLL: We need the opportunity to
5 be able to brief this based on all of this.

6 THE COURT: We will determine -- I will
7 determine that.

8 And I understand you have an objection,
9 but I'm going to allow counsel to finish making
10 his statement, and then I will give you an
11 opportunity.

12 I, in fact, started with you first. I am
13 giving him an opportunity. I will come back to
14 you, and then we will figure out where we go from
15 here.

16 We have a hearing scheduled for Wednesday,
17 and I intend to keep to that schedule. And we
18 will see what kind of evidentiary record we are
19 able to make here which I intend to make for the
20 Supreme Court.

21 Counsel Wiygul.

22 MR. WIYGUL: Thank you, Your Honor. So my
23 point was simply that there were -- in addition
24 to our crafting our request to avoid privilege
25 issues where we thought they might reasonably

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 trench on privilege, they're just a -- the vast
3 majority of the requests we think are
4 indisputably relevant -- and I don't think I've
5 heard or seen a relevance objection from the
6 Petitioners -- but they don't go anywhere near
7 privilege nor could they by their nature.

8 I'd also refer the Court respectfully to
9 request number 9 in our requests for production.
10 That's on page 18. That asks for all video and
11 audio recordings and photographs of the Speckin
12 inspection -- and the Speckin report itself notes
13 that Speckin took photographs in connection with
14 the inspection -- and again we get a -- I suppose
15 you might characterize it as a boilerplate
16 response that is not even connected to the
17 specific request that we propounded.

18 Similarly, request number 11 -- and,
19 again, this is only by way of example -- asked
20 for all documents identifying or reflecting the
21 names of the persons who attended or witnessed or
22 were invited to attend or witness the
23 inspection -- the Speckin inspection. I think
24 that is a transparent attempt to discover
25 identity of potential witnesses, and, again we

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 get a nonresponse, and we don't even get
3 objections that address the substance of the
4 request.

5 In our request for admission -- and,
6 again, I think here the attempt was to be
7 cognizant of the fact that the Supreme Court has
8 tasked the Special Master with assembling an
9 evidentiary record on an extremely tight time
10 table in an effort to try to obtain admissions to
11 things that we think are uncontroversial or even
12 if Petitioners deny them, we can get a denial and
13 then we would know what we need to explore
14 further at the evidentiary hearing, and -- and
15 again we just get intransigence.

16 We asked in request for admission 13 on
17 page 18 of responses of Fulton County to our
18 request for admission, we asked simply admit that
19 all of the actions that the Speckin report states
20 that Speckin Forensics performed as part of the
21 Speckin inspection were in fact performed by
22 Speckin Forensics as part of the Speckin
23 inspection, and we couldn't even get an answer to
24 that question.

25 And I could go -- I could go on and on. I

1 COURT PROCEEDING - NOVEMBER 4, 2022

2 won't because of the time.

3 THE COURT: Okay. Yeah, yeah, we don't
4 need to go on all of them, but thank you very
5 much for those examples.

6 And so your position is that the Speckin
7 inspection is really the crux of the issue
8 involving the contempt that we are to be
9 developing an evidentiary record about?

10 MR. WIYGUL: I think that's right, Your
11 Honor.

12 If I could just make another point, which
13 is the -- the relevant issues here include what
14 was actually done, clearly, but also there are
15 very key mens rea issues here because one of the
16 elements of contempt is whether the Petitioners
17 or the alleged condemnors did with wrongful
18 intent.

19 Other sanctions that we have sought are
20 sought under authorities that require a showing
21 of vexatious, bad faith, obdurate conduct.

22 Mens rea is really at the heart of the
23 issue here, and I don't think it can be avoided,
24 and so some of our requests, yes, do try to
25 discover that, and I think it's relevant directly

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2 to the elements of the legal issues involved, but
3 it's also relevant in so far as Petitioners'
4 conduct could illustrate consciousness of guilt,
5 which is, of course, a familiar concept in
6 proceedings such as these.

7 THE COURT: Okay. Thank you.

8 And obviously we do have to work through
9 the -- all of the filings that were -- that were
10 provided today.

11 There were supposed to be, I believe, some
12 depositions tomorrow. I -- clearly, those can't
13 go forward until we resolve -- well, let me ask
14 you, counsel, how do you see this proceeding?

15 And, Attorney Carroll, I'll come back to
16 you.

17 How do you see this proceeding?

18 MR. CARROLL: Well, the first thing I have
19 to tell the Court is that it did come to me
20 recently that our client -- that Fulton County
21 Commissioner Ulsh had a scheduled vacation and/or
22 trip that was scheduled about eight -- six to
23 eight weeks ago and that was paid for, and he's
24 leaving on the 8th, immediately after the
25 election is over.

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2 He's -- he will be monitoring the election
3 as his duties of commissioner and then he will be
4 leaving for -- out of state for a trip that has
5 been planned for about two months.

6 The Supreme Court, I would also argue that
7 they never gave -- they said that Fulton County
8 would give up its due process rights, and in the
9 end, they're asking for basically them to say
10 that they can't waive -- that these things --
11 they're asking them to waive their privilege on
12 underlying cases.

13 This is a breach of contract case
14 involving this issue, and that has been filed.
15 And discovery will take place in that case, and
16 they have a right to assert privileges in that
17 which you are making them waive. You're making
18 them waive by answering these questions, and that
19 is simply just unconscionable.

20 THE COURT: Well, excuse me. I'm going to
21 have to correct something that you're saying
22 which is absolutely incorrect, which is at every
23 point, I have been careful, as has the Supreme
24 Court, in protecting the due process rights of
25 your client.

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2 I gave you every opportunity to
3 appropriately assert the privileges that you
4 wanted to assert.

5 And the question is whether you properly
6 asserted those privileges under the law, under
7 procedure, as you should be aware of. So that's
8 really -- to the extent that there has been any
9 waiver of privilege, it would be because you made
10 a conscious decision not to assert it as you had
11 been instructed.

12 So I'm not taking away anybody's rights to
13 assert privilege.

14 MR. CARROLL: Well, I would respond that
15 the Supreme Court said in its last order without
16 prejudice to us raising -- to raise interlocutory
17 legal issues.

18 THE COURT: You were also told to comply
19 with our orders, and you have to prove --

20 MR. CARROLL: I would respectfully --
21 respectfully --

22 THE COURT: You have to assert and prove,
23 which is your burden, and that's what I -- I'm
24 asking you to do when I say how is this violating
25 and in what way are your privileges being

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2 violated.

3 MR. CARROLL: Because there are underlying
4 cases involving Dominion, who is the intervener
5 in this case, with a right-to-know request appeal
6 and also the breach of contract case --

7 THE COURT: Okay. First of all --

8 MR. CARROLL: -- and also the underlying
9 case in this case.

10 THE COURT: Well --

11 MR. CARROLL: The burden is on the -- and
12 I would respectfully suggest that the burden is
13 on the other party, not on our clients.

14 THE COURT: The burden to assert privilege
15 is on the -- on the requester or on the person
16 asserting the privilege? Who has the burden to
17 prove that a privilege adheres?

18 My understanding is that it -- the burden
19 is on the party asserting the privilege.

20 MR. CARROLL: I believe we have basically
21 suggested to the Court that the privilege exists
22 because of the underlying cases and they have a
23 right to have those cases protected, and as soon
24 as you open this up in this case, everything is
25 destroyed in the other cases in terms of their

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2 rights and privileges in the other cases.

3 So it has collateral damage and that is
4 why they are asserting this privilege, because
5 they will be prejudiced to a great degree with
6 regard to a fair litigation process for the
7 right-to-know appeal and the breach of contract
8 case and even the underlying case that's
9 involving this litigation here.

10 That's the -- that's my response.

11 THE COURT: Okay. I understand your
12 response.

13 Now, what do we do about Mr. Ulsh then?
14 You say he's going to be away beginning the 8th?
15 But you're only telling us that now.

16 Okay. Let me see if I have anything
17 further for this status conference.

18 Yes, I actually do have a question.

19 Did you file any objections to the
20 proposed deposition questions?

21 MR. CARROLL: We did file that motion,
22 Your Honor. I believe we did. There's -- yes,
23 we did. I don't have it in front of me right
24 now, but I believe we did.

25 THE COURT: Okay. I will take a look and

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2 see exactly what was filed, and we will issue an
3 order and --

4 MR. CARROLL: I may have misspoke. I
5 think we've -- we -- we objected to the questions
6 in our motion is how we responded to that.

7 THE COURT: Okay. So you did not file
8 specific objections to the questions?

9 MR. CARROLL: Right. We did it in our
10 motion. So I apologize if I misspoke. I'm
11 sorry.

12 THE COURT: Okay. Let me see if there's
13 anything --

14 MR. CARROLL: Yeah, this is -- I
15 apologize, Your Honor. It's been a very tight
16 timeline with many very long documents being
17 filed and having to be reviewed, and I apologize
18 for that misstatement, but we did answer that
19 question in our motion.

20 THE COURT: All right. Okay. Well, thank
21 you. This has been helpful for me, and I
22 appreciate the time that you have all given.

23 And we will -- I will issue an appropriate
24 order as soon as possible that will address the
25 filings that we have received, understanding

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2 that, again, for me, as well as for all of you,
3 we're under a time frame that we are -- well,
4 that we're going to meet.

5 And so with that, I thank you very much.
6 I don't know if there's anything further that any
7 of you need to say.

8 Mr. Carroll, you look like you want to say
9 something.

10 MR. CARROLL: Just one -- yeah, just one
11 additional thing, Your Honor. Thank you very
12 much.

13 In light of our client's scheduling
14 conflict, would it be inappropriate for the
15 Master -- your Master -- Your Honor to request an
16 extension of one week to the Supreme Court in
17 light of the conflicts of getting our clients to
18 that hearing for prearranged travel?

19 I mean, it's a very important due process
20 and very important rights that relate to numerous
21 cases here, and I -- and I think they put us all
22 on a tight timeline.

23 And I know I respect you greatly for
24 pushing this through in the way you have because
25 it was so important to get it done, but I think

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2 it's also important to make sure that we get it
3 right, and I would respectfully request that that
4 consideration be made for an extension of about
5 one week to the Supreme Court for response back
6 from the Master on that.

7 THE COURT: Well, I would say that to the
8 extent that you -- that your client -- that --
9 that you want a -- to have a motion made, that
10 you may make any motion you wish to the Supreme
11 Court, if you chose, as you -- as you know, and
12 so --

13 MR. CARROLL: I didn't want to show
14 disrespect to the Master and like I was going to
15 just immediately appeal that based on -- you
16 know, based on this understanding that happened
17 that way. So that was just a thought. So I
18 understand what you're saying, though, and thank
19 you.

20 THE COURT: Thank you very much.

21 Is there anything else?

22 Okay.

23 MR. WIYGUL: Your Honor, may -- I'm sorry.

24 THE COURT: Yeah.

25 MR. WIYGUL: May I just make two quick

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2 points for the record with Mr. -- with respect to
3 Commissioner Ulsh.

4 First I wanted to let the Special Master
5 know we have served notices to attend on the
6 three commissioners in connection with the
7 evidentiary hearing next week. We were hoping to
8 take their depositions in part so that we could
9 reduce the amount of time that their examinations
10 would take during the evidentiary hearing.

11 The second point I'd like to make, and it
12 may not be apparent, but I think it's an
13 important one, is that Commissioner Ulsh and
14 Commissioner Bunch voluntarily appeared in this
15 proceeding in their individual as well as their
16 official capacities as Petitioners, and the
17 Secretary has therefore sought sanctions against
18 them as Petitioners in their individual
19 capacities, and I say that because I think that
20 that may be relevant to the Court as
21 consideration of what information or testimony is
22 required from them.

23 THE COURT: Thank you very much.

24 Anything further?

25 MR. WIYGUL: Not from the Secretary, Your

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2 Honor.

3 MR. CARROLL: No, Your Honor. Thank you.

4 THE COURT: Thank you very much. I
5 appreciate the -- I appreciate your being here.
6 I appreciate everyone's work to date, and I
7 understand that a lot of work has gone into the
8 filings that have been presented to the Court,
9 and I want to thank you for that.

10 And with that then, we will finish up, and
11 I will be issuing an order as soon as I possibly
12 can.

13 Thank you very much.

14 - - -

15 (Remote videoconference hearing
16 concludes, 2:49 p.m.)

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R E P O R T E R ' S C E R T I F I C A T E

I, Lisa Taylor, Registered Professional
Reporter, certify:

That the foregoing matter was taken before me
at the time and place therein set forth;

That the proceeding was recorded
stenographically by me, to the best of my ability, and
thereafter transcribed;

That the foregoing transcript is a true record
of the proceeding.

I further certify that I am neither counsel
for nor related to any party to said action, nor in any
way interested in the outcome thereof.

In witness whereof, I have subscribed my name
this 5th day of November 2022.

Lisa Taylor
Registered Professional Reporter
Pennsylvania Notary Public and eNotary

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EXHIBIT 3

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

ORDER

NOW, November 4, 2022, following a status conference, and upon consideration of Petitioners/Appellees’ (collectively, Fulton County) Motion for Predicate Legal Rulings and to Exclude Certain Discovery Requested by the Secretary (Motion for Rulings), and Respondent/Appellant’s (Secretary) Application for Discovery Sanctions and Incorporated Memorandum of Law (Application for Discovery Sanctions), the Special Master hereby **ORDERS** as follows:

1. To the extent the Motion for Rulings requests any relief on the basis that there is no factual issue in the instant contempt proceedings that requires discovery, such requests for relief are **DENIED**. The Special Master concludes that there are factual issues relevant to contempt that warrant discovery to facilitate development of an

evidentiary record, as directed in our Supreme Court's October 21, 2022, and November 2, 2022 orders.

2. To the extent the Motion for Rulings requests any relief on the basis that conducting discovery before resolution of certain legal issues will unduly prejudice Fulton County, such requests for relief are **DENIED**. Further, the Special Master specifically concludes as follows:

(i) The underlying litigation in the matter docketed at No. 277 M.D. 2021 in this Court does not preclude any discovery sought by the Secretary, as Fulton County has not properly shown or proven that a privilege or objection arises simply on the basis of the underlying litigation. Fulton County has not cited, and the Special Master's independent research has not disclosed, any authority to that effect. Accordingly, Fulton County has failed to raise a proper objection on this basis.

(ii) Neither Fulton County's breach of contract action against Intervenor Dominion Voting Systems, Inc. (Dominion), as identified and described in the Motion for Rulings (Breach of Contract Action), nor any other litigation between Fulton County and Dominion, precludes any discovery sought by the Secretary. Fulton County has not properly shown or proven that a privilege or objection arises simply on the basis of other existing litigation. Fulton County has not cited, and the Special Master's independent research has not disclosed, any authority to that effect. The existence of other litigation alone does not shield a party from discovery. Accordingly, Fulton County has failed to raise a proper objection on this basis.

(iii) Dominion's proceeding against Fulton County pursuant to the Right-to-Know Law (RTKL),¹ as such proceeding is identified and described in the Motion for Rulings, does not affect

¹ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

discovery in this contempt proceeding. Further, any rights or protections that Fulton County may generally have under the RTKL are not at issue in this proceeding and do not preclude any discovery sought by the Secretary. *See Off. of the Dist. Att’y of Phila. v. Bagwell*, 155 A.3d 1119, 1138 (Pa. Cmwlth. 2017) (“The analysis of whether a record is discoverable in this jurisdiction and beyond is entirely distinct from whether the record is accessible under the RTKL.”). Fulton County has not properly shown or proven that the RTKL applies in this proceeding. Thus, Fulton County’s claim of privilege or protection based on the RTKL is meritless and is **OVERRULED**.

3. The Special Master specifically observes the following: All parties have been given the opportunity to raise objections to discovery in good faith, as directed in the Special Master’s October 28, 2022 Rule to Show Cause (Rule to Show Cause), as confirmed and modified by the Supreme Court’s November 2, 2022 Order, and further modified by the Special Master’s November 3, 2022 Order.² Pursuant to those orders, the parties were directed to serve objections to discovery requests no later than November 3, 2022, at 8:00 p.m., and objections based on privilege were to be returned with an accompanying privilege log, containing, *inter alia*, “the specific privilege claimed and the basis for such claim or other reason the document or communication is asserted to be non-discoverable.” Special Master’s Rule to Show Cause ¶ 5(d)(i). While the Secretary timely served Fulton County with proposed deposition questions, written interrogatories, requests for admissions, and requests for production (collectively, the Secretary’s Discovery), Fulton County failed to object in accordance with the Special Master’s Rule to Show Cause and subsequent orders. Specifically, Fulton County failed to object to the

² The Supreme Court’s November 2, 2022 *per curiam* order, which declined to grant emergency relief requested by Fulton County, stated that it was “without prejudice to [Fulton County’s] rights to seek discovery-related relief before the Special Master in due course *and in full conformity with any prior or future orders or directives issued by the Special Master.*” (Emphasis added.)

Secretary's proposed deposition questions and has continued to raise only blanket objections to the Secretary's Discovery, as reiterated in its Motion for Rulings, in direct violation of Paragraph 5(d)(i) of the Rule to Show Cause. Fulton County has not, at any time, availed itself of the opportunity to raise any objections to discovery on a specific, question-by-question basis as directed in the Special Master's orders. This has precluded the Special Master from making any meaningful determinations on Fulton County's claims of privilege. It is black letter law that the objector to a discovery request must demonstrate non-discoverability. *Ario v. Deloitte & Touche LLP*, 934 A.2d 1290, 1292-93 (Pa. Cmwlth. 2007) (citing 6 Stnd. Pa. Prac. § 34:24.) Fulton County has failed to carry its burden, and therefore its blanket claims of privilege are **OVERRULED** based on Fulton County's failure to assert them with sufficient specificity. This includes, without limitation, the claims based on attorney-client privilege, the work product doctrine, the deliberative process privilege, and the asserted violation of the individual constitutional rights of Commissioners Stuart L. Ulsh, Randy H. Bunch, and/or Paula J. Shives (collectively, the Commissioners) or of other unspecified persons from whom discovery is or may be sought.

4. To the extent the Motion for Rulings requests any relief based on an argument that the Secretary's Discovery will unduly favor Dominion's interest in this or other litigation, aid another private party, or "tilt the scales of justice," such requests for relief are **DENIED** based on the Special Master's ongoing obligation to afford due process and consider all parties' claims impartially, fairly, and accurately. The Special Master is, has been, and will continue to afford all parties due process, and Fulton County's conclusory claims to the contrary lacks merit.

5. In accordance with Paragraph 1 of the Special Master's November 3, 2022 Order, wherein the Special Master indicated she will consider whether to compel the Commissioners to attend depositions, and to the extent the Secretary wishes to continue with said depositions, the Special Master hereby compels Fulton County to make the Commissioners available for deposition on November 7,

and/or 8, 2022. No later than November 5, 2022, at 5:00 p.m., the Secretary shall serve Notices of Deposition on the Commissioners indicating which of the above dates said depositions shall take place.³

6. The Secretary's Application for Discovery Sanctions is held in abeyance pending the conclusion of the evidentiary hearing.



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

³ During the November 4, 2022 status conference, counsel for Fulton County orally indicated, for the first time, that one of the Commissioners for Fulton County will not be available to attend the evidentiary hearing currently scheduled for Wednesday, November 9, 2022, due to a previously scheduled vacation. In response, counsel for the Secretary orally indicated that said Commissioner had already been served with a Notice to Attend the evidentiary hearing. The Special Master cautions that it expects all Commissioners to comply with properly served Notices to Attend.

EXHIBIT 4

From: [Wiygul, Robert A.](mailto:Wiygul.Robert.A)
To: ["tom@thomasicarrolllaw.com"](mailto:tom@thomasicarrolllaw.com); ["libertylawyertjc"](mailto:libertylawyertjc); ["jim@dslawyers.com"](mailto:jim@dslawyers.com)
Cc: ["Gallagher, Shawn N."](mailto:Gallagher.Shawn.N); ["Hill, John B."](mailto:Hill.John.B); ["Dimitrios Mavroudis"](mailto:Dimitrios.Mavroudis); ["Boyer, Jacob B."](mailto:Boyer.Jacob.B); ["Fischer, Michael J."](mailto:Fischer.Michael.J); ["Romano, Karen M"](mailto:Romano.Karen.M); ["Kagedan, Eitan G."](mailto:Kagedan.Eitan.G)
Subject: County of Fulton v. Secretary of the Commonwealth, Nos. 277 MD 2021, 3 MAP 2022 -- Notices of Deposition [IWOV-HASP1.FID141330]
Date: Saturday, November 5, 2022 2:20:37 PM
Attachments: [2022-11-05 - Amended Notice of Remote Video Dep of SUlsh.pdf](#)
[2022-11-05 - Amended Notice of Remote Video Dep of RBunch.pdf](#)
[2022-11-05 - Amended Notice of Remote Video Dep of PShives.pdf](#)

Counsel:

Pursuant to Paragraph 5 of the Special Master's Order dated November 4, 2022, I hereby serve the attached Notices of Remote Video Deposition of Commissioners Ulsh, Bunch, and Shives.

For ease of reference, I have included the Zoom information for the depositions (which is also included in each of the Notices) below:

Join Zoom Meeting

<https://us06web.zoom.us/j/83140832313?pwd=ZlZweG5aOzZGbz05SQkITNHNVWTF6dz09>

Meeting ID: 831 4083 2313

Passcode: 377585

One tap mobile

+13126266799,,83140832313#,,,,*377585# US (Chicago)

+16469313860,,83140832313#,,,,*377585# US

Dial by your location

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 309 205 3325 US

+1 669 900 6833 US (San Jose)

+1 689 278 1000 US

+1 719 359 4580 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

Meeting ID: 831 4083 2313

Passcode: 377585

Find your local number: <https://us06web.zoom.us/j/keHYXEptkG>

Best regards,
Rob

Robert A. Wiygul
[Hangley Aronchick Segal Pudlin & Schiller](#)
One Logan Square, 27th Floor
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(215) 496-7042 (phone)
(215) 568-0300 (fax)

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Robert A. Wiygul (I.D. No. 310760)
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Counsel for Respondent/Appellant

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**AMENDED NOTICE OF REMOTE VIDEO DEPOSITION OF
STUART L. ULSH**

TO: Thomas J. Carroll, Esquire
224 King Street
Pottstown, PA 19464
tom@thomasjcarrolllaw.com
libertylawyertjc@protonmail.com

James M. Stein, Esquire
DICK, STEIN, SCHEMEL, WINE &
FREY, LLP
13 W. Main Street, Suite 210
Waynesboro, PA 17268-1517
Jim@dsslawyers.com

Counsel for Petitioners

PLEASE TAKE NOTICE that pursuant to Rule 4007.1 and Rule 4017.1 of the Pennsylvania Rules of Civil Procedure and the Special Master's Order dated November 4, 2022, Respondent/Appellant, the Acting Secretary of the Commonwealth, by and through undersigned counsel, will take the videotaped remote deposition upon oral examination of Stuart L. Ulsh for the purposes of discovery.

The deposition will take place remotely before a Notary Public or other person authorized by law to administer oaths from Frontino Reporting, LLC, 34 North Front Street, Philadelphia, PA 19106, at 9:30 a.m. on November 7, 2022, via Zoom videoconference (<https://us06web.zoom.us/j/83140832313?pwd=ZIZweG5aQzZGb05SQkITNHNVWTF6dz09>, Meeting ID: 831 4083 2313, Passcode: 377585) and will continue from day to day until completed.

The deposition will be recorded by stenographic and videographic means. The deposition will be videotaped by Frontino Reporting, LLC, 34 North Front Street, Philadelphia, PA 19106.

You are invited to attend and participate.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: November 5, 2022

By:  _____

Robert A. Wiygul (I.D. No. 310760)

John B. Hill (I.D. No. 328340)

Eitan G. Kagedan (I.D. No. 331246)

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Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 5th day of November 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

Thomas J. Carroll, Esquire
224 King Street
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Counsel for Intervenor



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Counsel for Respondent/Appellant

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**AMENDED NOTICE OF REMOTE VIDEO DEPOSITION OF
RANDY H. BUNCH**

TO: Thomas J. Carroll, Esquire
224 King Street
Pottstown, PA 19464
tom@thomasjcarrolllaw.com
libertylawyertjc@protonmail.com

James M. Stein, Esquire
DICK, STEIN, SCHEMEL, WINE & FREY, LLP
13 W. Main Street, Suite 210
Waynesboro, PA 17268-1517
Jim@dsslawyers.com

Counsel for Petitioners

PLEASE TAKE NOTICE that pursuant to Rule 4007.1 and Rule 4017.1 of the Pennsylvania Rules of Civil Procedure and the Special Master's Order dated November 4, 2022, Respondent/Appellant, the Acting Secretary of the Commonwealth, by and through undersigned counsel, will take the videotaped remote deposition upon oral examination of Randy H. Bunch for the purposes of discovery.

The deposition will take place remotely before a Notary Public or other person authorized by law to administer oaths from Frontino Reporting, LLC, 34 North Front Street, Philadelphia, PA 19106, at 2:30 p.m. on November 7, 2022, via Zoom videoconference (<https://us06web.zoom.us/j/83140832313?pwd=ZlZweG5aQzZGbz05SQklTNHNVWTF6dz09>, Meeting ID: 831 4083 2313, Passcode: 377585) and will continue from day to day until completed.

The deposition will be recorded by stenographic and videographic means. The deposition will be videotaped by Frontino Reporting, LLC, 34 North Front Street, Philadelphia, PA 19106.

You are invited to attend and participate.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: November 5, 2022

By:  _____

Robert A. Wiygul (I.D. No. 310760)

John B. Hill (I.D. No. 328340)

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(215) 982-2280

Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 5th day of November 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

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Pottstown, PA 19464
tom@thomasjcarrolllaw.com
libertylawyertjc@protonmail.com

James M. Stein, Esquire
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Jim@dsslawyers.com

Counsel for Petitioners

Shawn N. Gallagher, Esquire
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Counsel for Intervenor



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Counsel for Respondent/Appellant

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*,
Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,
Respondent/Appellant.

No. 277 MD 2021
No. 3 MAP 2022

**AMENDED NOTICE OF REMOTE VIDEO DEPOSITION OF
PAULA J. SHIVES**

TO: Thomas J. Carroll, Esquire
224 King Street
Pottstown, PA 19464
tom@thomasjcarrolllaw.com
libertylawyertjc@protonmail.com

James M. Stein, Esquire
DICK, STEIN, SCHEMEL, WINE & FREY, LLP
13 W. Main Street, Suite 210
Waynesboro, PA 17268-1517
Jim@dsslawyers.com

Counsel for Petitioners

PLEASE TAKE NOTICE that pursuant to Rule 4007.1 and Rule 4017.1 of the Pennsylvania Rules of Civil Procedure and the Special Master's Order dated November 4, 2022, Respondent/Appellant, the Acting Secretary of the Commonwealth, by and through undersigned counsel, will take the videotaped remote deposition upon oral examination of Paula J. Shives for the purposes of discovery.

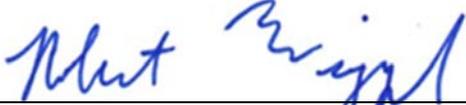
The deposition will take place remotely before a Notary Public or other person authorized by law to administer oaths from Frontino Reporting, LLC, 34 North Front Street, Philadelphia, PA 19106, at 10:00 a.m. on November 8, 2022, via Zoom videoconference (<https://us06web.zoom.us/j/83140832313?pwd=ZlZweG5aQzZGbz05SQklTNHNVWTF6dz09>, Meeting ID: 831 4083 2313, Passcode: 377585) and will continue from day to day until completed.

The deposition will be recorded by stenographic and videographic means. The deposition will be videotaped by Frontino Reporting, LLC, 34 North Front Street, Philadelphia, PA 19106.

You are invited to attend and participate.

HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: November 5, 2022

By:  _____

Robert A. Wiygul (I.D. No. 310760)

John B. Hill (I.D. No. 328340)

Eitan G. Kagedan (I.D. No. 331246)

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PENNSYLVANIA DEPARTMENT OF
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Philadelphia, PA 19103

(215) 982-2280

Counsel for Respondent/Appellant

CERTIFICATE OF SERVICE

I, Robert A. Wiygul, hereby certify that on this 5th day of November 2022, I caused a true and correct copy of the foregoing to be served on the following counsel of record by electronic mail:

Thomas J. Carroll, Esquire
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Pottstown, PA 19464
tom@thomasjcarrolllaw.com
libertylawyertjc@protonmail.com

James M. Stein, Esquire
Dick, Stein, Schemel, Wine & Frey, LLP
13 W. Main Street, Suite 210
Waynesboro, PA 17268-1517
Jim@dsslawyers.com

Counsel for Petitioners

Shawn N. Gallagher, Esquire
Buchanan, Ingersoll & Rooney, P.C.
501 Grant Street, Suite 200
Pittsburgh, PA 15219-1410
shawn.gallagher@bipc.com

Counsel for Intervenor



Robert A. Wiygul

EXHIBIT 5

From: tom@thomasjcarrolllaw.com
To: [Wiygul, Robert A.](#)
Cc: attorneylambert@protonmail.com
Subject: 277 MD 2021
Date: Monday, November 7, 2022 8:04:03 AM

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

Good Morning:

Unfortunately, my clients are unable to appear for Depositions this week. As you know, your client sent mass communication over the weekend informing of major problems with the Election System that is to be utilized this week for the mid-term Election. My clients are Election Board members and must fulfill their official duties as Commissioners and Election Board Members. I have filed an Emergency Application before the Supreme Court. Let's connect after the Court rules to deal with these new election problems created by your client and brought to light over the weekend. Additionally, I will be at a required medical procedure this morning as was outlined in the Emergency Application. I will get back to you as soon as possible.

Tom

EXHIBIT 6

From: [Wiygul, Robert A.](#)
To: "[libertylawyertjc](#)"
Cc: [AttorneyLambert](#); "[Fischer, Michael J.](#)"; [Boyer, Jacob B.](#); [Romano, Karen M](#); [Dimitrios Mavroudis](#); [Kagedan, Eitan G.](#); "[Gallagher, Shawn N.](#)"; [Goldman, Kathleen Jones](#)
Subject: RE: 27 MD 2021 [IWOV-HASP1.FID141330]
Date: Monday, November 7, 2022 9:18:31 AM

Mr. Carroll:

1. The Special Master's Order on Friday could not have been clearer. That Order compelled the Commissioners to appear for deposition today and tomorrow as noticed by the Secretary. The Order also made clear that the Commissioners were required to comply with the Secretary's Notices to Appear at the evidentiary hearing beginning on Wednesday. We will be appearing on the Zoom at 9:30 a.m. and 2:30 p.m. today, as scheduled, for the respective depositions of Commissioner Ulsh and Commissioner Bunch. If the Commissioners do not appear, the Secretary reserves the right to seek all sanctions available under the law. I hope you have advised your clients of the legal jeopardy they face.
2. Please copy all counsel of record on your email correspondence going forward.
3. Your email copies an AttorneyLambert@protonmail.com. I received two emails from that address last week without any signature block. I asked the sender to identify themselves and to state whether they represent Petitioners. I did not receive a response. Please answer these questions.

Best regards,
Rob

Robert A. Wiygul
Hangley Aronchick Segal Pudlin & Schiller
One Logan Square, 27th Floor
Philadelphia, PA 19103
215-496-7042 (phone)
215-568-0300 (fax)

From: libertylawyertjc <libertylawyertjc@protonmail.com>
Sent: Monday, November 7, 2022 8:05 AM
To: Wiygul, Robert A. <raw@hangley.com>
Cc: AttorneyLambert <AttorneyLambert@protonmail.com>
Subject: 27 MD 2021

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

Good Morning:

Unfortunately, my clients are unable to appear for Depositions this week. As you know, your client sent mass communication over the weekend informing of major problems with the Election System that is to be utilized this week for the mid-term Election. My clients are Election Board members

and must fulfill their official duties as Commissioners and Election Board Members. I have filed an Emergency Application before the Supreme Court. Let's connect after the Court rules to deal with these new election problems created by your client and brought to light over the weekend. Additionally, I will be at a required medical procedure this morning as was outlined in the Emergency Application. I will get back to you as soon as possible.

Tom

EXHIBIT 7

Filed 11/1/2022 10:27:00 PM Supreme Court Middle District 3 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA

COUNTY OF FULTON, *et al.*

Petitioners/Appellees.

v.

SECRETARY OF THE
COMMONWEALTH,

No.: 277 M.D. 2021

No.: 3 MAP 2022

RESPONDENT APPELLEE FULTON COUNTY'S
EMERGENCY APPLICATION FOR A PRELIMINARY INJUNCTION TO
ENJOIN ~~DISCOVERY IN~~ DEPOSITIONS SCHEDULED FOR NOVEMBER
7, 2022 AND TO
HAVE SPECIAL MASTER ~~PROCEEDINGS AND TO COMPEL LEGAL
RULINGS PRECEDING SAID~~ RULE ON FULTON COUNTY'S LEGAL
ISSUES RAISED IN ITS MOTION OBJECTING TO DISCOVERY

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3. *The Underlying Litigation and Other Pending Matters by and between Fulton County and Dominion Preclude the Proposed Discovery*

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a. *The Underlying Litigation Precludes the Proposed Discovery*..... ~~24~~33

INTRODUCTION

In addition to the arguments and reasons stated herein, new events have taken place over the weekend that have directly affected the operation of the November 8, 2022 elections and the Fulton County individual members, as election board members, have to address these matters as they are responsible for the proper conducting and operation of elections in Fulton County. Therefore, they are unavailable for the scheduled depositions for today, *Monday, November 7, 2022*. Petitioner / Appellant Secretary of the Commonwealth, has notified counties that there has been a system-wide outage and additional failures in their election management, and in the equipment systems databases that the Secretary uses for elections to occur smoothly and appropriately in the Commonwealth of Pennsylvania. (ATTACHMENT F).

The following is an emergency application ~~addressing to enjoin~~ the ~~authority and scope of the appointed Special Master Judge Renée Cohn Jubilerer's October 24~~ taking of depositions of these Fulton County election board members, scheduled for today, *Monday, November 7, 2022*, ~~October 27, 2022~~ in the underlying proceedings, and ~~October 28, 2022 orders. This application also seeks~~ for an order to ~~enjoin~~ have the Special Master's ~~currently proposed discovery in those~~ in the underlying contempt proceedings, ~~part of which is due tomorrow,~~ rule on predicate legal issues raised by Fulton County in its motions regarding discovery.

(ATTACHMENT A, Special Master's November ~~24~~, 2022 ~~by 12:00 p.m., and~~
~~advises the Court that there are necessarily certain legal rulings that must occur prior~~
~~to any ostensible fact-finding discovery as envisioned by the Special Master's~~
~~proceedings.~~Order).

There are ~~also~~ multiple pending matters being litigated by and between Fulton County and Intervenor Dominion. The evidence and discovery in these other matters bear
directly on whether or not Fulton County should be required to respond to discovery
at this time in response to Petitioner / Appellant Secretary's requests. Despite raising
these multiple predicate issues in their motion before the Special Master filed on
Friday, November 7, 2022 (ATTACHMENT B, Fulton County's Motion), the
Special Master did not appreciate the necessity for a legal ruling preceding a
requirement that Fulton County fully submit to discovery. As such, Fulton County is
being required to submit to said discovery, including to depositions commencing
today at 9:30 a.m. Monday, November 7, 2022 (ATTACHMENT C, Deposition
Notices for Bunch, Shives, Ulsh (first to commence at 9:30 a.m. on Monday,
November 7, 2022).

Fulton County's disclosure through discovery (whether via testimony during the
scheduled depositions or in response to the Secretary's requests and interrogatories),
will directly prejudice Fulton County's rights to due process in the other litigation

between Fulton County and Intervenor Dominion. Fulton County explained in its motion that there are several categories of discovery in the pending contempt proceeding that would require Fulton County to disclose information where it would otherwise have a right to object or raise various exemptions, exclusions, rights, protections and privileges in those other proceedings in the ordinary course of litigation. If Fulton County is required to disclose such information in these proceedings, it would not only constitute a deprivation of Fulton County's due process rights to raise objections to these overlapping questions in the other proceedings, but it would, at the same time, constitute a waiver on the part of Fulton County and a disclosure of information to the public that might otherwise be protected under Pennsylvania's Right to Know Law (RTKL). More critically, Fulton County's individual board members have constitutional rights to assert due process protections, including under the Fifth Amendment. As with the other overlapping discovery requests in the other pending matters by and between Fulton County and Intervenor Dominion, requiring Fulton County's board members to submit to depositions would clearly constitute an involuntary waiver of their rights to assert these protections in those proceedings. The Special Master concluded that Fulton County did not have a right to assert these due process and Fifth Amendment privileges in these proceedings, since she had concluded they were "civil contempt" proceedings and the existence of other litigation did not preclude discovery.

(ATTACHMENT A, p. 2, ¶ 2(ii)).

Without citing any authority, the Special Master concluded that Fulton County could not assert any exemptions, exclusions, rights, privileges or protections based on this other litigation. *Id.* However, there are multiple ongoing federal and state investigations that are well-publicized targeting individuals and governmental members with prosecution and criminal liability related to the conducting of inspections and testing on election machines and systems used during and after elections. There is widespread coverage of this in the news, including concerns over the questioning of internet-based and network-connected election systems. It is beyond debate that individuals have a right generally to assert their Fifth Amendment rights and privileges during ongoing proceedings. Here, the Special Master appears to have misunderstood Fulton County's arguments, even going so far as to conclude that they could not raise these objections (while at the same time saying that their due process rights would be protected). (ATTACHMENT A, pp. 2-3, ¶ 2).

It is also patently false that Fulton County failed to object to the Secretary's discovery request, as it timely filed a motion pursuant to the Special Master's prior orders explaining that even providing a privilege log and/or responses to discovery while multiple litigation was pending by and between Fulton County and Intervenor Dominion, would automatically cause Fulton County to surrender its due process

rights to object to and withhold protected and privileged information in those other proceedings when discovery takes place. (ATTACHMENT B).

The same reasoning applies even in the underlying litigation by and between Fulton County and the Secretary. It is evident that requiring a party to disclose information in one proceeding, where an adversary in other litigation is conveniently an intervening party and allowed to participate in the reception of those disclosures, unjustly benefits the intervenor, which would otherwise have to abide by the ordinary course of discovery and due process in those other litigation matters.

Finally, despite having raised the issue before the Special Master and before this Court, the Special Master has failed to answer or even address in any way Fulton County's fundamental prima facie argument, to wit, that if this Court's January Orders prohibiting the inspection of voting machines did not apply, primarily because the Court's January Orders enjoined the specific inspection that was scheduled to take place in January of 2022 and, secondly, because Fulton County had a right to a subsequent inspection of defunct, and no-longer-in-service voting machines in its due diligence to pursue litigation against Dominion, then there is no need for contempt proceedings involving invasive discovery that violates fundamental rights, privileges, and protections of Fulton County and its individual members, employees, attorneys, consultants and experts.

The proposed discovery threatens the substantial legal rights of Fulton County,

including the constitutional rights of its individual members, employees, attorneys, consultants, and experts in the underlying litigation, as well as in other litigation in which Fulton County is involved with Intervenor Dominion.

Specifically, in additions to the ordinary legal privileges and protections that should be afforded to Fulton County in the present underlying litigation (which is still pending), the proposed discovery greatly prejudices Fulton County in its ability to avail itself (and its individual members, employees, attorneys, consultants, and experts) of protections and privileges that they have a lawful right to assert in this and other litigation involving Intervenor Dominion. The proposed discovery would force Fulton County to be exposed to these prejudices and would necessarily constitute a waiver of its right (and the rights of its individual members, employees, attorneys, consultants, and experts), to raise the privileges and protections to which they should be afforded by law in this and other litigation.

Subjecting a party to discovery where their privileges, protections, and rights may be prejudiced and effectively waived is constitutionally suspect and raises serious due process concerns, the latter of which this Court was careful to point out to the Special Master in its October 21 appointment order [\(ATTACHMENT D\)](#).

[Undersigned counsel is also undergoing medical procedures that require him to attend a doctor's appointment at 10:30 a.m. today, November 7, 2022, at which he must take another dose of medication. If he misses that appointment, he will not be](#)

administered the medication and he will become ill. Further, if he does not attend he will lose coverage for the treatment, which will require him to pay out of pocket over \$10,000. (ATTACHMENT E, Confirmation of Medical Appointment and Affidavit of Undersigned).

There are also serious practical concerns with scheduling the depositions of the entire Fulton County board, all of whom are responsible for the overseeing of and operations surrounding the Tuesday, November 8, 2022 election. Indeed, on November 4, 2022, Fulton County received a notice from opposing counsel's client, that the internet-based database and system used for correspondence, reporting and poll book generation has experienced a system-wide outage. (ATTACHMENT F, Notice to Counties Regarding System-Wide Outage).

For the reasons stated below, Respondent / Appellee Fulton County requests the Court to enjoin the depositions that are scheduled to take place.

BACKGROUND

1. Summary of Proceedings

On October 18, 2022, at 3:25 p.m., eight days before oral argument was scheduled to take place ~~in this Court~~, Appellees, Secretary of the Commonwealth filed a 656-page document entitled "Application for an Order Holding Appellees (Fulton County) in Contempt and Imposing Sanctions." (ATTACHMENT ~~A~~G, Secretary's Application

and Memorandum (combined).¹ Intervening party Dominion Voting Systems (Intervenor Dominion) fully concurred with the relief sought in the Secretary’s Application and in its Memorandum of Law. (ATTACHMENT [BH](#), Intervenor Dominion’s Memorandum Concurring with the Secretary, October 26, 2022).

On October 18, 2022, the Prothonotary issued a letter indicating that an answer to the Secretary’s Application was to be filed by 10:00 a.m. on Thursday, October 20, 2022. (~~ATTACHMENT C, Prothonotary’s October 18, 2022 Letter~~). Fulton County filed an Application for an Extension to respond to the Secretary’s Application citing the stealth nature of the latter’s filing and the fact that it was a 656-page document, which counsel for Fulton County would have to read, review, confer with his clients, and respond to within a short time frame.²

On October 21, 2022, the Supreme Court issued an Order which provided, inter alia:

Upon consideration of the Secretary of the Commonwealth’s Application for an Order Holding Appellees in Contempt and Imposing Sanctions (“Application”), filed October 18, 2022, it is hereby **ORDERED**:

1. The Honorable Renée Cohn Jubelirer, President Judge of the

¹ For ease of reference, Fulton County attaches only the 43-page application and 18- page memorandum, not the remaining 613 pages of “exhibits” that were attached to the Secretary’s Application.

² The Secretary implies that Fulton County did nothing in response to the Application. However, given the length of the Application and the manner in which it was filed (6 days before oral argument was scheduled to take place), Fulton County filed the referred to Application for an extension of time to respond. Nothing in the Prothonotary’s letter indicates that Fulton County was barred from seeking such an extension. The Court denied the application for extension on October 20, 2024.

Commonwealth Court of Pennsylvania, is designated to serve as Special Master.

2. The Special Master shall ascertain whether the requested finding of contempt is civil or criminal in nature. *The Special Master shall then take all steps necessary to afford the parties such process as is due in connection with that determination.*

3. The Special Master shall consider the Application and develop an evidentiary record on the averments therein.

4. The Special Master shall prepare a report containing proposed findings of fact and recommendations concerning the relief sought, which the Special Master shall file with this Court on or before November 18, 2022.

5. The Special Master shall make a recommendation to this Court with respect to each of the forms of relief sought in the Application, including: (1) a finding of contempt; (2) the imposition of sanctions; ⁽³⁾ the award of counsel fees; and (4) dismissal of the underlying litigation. (ATTACHMENT D, Pennsylvania Supreme Court Order, October 21, 2022) (emphasis added).³

Notably, nothing in the Court’s order required the conducting of an “evidentiary hearing,” *prior to* a determination of the legal ~~issues~~issue raised in Fulton County’s answer of ~~(1)~~ whether Fulton County can even be held in contempt within the meaning and the plain language of ~~this~~the Supreme Court’s January orders issuing the stay (an issue that Fulton County raises in its Answer filed on October 26, ~~and~~ ~~(2)~~ ~~whether the Secretary’s Application for contempt seeks the imposition of “civil” or “criminal” contempt.~~

³ In a separate order on the same day, the Court issued a Per Curiam Order submitting the case on appeal on previously filed briefs and cancelling oral argument previously scheduled for October 26, 2022.

Rather, the language of the order explicitly provides that *after* the latter determination, the Special Master shall “*then take all steps necessary to afford the parties such process as is due in connection with that determination....*” *Id.*, ¶ 2 (emphasis added).

On October 24, 2022, the Special Master issued an order providing in relevant part as follows:

NOW, October 24, 2022, in accordance with the Pennsylvania Supreme Court’s October 21, 2022 Order in *County of Fulton, et al.*

v. Secretary of the Commonwealth, (Pa., No. 3 MAP 2022), the undersigned Special Master hereby **ORDERS** as follows:

1. Appellees (collectively, Fulton County) shall file and serve an answer to Appellant’s (Secretary) Application for an Order Holding [Fulton County] in Contempt and Imposing Sanctions (Application for Contempt) **no later than 11:59 p.m. on October 26, 2022;**

2. Fulton County, the Secretary, and Intervenor Dominion Voting Systems, Inc. (Dominion) shall file and serve memoranda of law, with citations to relevant authority, addressing whether the relief requested in the Secretary’s Application for Contempt is civil or criminal in nature, and describing the appropriate procedural safeguards that attach thereto, **no later than 11:59 p.m. on October 26, 2022.** (ATTACHMENT [E](#), Special Master’s Order, October 24, 2022) (emphasis in original).⁴

On October 26, 2022, Fulton County filed its Answer and Memorandum of Law in response to Special Master’s order. (ATTACHMENT [F](#) and [J](#) and ATTACHMENT [G](#) and [K](#)) Key points made in Fulton County’s application were as

⁴ The Special Master’s Order also scheduled a status conference for 1:00 p.m. on October 27,

follows:

- i. As a matter of fact, Fulton County had an inspection conducted in July 2022 of the defunct and no-longer-in-service Dominion machines and equipment that had been used in Fulton County elections before they were decertified by the Secretary (one issue raised in the underlying litigation in this case, 277 MD 2021), and before Fulton County contracted with another provider for election equipment and services;
- ii. Fulton County argued, as a point of law, that the Supreme Court’s January Orders staying inspection of election machines applied in view of the current underlying appeal to current and active machines being used or to be used in future elections, only. Fulton County also argued, as a point of law, that the Court’s order applied exclusively to the Intergovernmental Senate Committee’s proposed independent inquiry that was to be conducted on such machines on January 14, 2022. Specifically, the Order stated: ***“the inspection of Fulton County’s electronic voting equipment that is currently scheduled to begin at 1:00 p.m. on January 14, 2022, is hereby STAYED and ENJOINED pending further Order of the Court.”*** (emphasis added). Fulton County pointed out, also as a matter of law, that a strict (or narrow) interpretation of the language of the order would not apply to the independent inspection that occurred in July 2022 regarding the defunct, and no-longer-in-use, election machines and equipment.
- iii. As a matter of fact, Fulton County noted that it had voted to stop using Dominion (and in fact it could no longer use them) and began using Hart’s electronic voting systems and services after November 2021 (See ATTACHMENT [FJ](#), Exhibit E).
- iv. As a matter of fact, Fulton County sued Dominion for breach of contract after the July 2022 report was produced. (ATTACHMENT [HL](#), Notice of Removal of Fulton County’s Breach of Contract Action, filed October 18, 2022, U.S.D.C. Middle Dist. Pa., Case No. 1:22-cv-01639-SHR).

On October 28, 2022, the Special Master issued an Order (ATTACHMENT [FM](#),

10/28/22 Order), in which it was ruled as follows:

2022, which undersigned counsel participated in.

1. County of Fulton, Fulton County Board of Elections, Stuart L. Ulsh, in his official capacity as County Commissioner of Fulton County and in his capacity as a resident, taxpayer and elector in Fulton County (Commissioner Ulsh), and Randy H. Bunch, in his official capacity as County Commissioner of Fulton County and in his capacity as a resident, taxpayer and elector of Fulton County (Commissioner Bunch) to show cause why the Secretary is not entitled to the relief requested in her Application for an Order Holding [Fulton County] in Contempt and Imposing Sanctions (Application for Contempt). *Id.*

3. Hearing on the rule to show cause in connection with the Application for Contempt shall be held on Wednesday, November 9, 2022, at 9:00 a.m., in Courtroom 3001, Third Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg,

Pennsylvania.^[5] In the event the hearing continues into Thursday, November 10, 2022, the hearing will reconvene at 9:00 a.m. in the same location.

5. Discovery in advance of the hearing shall proceed strictly as follows:

- (a) The Secretary shall serve any requests for production of documents on Fulton County, via email, no later than October 28, 2022, at 8:00 p.m.
- (b) Fulton County and Dominion shall serve any requests for production of documents, via email, on the opposing party no later than October 31, 2022, at 12:00 noon.
- (c) The parties shall serve written interrogatories, requests for admissions, and proposed deposition questions (excluding follow-up questions), if any, via email, on the opposing party, no later than October 31, 2022, at 12:00 noon.
- (d) Responses, productions, and objections, if any, to the discovery requests served pursuant To Paragraph 5(a)-(c) shall be completed and returned to the requesting party no later than November 2, 2022, at 12:00 noon. Objections filed after November 2, 2022, at 12:00 noon will be considered waived and will not be entertained by the Court.

~~[The hearing will be available to watch via a public livestream weblink posted on the Court's website.](#)~~

- (i) To the extent objections are raised on privilege grounds, the party asserting privilege shall simultaneously serve a privilege log identifying the following information with respect to each withheld document or communication: (1) the date of the document or communication; (2) its author or sender; (3) all persons receiving the document or communication and any copies; (4) the nature and form

[5 The hearing will be available to watch via a public livestream weblink posted on the Court's website.](#)

of the document or communication (e.g., letter, memorandum, phone call, etc.); (5) the subject matter identified in the document or communication; and (6) the specific privilege claimed and the basis for such claim or other reason the document or communication is asserted to be non-discoverable.

- (e) Counsel are reminded of their obligation to act in good faith to resolve all discovery disputes. To the extent objections to any discovery requests served remain, the parties shall file an appropriate motion, including but not limited to a motion in limine, with this Court no later than November 3, 2022, at 12:00 noon, and shall attach a supporting memorandum of law.
- (f) Joint stipulations of fact and the authenticity or admissibility of exhibits may be filed at any time in advance of the start of the hearing.
- (g) Counsel shall make every effort to resolve any discovery disputes that arise without Court involvement.

6. The parties shall file and serve a witness and exhibit list that includes a brief statement estimating the length of time for presentation of their respective evidence during the hearing no later than November 8, 2022, at 9:00 a.m.

7. No later than November 14, 2022, at 12:00 noon, each party shall file a post-hearing brief, which shall include proposed findings of fact (with citations to the record) and proposed recommendations for each specific request for relief sought by the Secretary in the Application for Contempt (with citations to authority).

8. The Secretary shall promptly serve this Order on the County of Fulton, Fulton County Board of Elections, Commissioner Ulsh, and Commissioner Bunch in accordance with Pa. R. Civ. P. 440, and shall promptly file in this Court proof of service of same.

9. Given the existing time constraints in this matter, no extensions or continuances shall be granted and no late submissions will be

considered by the Court. In the event counsel for any party cannot meet the deadlines set forth above, the Court expects the party to retain other counsel.

By way of its Answer, Fulton County conceded the fact that an inspection of defunct and no-longer-in-use Dominion voting equipment occurred in July 2022. In its Answer and accompanying Memorandum of Law, Fulton County also raised significant, predicate legal issues and arguments concerning the scope of the Court's January Orders, primarily, that they did not apply to Fulton County's due diligence inspection of defunct and useless voting equipment in its investigation and subsequent filing of a breach of contract action against Dominion.

~~If~~Since Fulton County did not violate ~~this~~the Court's orders because it does not apply to the July 2022 inspection, then there is no justification for a proceeding involving invasive discovery that violates the due process rights and other privileges and protections of Fulton County and its individual members, employees, attorneys, consultants, and experts.

~~There is a second predicate legal issue that must first be addressed before the discovery in the Special Master's proceeding commences. This Court's October 21 Order appointing the Special Master does not authorize the commencement of discovery prior to the Special Master's determination of the legal issue concerning whether the Secretary's Application requests "civil" or "criminal" contempt. (ATTACHMENT D, p. 2, ¶ 2).~~

~~Both parties briefed this issue in their respective memoranda of law per the Special Master's October 24, 2022 Order. It would be prejudicial to Fulton County to require it to engage in "discovery" when it does not know the legal standards that are going to be applied in considering whether it should be held in contempt of this Court's January Orders.~~

~~Moreover, even if the issue is resolved~~In this proceeding, the proposed discovery implicates significant constitutional concerns, among them, the constitutional rights of the individual members of Fulton County commissioners that the Secretary seeks to depose. The proposed discovery ~~actually~~also prejudices several other substantial rights and significant interests of Fulton County. First, it requires Fulton County, which is a plaintiff in the underlying litigation, to submit itself to discovery before that proceeding is properly litigated in due course. The case is currently on appeal before the Supreme Court in an interlocutory posture. Requiring Fulton County to submit to the discovery requested would prejudice its rights to raise objections and assert all exemptions, exclusions, rights, privileges and protections it would otherwise be afforded in ordinary due process of litigating the underlying litigation. Second, there is the aforementioned pending breach of contract action that Fulton County filed against Dominion, which action is now before a federal court on Dominion's notice of removal. (ATTACHMENT ~~HL~~HL).

There is also a pending appeal in the Court of Common Pleas filed by Fulton County in a Right to Know Request Law (RTKL), [65 P.S. § 67.101 et seq.](#), proceeding initiated by Intervenor Dominion. (Court of Common Pleas of Fulton County, Case No. 204 of 2022-C; OOR Docket No. AP 2022-1542). Among other issues raised by Fulton County in that appeal is Dominion’s April 25, 2022 request for information from Fulton County related to the conducting of inspections of Dominion’s voting machines subsequent to the November 2020 election. Specifically, Dominion is requesting, inter alia, “[a]ll documents and communications relating to audits, reports, or investigations of the 2020 election, including by Wake TSI, Pro V&V, SLI Compliance, Allied Security Operations Group, Alex Halderman, or any state or local agencies.” (ATTACHMENT [JN](#), Office of Open Records Final Determination, In the Matter of Florence Chen & Dominion Voting Systems, Inc., Requester v. Fulton County, Respondent, August 2, 2022, OOR Docket No. AP 2022-1542).⁶ [As explained in greater detail herein, much of the Secretary’s discovery request \(which Intervenor Dominion is both a beneficiary of and a proponent for\) contains requests for the same or substantially similar information. See for example ATTACHMENT O, Deposition Questions, 1-5; 6.](#)

The breach of contract and breach of warranty action on the other hand concerns the reliability and integrity of Dominion voting machines used by Fulton County

during the November 2020 election, and whether and to what extent they were fit for their use and purpose during that election. (ATTACHMENT [HL](#)). This action serves

the direct interests of Fulton County and its citizenry. Fulton County is suing Intervenor Dominion for breach of contract and breach of warranty related to the deficiencies, as alleged and supported therein, of Dominion's voting machine systems, hardware, software and processes used in the November 2020 election. *Id.*

The discovery sought in the instant proceeding will automatically require Fulton County to disclose information that is protected by several privileges and protections as discussed in greater detail below vis-à-vis the Secretary and Dominion (in the

underlying litigation) and Intervenor Dominion (in the breach of contract action and the RTKL proceedings).

Perhaps even more significant is the fact that the Secretary has all but stood in as surrogate for Intervenor Dominion advocating on behalf of Dominion, and even going so far as to demand dismissal of Fulton County's breach of contract action against Dominion as a sanction for the alleged violation by Fulton County of ~~this~~[the Supreme](#) Court's January orders. (ATTACHMENT [AG](#), p. 26 and footnote 37). This even though the Secretary acknowledges that Dominion intervened in the underlying litigation to, in part, "preserve its contractual rights" and that Fulton County used the

⁶ Florence Chen, Esq. is counsel for Dominion [V](#)oting Systems in the RTKL proceedings.

Dominion machines, equipment and services under a “lease” agreement. *Id.*, pp. 15-16.

~~This application seeks an emergency injunction of the discovery in the Special Master’s proceedings pending legal conclusions by the Court on the legal issues presented, and necessarily preconditional to requiring Fulton County to undergo the onerous, burdensome, and prejudicial discovery propounded by the Secretary and joined by Intervenor Dominion. As demonstrated herein, this discovery directly and immediately threatens Fulton County’s substantial rights and interests, and that of its individual members, employees, attorneys, consultants, and experts, and the collective rights of the Fulton County citizenry as a whole.~~

2. The Secretary’s Discovery Requests

The Secretary has noticed the depositions of Fulton County Commissioners Randy H. Bunch, Paula J. Shives, and Stuart L. Ush. (ATTACHMENT C). The Secretary has also submitted proposed deposition questions. (ATTACHMENT O). The Secretary has also propounded interrogatories (ATTACHMENT P), requests to produce (ATTACHMENT Q), and requests to admit (ATTACHMENT R). All of the Secretary’s discovery requests contain demands that Fulton County disclose certain “categories” of information, documents, and/or testimony. These “categories” can be separated into roughly the following groups.

a. Communications and Correspondence

Communications and correspondence by and between Commissioners and employees, attorneys, consultants, and experts. This includes subjective thought processes, questions concerning internal and/or privately held meetings, and communications and correspondence by and between the Commissioners and employees, attorneys, consultants, and experts, in the pursuance and performance of its public duties and responsibilities, on such subjects as Fulton County's day-to-day financial decisions, business operations, due diligence investigations, including those made in anticipation of litigation. (e.g., ATTACHMENT O, Deposition Questions, 27-30).

b. Information Regarding Wake TSI

Information regarding the commissioning of and deliberations, discussions, and decisions to allow Wake TSI to conduct an inspection of Fulton County's Dominion voting machines in 2020 and/or 2021. (e.g., ATTACHMENT O, Deposition Questions, 1-5).

c. Information Regarding Sage Envoy, LLC

Information regarding the commissioning of and deliberations, discussions, and decisions to allow Sage Envoy, LLC to conduct an inspection of Fulton County's Dominion voting machines in 2020 and/or 2021. (e.g., ATTACHMENT O, Deposition Questions, ¶ 6).

d. Information Regarding Speckin Forensics, LLC

Information regarding the commissioning of and deliberations, discussions, and decisions to allow the Speckin Forensics expert report conducted on [date]. (ATTACHMENT O, Deposition Questions, 12-34); (ATTACHMENT P, Interrogatories, 1-16); (ATTACHMENT Q, Requests to Produce, 1-12) (ATTACHMENT R, Requests to Admit, 5-27).

This includes a wide array, but essentially the entire range of information is sought with respect to Fulton County’s engagement with Speckin and its ultimate use of the Speckin Report in the ordinary course of its operations and investigations, including in the pending breach of contract action against Dominion.

e. Mental Impressions and Subjective Thought Questions

There are several questions that asks Fulton County to provide answers concerning their mental impressions, subjective thoughts, and individual decisions. For example, several questions seek the Fulton County board members’ “understandings”, “ideas” “awareness”, “decisions”, (ATTACHMENT O, Deposition Questions, 9-11, 25, 26).

f. Questions Concerning Legal Advice, Deliberations, and Consultations

Several of the Secretary’s discovery requests ask Fulton County to disclose communications, information, and decision making concerning legal counsel. (ATTACHMENT O, Deposition Questions, 35-40); (ATTACHMENT P,

Interrogatories, 11-12, 17-18).

g. Public Information and Records

The balance of the discovery requests asks for information regarding matters that are already of public record. This includes asking Fulton County (and its individual board members) when or if they were aware of publicly available and/or publicly released information. An example of this is asking the individual commissioners if they were aware of the Supreme Court's orders entered on January 14, 2022 and January 27, 2022 enjoining the inspection of Fulton County's voting machines that was to occur on January 14, 2022.

ARGUMENT AND ANALYSIS

This application seeks an emergency injunction because prior to the proposed discovery it must first be determined whether Fulton County even violated the Supreme Court's January 14 and January 27 orders enjoining inspection of Fulton County's voting machines. Moreover, considering much of the content and requests in the Secretary's proposed discovery, and in consideration of the multiple other pending matters by and between Fulton County and Intervenor Dominion requiring Fulton County to disclose the discovery sought would require it to disclose or otherwise divulge information with respect to which it could assert the multiple legal exemptions, exclusions, rights, privileges and protections in those other matters.

Finally, Fulton County has an ongoing obligation to refrain from disclosing

information that would not otherwise be public or publicly available in the ordinary course of protecting its rights to object to requests for information made under Pennsylvania's Right to Know Law (RTKL).

A party seeking a preliminary injunction must establish the following elements:

(1) A clear right to relief; (2) immediate and irreparable harm in the absence of an injunction; (3) restoration of the status quo; (4) no adequate remedy at law exists and the injunction is appropriate to abate the alleged harm; (5) greater injury will result by not granting than by granting the injunction; and (6) the preliminary injunction will not adversely affect the public interest. *Wyland v. West Shore School District*, 52 A.3d 572, 582 (Pa. Cmmw. 2012) (citing *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995 (Pa. 2003)).

Fulton County is being subjected to onerous discovery proceedings before the predicate legal issues it has raised before the Court and the Special Master have been decided. This Court clearly required the Special Master to decide the legal issue of whether the contempt proceedings are "civil" or "criminal" in nature. (ATTACHMENT D, ¶ 2). Moreover, Fulton County has raised the issue of whether this Court's January Orders even apply to the particular examination performed by Fulton County in its due diligence to ultimately pursue a breach of contract action or other action against Dominion. Finally, a multitude of rights, privileges, and protections are at stake if the discovery is allowed to proceed, not only in the current

underlying litigation, but in the other matters pending between Fulton County and Dominion. Fulton County is entitled to have the propounded discovery enjoined (at least temporarily) pending a legal determination by this Court of the predicate legal issue that Fulton County has raised.

Disclosure and testimony gleaned from the proposed discovery will immediately and irreparably harm Fulton County. Not only will it divulge and therefore waive its right to object to and raise privileges and protections with respect to disclosures in the ordinary course of the underlying pending litigation in this case, but it will give up its current rights to protect information from the public on an ongoing basis in accordance with the exemptions and exclusions of the RTKL, as well as its rights to object to and raise all available privileges and protections in the pending RTKL appeal and breach of contract action, the latter two of which contain issues and factual matters that overlap with the issues and facts in the current underlying litigation, and sought by the Secretary's and Dominion's discovery requests. This will result in irreparable harm because the consequences disclosure and testimony will have on Fulton County cannot be undone.

Restoration of the status quo would be allowing this Court to address the pending appeal and the underlying litigation. Legal rulings can be made with respect to Fulton County's arguments concerning the scope of this Court's January Orders as well as the scope of this Court's October 21 Order as it pertains to the discovery

that the Special Master has initiated.

There is no other adequate remedy because this Court cannot affect or adjudicate the underlying litigation before it addresses the appeal, nor can it adjudicate those other matters in which Fulton County and Intervenor Dominion are engaged. The only way to abate harm to Fulton County in both the underlying litigation and the other matters is to stop the propounded discovery in the Special Master's proceeding at this juncture. Fulton County is required to respond to the discovery by noon tomorrow. This includes document production, responses to interrogatories and requests to admit, and motions and briefs concerning objections.

On balance, greater harm will result to Fulton County's interests if an injunction is not granted than will any harm come to the Secretary or Dominion. The public interest will also not be adversely affected in the circumstances. Indeed, Fulton County would submit that the public interest would be served by avoiding a situation in which Fulton County and its individual board members, employees, attorneys, consultants and experts will be required to divulge critical information and produce documents that prejudice its rights (and by extension those of its citizens) in the underlying and in those other matters in which it is involved with Dominion. On the other hand, there is no harm to the public in allowing the appeal and underlying litigation to proceed

Ultimately, even if discovery is allowed to proceed, although Fulton County

submits that there is no issue of fact because it has admitted to having had the inspection performed, rulings on the predicate legal issues are the minimum required before any discovery is allowed. The Special Master did not address the predicate legal issues, nor did she understand that submitting to discovery today would require Fulton County to waive and surrender its substantial due process and constitutional rights in the other pending matters in which Intervenor Dominion is involved.

ARGUMENT AND ANALYSIS

1. There Is No Factual Issue in the Contempt Proceeding Requiring Discovery

Preliminarily, counsel for Fulton County asserts that pursuant to Pa. R. Civ. P. 206.7(b), the Secretary and Intervenor Dominion is not entitled to take depositions or pursue discovery because Fulton County's Answer to the Secretary's Application "raised no issues of material fact". In its answer, Fulton County clearly conceded that it had conducted an inspection of the defunct and out-of-service voting machines and equipment that had been previously provided by Intervenor Dominion to Fulton County.

~~2~~ Now, the Secretary seeks to depose Fulton County for the benefit of Dominion because as explained many of the questions and interrogatories seek information that is privileged and that would subject Fulton County's individual members to constitutional jeopardy. This, even though there is no issue of material fact in these proceedings,

2 *Discovery Before Certain Legal Issues Are Resolved Unduly Prejudices Fulton County*

~~While the scope of the Special Master's Order is governed by its October 27, 2022 order, there are significant legal issues that must be addressed concerning the scope of such discovery as it applies to Fulton County and addressing the Secretary's Application for Contempt and Dominion's joinder therein. The legal rulings sought herein are requested to protect Fulton County's rights and responsibilities, which can only be fully protected and realized if they are subjected to the adversarial process of substantive litigation and potential appeal.~~

~~a. *This Court's October 21 Order Requires the Special Master to Consider the Legal Issue Concerning Whether the Alleged Contempt Should Be Assessed Under a Criminal or Civil Standard*~~

~~The plain language of this Court's October 21, 2022 Order specifically requires the Special Master to first consider the legal issue of "whether *the requested finding of contempt is civil or criminal in nature. The Special Master shall then take all steps necessary to afford the parties such process as is due in connection with that determination.*" (ATTACHMENT D, Pennsylvania Supreme Court Order, October 21, 2022, ¶ 2 (emphasis added).~~

~~A court speaks through its written orders and its plain language must be interpreted and applied as written. "[A] court speaks by its order, and effect must be given according to its terms, but not extended beyond its terms, and ordinarily an order will not be construed as going beyond the motion in pursuance of which it is~~

given.” *Rodney v. Wise*, 347 Pa. Super. 537, 544 n.4, 500 A.2d 1187, 1190 (1985), citing 60 C.J.S. Motions & Orders § 64 (1969). See also: 56 Am.Jur.2d Motions, Rules & Orders § 29 (1971).

Here, the Court’s October 21 Order clearly sets up a two-pronged proceeding, one that is requiring the Special Master to decide a legal question on the basis of the answers and memoranda submitted by the Secretary, Dominion, and Fulton County, and a second, which requires the Special Master to *afford the parties such process as is due in connection with that determination.*” (ATTACHMENT D, ¶ 2).

Thus, even if this Court does not agree that the plain language of its January Orders did not preclude Fulton County from performing the inspection of the defunct Dominion machines, the other predicate legal issue that must be considered before Fulton County is subjected to discovery in the Special Master’s proceedings regarding the nature of the contempt sought by the Secretary must be decided. This is not a mere procedural detail. The difference between the standard of review and application, as well as legal proceedings, differs significantly depending upon whether it is civil or criminal in nature. Moreover, the rights of and protections afforded to the party against whom the contempt action is prosecuted differ markedly.

b. The Legal Issue of the Scope this Court’s January Orders Must Be Resolved Before Fulton County is Subjected to Onerous and Constitutionally Suspect Discovery

In its Answer to the Secretary's Application to this Court to hold it in contempt, and its Memorandum of Law, Fulton County clearly asserted the predicate legal issue concerning application of the plain language of this Court's January Orders staying the then-scheduled inspection of the Dominion voting machines being used in Fulton County. (ATTACHMENTS ~~F~~J and ~~G~~K). [Moreover, Fulton County raised this issue in its motion objecting to discovery. \(ATTACHMENT B\).](#)

It remains Fulton County's position that whatever standard applies to the contempt proceedings, the Court's January Orders did not prohibit it from conducting inspection of defunct and decertified voting machines that had already been decommissioned and were never going to be used again.

Aside from the fact that Fulton County was within its right to conduct due diligence and inspect the defunct and useless Dominion voting machines that had been decertified by the Secretary, and were no longer in service, Fulton County lawfully conducted these inspections.

Further, this Court's January Order only applied to the then-scheduled Intergovernmental Senate Committee's proposed inspection. The Court's first order states:

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

On January 27, the Court entered a follow-up order, providing as follows:

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

A party may not be held in contempt of court for failing to obey an order that is *too vague or that cannot be enforced*. *Marian Shop v. Baird*, 448 Pa. Super. 52, 57, 670 A.2d 671, 674 (1996). Moreover, as noted earlier, a court speaks through its written orders and its plain language must be interpreted and applied as written. "[A] court speaks by its order, and effect must be given according to its terms, but not extended beyond its terms, and ordinarily an order will not be construed as going beyond the motion in pursuance of which it is given." *Rodney v. Wise*, 347 Pa. Super. 537, 544 n.4, 500 A.2d 1187, 1190 (1985), citing 60 C.J.S. Motions & Orders § 64 (1969). See also: 56 Am.Jur.2d Motions, Rules & Orders § 29 (1971).

Here, a plain reading of the Court's order clearly demonstrates that it applied to *the inspection* that was proposed by the Intergovernmental Senate Committee – that is the only inspection of electronic voting equipment that was scheduled to begin at 1:00 p.m. on January 14, 2022. Moreover, that inspection was to be conducted for many different reasons than the inspection that resulted in the September Report

provided by Speckin Forensics, LLC.

As noted, the latter inspection occurred after additional public debate and Fulton County's decision to, in good faith, perform due diligence to uphold its fiscal duties and responsibilities, deciding ultimately to bring a breach of contract action against Intervenor Dominion, which remains pending (ATTACHMENT [HL](#)), and to protect its citizenry, and the integrity of future elections.

An order forming the basis for contempt must be strictly construed, any ambiguities or omissions in the order must be construed in favor of the defendant. In such cases, a contradictory order, or "an order whose specific terms *have not been violated* will not serve as the basis for a finding of contempt." *Stahl v. Redcay*, 2006 PA Super 55, 897 A.2d 478, 489 (Pa. Super. 2006). To sustain a finding of contempt, the complainant must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent. A person may not be held in contempt of court for failing to obey an order that is too vague or that cannot be enforced." *Id.*

Any doubt or ambiguity in language or application would be construed in Fulton County's favor. *Id.* As noted, the order in the instant case applies to a very narrow and specific event. Moreover, the act of conducting inspections on defunct and no longer active voting machines was not with wrongful intent, but rather, was

with the sanctioning and approval of Fulton County, a public body, acting in good faith and performing due diligence. *Id.*

The inspection of election machines is a continuing duty on the part of governmental entities charged with the duty and responsibilities of protecting its citizenry. Moreover, as Fulton County's decisions were taken after public debate and voting in pursuit of its pending breach of contract action against Intervenor Dominion, and were lawful actions on the part of a governmental entity, Fulton County cannot be held in contempt for its good faith efforts to protect the rights of its citizens and to ensure that the elections it carries out as required by law are safe and secure, so that citizens can have faith in the reliability and outcome of future elections. No state should discourage due diligence and searching examination of the methods and procedures used to comply with the election laws and to provide all citizens their constitutionally guaranteed rights to free and fair elections.

Fulton County raises a legitimate and merit-worthy argument. Disposition of the prima facie question of whether this Court's January Orders were even violated by Fulton County must, of necessity, precede a decision to submit the matter to a Special Master. The Court's October 21, 2022 Order doing so completely bypasses this prima facie issue. Not only is this not in accord with the plain language of the Court's January Orders, but it results in significant prejudice to Fulton County and its individual members, employees, attorneys, consultants, and experts, in the

underlying litigation in this case, 277 MD 2021 and in other pending litigation discussed herein, all of which involve Intervenor Dominion.

3. *The Underlying Litigation and Other Pending Matters by and between Fulton County and Dominion Preclude the Proposed Discovery*

~~Fulton County asserts that any and all information that is subject to the privileges and protections discussed below are de facto and prima facie protected and non-disclosable. This applies to any production of documents and/or information, written responses to discovery request, and/or any oral statements taken via testimony in open court or via depositions.~~

The Special Master cannot allow discovery where the pending underlying matter is still being litigated and other matters in which Intervenor Dominion and Fulton County are parties remain pending. Doing so would completely destroy any of the ordinary protections and privileges afforded parties in litigation and threaten due process rights attendant to those adversarial proceedings. This is especially true as much of the information sought by the Secretary and Dominion overlap significantly with information and discovery that is or would be pertinent to Dominion and Fulton County in the other pending matters.⁷ This seems to be a fundamental principle that cannot be avoided. In other words, if the discovery as contemplated is allowed to proceed immediate and irreparable harm will occur and there is no undoing that

⁷ Indeed, Dominion will likely object to the proposed discovery of Fulton County on the same grounds, i.e., such discovery and disclosure on the part of Dominion would prejudice its rights and threaten its protections and privileges in the other matters in which it is involved with Fulton County.

harm. Greater injury will result to Fulton County and its individual members, employees, attorneys, consultants, and experts, than will result from not proceeding first with a determination of the purely legal issues that have been raised by Fulton County, both in this Court and in the Special Master's proceedings.

a. The Underlying Litigation Precludes the Proposed Discovery

In August of 2021, Fulton County sued the Secretary challenging the Secretary's decertification of Dominion's voting machines. Case No. 277 MD 2021 (the litigation underlying the appeal in this case). This suit is pending notwithstanding the issues being addressed by this Court in the Secretary's interlocutory appeal.

Fulton County's lawsuit contains five counts: (1) the Secretary unlawfully decertified Fulton County's two electronic voting machines; (2) the Pennsylvania Election Code (Election Code) expressly authorized the County to inspect its electronic voting devices as part of its statutory duty to ensure the safe and honest conducting of elections in the County; (3) a directive of the Secretary, which purported to prohibit all county boards of elections from inspecting their electronic voting devices with the assistance of a third-party consultant, violated Section 302 of the Election Code, 25 P.S. §2642; (4) the Secretary unlawfully withheld funding from the County that it needs to acquire replacement electronic voting devices; and (5) a request for injunctive relief to restore the status quo that existed prior to the Secretary's unlawful decertification of the county's voting machines.

The discovery sought from Fulton County in the Special Master’s proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying matter. This would include communications and consultations made in “closed door” conferences and meetings in which Fulton County discussed with legal counsel and consultants all aspects of the instant appeal, including all communications and consultations made prior to the filing of the underlying lawsuit, the instant appeal, and the contempt application. The underlying litigation remains pending.

The discovery sought from Fulton County in the Special Master’s proceeding will necessarily require Fulton County to disclose or otherwise subject itself (and its individual members, employees, attorneys, consultants, and experts) to onerous and burdensome discovery, which discovery actually relates to and is relevant to the litigation in the underlying litigation

b. Fulton County’s Breach of Contract Action Against Dominion Precludes the Proposed Discovery

On January 14, 2022, Fulton County voted unanimously to approve execution of the contract to purchase its election equipment from Hart for all future elections. (ATTACHMENT [FJ](#), p. 5, referencing Exhibit H, Fulton County’s January 14, 2022, Public Meeting Minutes). Subsequently, Fulton County filed a breach of

contract and breach of warranty action against Dominion alleging, among other claims, that the Dominion voting machines were not fit for their intended use and purpose.

(ATTACHMENT [HL](#), Notice of Removal of Fulton County’s Breach of Contract Action, filed October 18, 2022, U.S.D.C. Middle Dist. Pa., Case No. 1:22-cv-01639-SHR).

Fulton County alleges the existence of a contract to which it is a party with Dominion. “Fulton County is first party to a contract (a “Voting System and Managed Services Agreement”, hereafter “Agreement”) with Dominion, which Agreement was executed for and with Fulton County, Pennsylvania, on or about August 20, 2019, for equipment and services to be provided to Fulton County.” *Id.*, pp. 17-18, ¶ 1). “Defendant, Dominion Voting Systems, Inc., is second party to the Agreement with Fulton County, which Agreement, on information and belief was signed and executed by Dominion on or about August 14, 2019.” *Id.*, p. 18, ¶ 2.

Fulton County demonstrates in that Complaint that the contract contained ordinary terms proving the existence of a contract by and between Fulton County and Dominion.⁸ Fulton County further alleges that the Agreement provided that

⁸ In one of the many examples of advocating for Dominion, the Secretary in its pleadings on the application for contempt contends that there was no contract by and between Fulton County and Dominion. (ATTACHMENT [AG](#), p. 26 and footnote 37). However, the Secretary is not the judge of that legal question. Moreover, the Secretary is not, at least on paper, defending that breach of contract suit on behalf of Dominion. Finally, Fulton County’s complaint contains all the necessary allegations (including attaching and referencing the alleged contract) necessary for that issue to [be properly litigated by and between Fulton County and Dominion. It is certainly not the Secretary’s call to summarily dismiss Fulton County’s lawsuit in that separate action, especially when doing so inconceivably advocates](#)

Dominion was to provide “voting systems services, software licenses and related services,” to Fulton County for the conducting of elections in Fulton County. *Id.*, p. 19, ¶ 10. Fulton County also alleges that the Agreement contained certain conditions, guarantees, and warranties by Dominion, and cites the provisions of the Agreement containing these additional contract elements. Indeed, the Complaint goes through meticulous detail to describe the Agreement and the ordinary contract terms found therein. *Id.*, pp. 19-25, ¶¶ 11-40.

Fulton County then goes through several forensics reports and independent analyses of Dominion voting machines generally to allege that the Dominion machines did not perform as promised to Fulton County in the Agreement. *Id.*, pp. 25-36, ¶¶ 41-86. Among the reports cited was the Speckin Report commissioned by Fulton County in July 2022, and received in September 2022, which detailed the deficiencies in and inadequacies of Dominion’s voting systems, equipment, hardware, software, and services.

Based on all of the evidence it provides, Fulton County then states a Breach of Contract claim and a Breach of Warranty claim against Dominion, alleging that, for consideration, Dominion promised to provide certain equipment and services in

~~be properly litigated by and between Fulton County and Dominion. It is certainly not the Secretary’s call to summarily dismiss Fulton County’s lawsuit in that separate action, especially when doing so inconceivably advocates for what Intervenor~~

for what Intervenor Dominion’s position would be in that separate litigation in which the

~~Dominion's position would be in that separate litigation in which the~~ Secretary is not even involved. Indeed, Fulton County pointed out in its complaint that the terms of the Agreement provide that its "interpretation" was to be governed by the laws of the State of Pennsylvania". *Id.*, pp. 18-19, ¶ 7. This is a standard contract term and it is doubtful that the Secretary can take the place of a judicial tribunal to interpret that Agreement, much less conclude that it is not a contract.

~~Based on all of the evidence it provides, Fulton County then states a Breach of Contract claim and a Breach of Warranty claim against Dominion, alleging that, for consideration, Dominion promised to provide certain equipment and services in~~ accordance with the terms of the Agreement and its Warranties, and failed in that regard. *Id.*, pp. 36-40, ¶¶ 87-101.

This is ongoing litigation by and between Intervenor Dominion and Fulton County respecting the performance of and adequacy of the defunct and useless Dominion machines. The Special Master has opened up discovery to both the Secretary and Dominion concerning, among other things, questions related to the investigation by Fulton County, its privileged and confidential deliberations, and its decision-making with respect to its due diligence and good faith performance of its duties to Fulton County citizens, during pending and separate litigation in which those very same questions and the work-product and strategies developed by Fulton County and its legal counsel, consultants, and experts, are key to affording Fulton County the full panoply of its due process and litigation rights in that separate adversarial proceeding.

As this Court noted in its order appointing the Special Master, it was essential to

ensure that the parties' rights to due process were respected. (ATTACHMENT D, ¶ 2). They will not be if the current "discovery" is allowed to proceed as envisioned by the Special Master, the Secretary, and Intervenor Dominion, especially where the discovery overlaps with issues at play in the breach of contract action. Even more egregious is the fact that the Secretary takes the same adversarial positions as Dominion would do against Fulton County in that action.

Indeed, the Secretary has issued notices to depose the three Commissioners of Fulton County (Paula Shives, Randy Bunch, and Stewart Ulsh). (ATTACHMENT [KC](#), Deposition Notices ~~Issued on October 31, 2022~~). ~~These depositions will involve questioning under a situation in which, primarily, the Special Master has not yet made a determination as to whether the contempt proceedings themselves or "civil" or "criminal" in nature; a legal ruling that this Court specifically requested the Special Master to make before proceeding with fact finding. Moreover, notwithstanding the answer to that predicate legal question, requiring~~. [Requiring](#) Fulton County's board members to sit for depositions could expose them to potential criminal investigation based simply on the Pennsylvania Attorney General's and the United States Department of Justice's attempts to prosecute individuals for questioning the integrity of election machines used in elections in the United States.

This is no hypothetical speculation. Among the Secretary's 41 proposed

deposition questions are included: “*Whose idea was it to image and/or inspect the contents of hard drives from the Voting Machines after January 14, 2022?*” (ATTACHMENT [LQ](#), Secretary’s Proposed Deposition Questions, October 31, 2022,

p. 6, ¶ 10). Another one asks: “With respect to any communications you have had with persons other than counsel for Petitioners regarding the Order entered by the Supreme Court of Pennsylvania in this Action on January 14, 2022, the Order entered by the Supreme Court of Pennsylvania in this Action on January 27, 2022, or the Injunction, what was the substance of each such communication?” *Id.*, p. 11, ¶ 28. A similar question seeks the same with respect to Fulton County’s commissioning of the July 2022 Speckin Report (the report that is the subject of the Secretary’s Application, but which is also part of Fulton County’s separate breach of contract action against Intervenor Dominion. *Id.*, p. 12, ¶ 30.

In addition to asking for a subjective and intentional belief on the part of the deponents, which could put them at risk of the aforementioned investigations, this also requests the deponents to divulge deliberative thought processes that Fulton County contends are subject to several protections and privileges, including attorney-client privilege. Seeking such testimony while other actions are pending that involve Dominion, especially where Dominion is an intervenor in this action, complicit in the Secretary’s Application for Contempt, and a direct participant, and

indeed, beneficiary of the information that might be gleaned from the propounded discovery, makes it impossible for Fulton County and its individual members, employees, attorneys, consultants, and experts, not to expose themselves to prejudice and potential disclosure of their positions, and waiver of their protections and privileges in those other matters. This is a direct violation of the due process rights of Fulton County and infringement upon multiple recognized privileges and protections, such as attorney-client, work-product, deliberative process, etc.

The Interrogatories propounded by the Secretary are no less intrusive. The first interrogatory requests Fulton County to disclose its deliberations and potentially conversations with its legal counsel and other consultants in its decisions leading up to the filing of its breach of contract action – and the question specifically relates to the inspection that was conducted in pursuance thereof and which is the subject of the Secretary’s Application for contempt. (ATTACHMENT [MP](#), Secretary’s Interrogatories, p. 7, ¶ 1). Additional interrogatories seek technical and logistical details concerning the September 2022 report, which details are necessarily critical to and of current use in the other actions involving Intervenor Dominion (the breach of contract action *and* the RTKL proceeding).

In addition, the propounded discovery seeks to elicit testimony and information that will necessarily relate to the underlying litigation (277 MD 2021), but in Fulton County’s breach of contract action and its appeal in the RTKL proceedings, both of

the latter of which involve Intervenor Dominion as the opposing party, *and* fact questions regarding the examination of Dominion's voting machines, hardware, software and related equipment and services that it provided to Fulton County.

The Secretary also seeks direct testimony concerning Fulton County's decisions to hire legal counsel and what attorneys have provided legal advice to Fulton County. (ATTACHMENT [LQ](#), ¶¶ 35-39). The deposition questions also inquire into Fulton County's deliberations and decisions to hire consultants and experts in the course of Fulton County's day-to-day operations. For example, there are questions related to the hiring of Speckin Forensics, LLC, which issued the report in September 2022 and which report is being used by Fulton County in the breach of contract action that it voted to pursue against Intervenor Dominion.

Not only does Fulton County take the position that this information is protected by attorney-client and deliberative process privileges, it is also work-product to the extent that it involves decisions and work performed in anticipation of and in the pursuance of litigation. Intervenor Dominion is getting a free ride on the back of the Secretary's discovery and could obviously use the fruits thereof in its own separate litigation with Fulton County.

Therefore, briefing and a legal ruling needs to be had on the propriety of forcing Fulton County, as defined above to disclose information through the Special Master's hearing and discovery process that could, in Fulton County's view lead to a

violation of Fulton County's individual and collective rights.

c. Fulton County Has Protections Under the RTKL which the Proposed Discovery Threatens

To the extent that the discovery sought in this proceeding contains a demand for testimony, and/or communications, and/or documentation, and/or information exempt or excluded from disclosure under the RTKL, such is protected by one, or more, statutory and/or common-law privileges, including, but not necessarily limited to, deliberative process privilege; whistle-blower protection act exclusions and protections; attorney-client privilege; and/or work-product doctrine, to the same extent as the RTKL. In other words, Fulton County has certain legal and administrative rights to assert exemptions and exclusions under the RTKL that would be destroyed or waived immediately if it were to submit to the proposed discovery.

Fulton County's Protections Under the Right to Know Law

Particularly, although not exclusively, Fulton County has exemptions and exclusions from public disclosure under Pennsylvania's Right to Know Law (RTKL), 65 P.S. § 67.101 et seq. These exemptions and exclusions are not only relevant to Fulton County's existing rights to protect certain information from public disclosure on an ongoing basis, in other words, information that may be disclosed during the proposed discovery that would otherwise not be available under one or more exemptions in the RTKL, but as explained below, to the exemptions and protections it has asserted in the ongoing RTKL appeal involving Dominion.

Any and all written production, documents and information, and/or testimony that Fulton County might be expected to divulge in this proceeding is protected and could not be publicly disclosed by virtue of it being produced or given, respectively, in this proceeding. Any and all exemptions and/or exclusions that are or might be applicable to Fulton County under the RTKL apply equally to some or all of the information sought through discovery in this proceeding. As noted, the Special Master's October 24 Order envisions a public hearing aired on public television in which these issues and the evidence ostensibly to be gleaned during her ordered discovery will be immediately publicized. (ATTACHMENT I, p. 2, ¶ 3, footnote 2).

Such information, which if disclosed in the course and scope of the discovery sought (information, documents, written responses, answers, and testimony), and

which are and would be exempt and excluded from Fulton County's *preliminary and absolute* rights to object to said disclosures under the RTKL, are equally protected in the instant case to the same extent, as such sought after information would become available as "public information" contrary to Fulton County's legal rights and responsibilities to protect said information from public disclosure, both preliminarily and absolutely, under the RTKL.⁹

Under Section 305(a) of the RTKL, information in an agency's possession is presumed to be public record unless: (1) it is exempt under Section 708 of the RTKL;

(2) it is protected by a privilege; or (3) it is exempt from disclosure under any other federal or state law or regulation or judicial order or decree. 65 P.S. § 67.305(a).

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 Pa. Stat. Ann. § 67.708

The RTKL also exempts or excludes information subject to the attorney-work product doctrine, attorney-client privilege, the doctor-patient privilege, the speech and debate privilege, or other privilege recognized by a court interpreting the laws of

⁹ Fulton County has the right to object to all requests made under Pennsylvania's Right to Know Law (RTKL) and has subsequent administrative, legal and appellate rights with respect to any preliminary objections and refusals to provide such information that may be included in such requests. As such, these administrative and legal rights cannot be circumvented and destroyed by the required disclosure of such information to the extent that any purported discovery requests herein demand any and all such information that would be subject to full panoply of protections afforded to

this Commonwealth. 65 Pa. Stat. Ann. § 67.102.

Once a protection or privilege is asserted and established, the burden is on the requesting party to prove that there is no privilege. See, e.g., *Office of the Governor v. Davis*, 122 A.3d 1185, 2015 Pa. Commw. LEXIS 363 (Pa. Commw. Ct. 2015), citing 65 Pa. Stat. Ann. § 67.102.

(i) Personal Information

The law creates exemptions for certain information often contained in a public record related to personal information. The Right-to-Know Law exempts the disclosure of a record that “would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.” Section 708(b)(1)(ii) of the Right-to-Know Law, 65 P.S. § 67.708(b)(1)(ii). See also, *Pa. State Educ. Ass’n ex rel. Wilson v. Pa. Office of Open Records*, 4 A.3d 1156, 1160 (Pa. Cmwlth. 2010). Specifically, § 708(b)(6)(i)(A) identifies exemptions for the following information: (A) A record containing *all or part* of a person’s...home, cellular or personal telephone numbers, [and] personal e-mail addresses.... (emphasis added). *Id.* To the extent that discovery in this proceeding would include any two-way communications with or by or from or to individuals that are part of the discovery sought, such communications are subject to the exemption in subsection (b)(6)(i)(A).

(ii) Records Relating to Fulton County Employees

Section 708(b)(7) of the RTKL generally exempts from access by a requester certain "records relating to an agency employee." *Office of Gen. Counsel v. Bumsted*, 247 A.3d 71, 77 (Pa. Cmwlth. 2021). Section applies to local agencies. "LOCAL AGENCY." Any of the following: (1) Any political subdivision... 65 Pa. Stat. Ann. § 67.102 (LexisNexis, Lexis Advance through 2022 Regular Session Act 97; P.S. documents are current through 2022 Regular Session Act 97).

(iii) Security Measures, Practices and Procedures and Safety

Subsection (b)(3) and (4) of the RTKL exempts:

[R]ecords, the disclosure of which creates a *reasonable likelihood* of endangering the safety or the physical security of... information storage system[s], which may include:

(i) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;

(iii) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including...technology, [and] communication...systems[,] and

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would be reasonably likely to jeopardize computer security. 65 Pa. Stat. Ann. § 67.708(b)(3) and (4).

To the extent that the discovery sought in this proceeding contains a demand for communications and/or documentation and/or information that is protected from

disclosure because it relates to or touches upon a public body's ongoing security measures, methods, practices, and procedures, and/or regarding security and safety of persons, property, confidentiality, integrity, and/or availability of computer and information systems, such is protected from disclosure to the same extent as the RTKL, would protect such information. Fulton County's disclosures under the discovery that has been propounded by the Secretary and Intervenor Dominion would be an automatic and immediate waiver of its rights to assert this exemption in the future.

The Special Master's November 4 Order (ATTACHMENT A) misunderstood the argument made by Fulton County. It is the potential disclosure of public information not only in general, but also, in reference to the pending RTKL appeal currently pending by and between Fulton County and Dominion. (ATTACHMENT N). While a RTKL proceeding may not entitle a party to raise privileges because other litigation is pending, the question concerns whether Fulton County's due process rights in an RTKL proceeding can be surrendered vis-à-vis an adverse party, where that adverse party is participating in a current proceeding where many of the same questions that Fulton County has raised in the RTKL proceeding are being asked of it in the current proceedings involving Dominion. Fulton County would automatically waive and surrender its rights that it may be entitled to avail itself of in

[the RTKL appeal if it is required to submit to discovery here.](#)

(iv) Other Statutory and Common-Law Privileges and Protections

The statutory privileges in the RTKL itself are also copasetic with the common-law jurisprudence regarding privileges and protected work-product.

Section 102 of the RTKL defines “privilege” as: “The attorney work-product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court incorporating the laws of this Commonwealth.” See *Bagwell v. Pa. Dep’t of Educ.*, 103 A.3d 409, 414 (Pa. Cmwlth. 2014).

In addition, the work-product doctrine, while closely related to the attorney-client privilege, provides broader protections. *Levy v. Senate of Pa. (Levy III)*, 94 A.3d 436 (Pa. Cmwlth. 2014); *Dages v. Carbon Cnty.*, 44 A.3d 89 (Pa. Cmwlth. 2012). Confidential information flows from the client to the attorney, and vice versa, in the attorney-client relationship. *Gillard v. AIG Ins. Co.*, 609 Pa. 65, 15 A.3d 44 (Pa. 2011). The attorney-client privilege protects such confidential communications. *Id.* “By contrast, work-product privilege only applies to records that are the work-product of an attorney, and may extend to the product of an attorney’s representative secured in anticipation of litigation.” *Rittenhouse v. Bd. of Sup’rs*, 41 A.3d 975, 2012 Pa. Comwlth. Unpub. LEXIS 248 (2012) (applying Pa. R.C.P. No. 4003.3 (work product extends to investigator’s reports prepared for litigation)).

At the core of the work-product doctrine is that parties and their attorneys need a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. *Commonwealth v. Kennedy*, 583 Pa. 208, 876 A.2d 939, 945 (Pa. 2005). See also, *Hickman v. Taylor*, 329 U.S. 495, 510-11, 67 S. Ct. 385, 91 L. Ed. 451 (1947)). “The underlying purpose of the work product doctrine is to guard the mental processes of an attorney, providing a privileged area within which he can analyze and prepare his client’s case.” *Commonwealth v. Sandusky*, 2013 PA Super 182, 70 A.3d 886, 898 (Pa. Super. 2013).

In the RTKL context, the Pennsylvania Court of Appeals recently held the work-product doctrine protects the “mental impressions, theories, notes, strategies, research and the like created by an attorney in the course of his or her professional duties, particularly in anticipation or prevention of litigation” from disclosure. *Levy III*, 94 A.3d at 443 (emphasis added). Moreover, the “doctrine protects any material prepared by the attorney ‘in anticipation of litigation,’ regardless of whether it is confidential.” *Dages*, 44 A.3d at 93 n. 4 (quoting *Nat’l R.R. Passenger Corp. v. Fowler*, 788 A.2d 1053, 1065 (Pa. Cmwlth. 2001)).

The Pennsylvania Supreme Court also previously held “that, to the extent material constitutes an agency’s work product, it is not subject to compulsory public disclosure pursuant to the RTKL.” *In re Thirty-Third Statewide Investigating Grand Jury*, 86 A.3d 204, 225 (Pa. 2014) (citing *LaValle v. Office of Gen. Counsel*, 564 Pa.

482, 769 A.2d 449, 459 (Pa. 2001).

Thus, subsection 708(b)(10) exempts communications and information concerning “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.” (emphasis added).

Section 708(b)(10) is a “statutory privilege.” This exemption would extend to privileged communications by and between the County and individuals and entities whose reports and information have been or will be used by the County to formulate policies and procedures; and, specifically, with respect to the proper conducting of future elections. According to the language of Section 708(b)(10)(i)[A], “protected records must be predecisional and deliberative.” *Kaplin v. Lower Merion Twp.*, 19 A.3d 1209, 1214 (Pa. Cmwlth. 2011). Information that constitutes “confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice” is protected as “deliberative.” *In re Interbranch Comm’n on Juvenile Justice*, 605 Pa. 224, 238, 988 A.2d 1269, 1277-78 (2010) (quoting plurality opinion in *Commonwealth v. Vartan*, 557 Pa. 390, 399, 733 A.2d 1258, 1263 (1999)).

Section 708(b)(17) also provides another “statutory privilege;” an exemption for records of an agency relating to a noncriminal investigation, including: (i) complaints; investigative materials, notes, correspondence and reports; records that include the identity of confidential sources, including whistle-blowers; a record that includes information made confidential by law; and any work papers underlying an audit.

Fulton County has a duty to pursue and is pursuing an ongoing active, non-criminal investigation into the conducting of the 2020 election, which necessarily implicates and bears upon the County’s proper and lawful conducting of future election cycles. It must also do this in confidence. Such information falls within not only the common-law attorney-client and work-product privileges, but also the statutory privileges identified in (b)(10) and (b)(17) of the RTKL. Disclosure of these matters, which are within the scope of the Secretary’s and Intervenor’s Dominion’s discovery requests would violate the statutory privilege and potentially disclose protected information about said ongoing investigations.

In *Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 811 (Pa. Cmwlth. 2010), the Court defined the term “noncriminal investigation” by providing a non-exhaustive list in the conjunctive. Thus, the term “investigation” within the meaning of this exemption: “includes systematic or searching inquiry, a detailed examination, or an official probe.” Certainly, in addition to being protected by the common-law

and statutory privileges discussed above, including the investigatory executive privileges attendant to an official governmental agency's probe of potentially systemic issues in the conducting of state and national elections, audits and reports created for the purposes of, inter alia, "inquiry", "detailed examination," and "official probe[s]" would be within the "noncriminal investigation" exemption which Fulton County has a right to assert.

All of these are rights, privileges, and protections that Fulton County possesses and may assert through the ordinary due process afforded in the administrative proceedings under the RTKL are under threat due to the currently scheduled discovery. Moreover, in the ordinary course, a request for public records and exemptions or privileges and protections asserted by the governmental entity would be able to be subjected to in camera review or request submissions beforehand as to material facts when exemptions are potentially applicable. See, e.g., *Dinmore v. Pa. Dep't of Cmty. & Econ. Dev.*, 2022 Pa. Comwlth. Unpub. LEXIS 188, at *28-31 (Cmwlth. May 6, 2022).

To subject Fulton County to the proposed discovery in the instant proceeding would automatically and immediately deprive Fulton County of these rights without recourse to the administrative and adversarial process ordinarily afforded under the RTKL.

Fulton County has already detailed the overlap in the questions being asked in

the Secretary's proposed discovery requests and deposition questions, and the information being sought by Intervenor Dominion in the separate RTKL appeal currently pending in the Fulton County Court of Common Pleas. (Court of Common Pleas of Fulton County, Case No. 204 of 2022-C; OOR Docket No. AP 2022-1542). Indeed, Fulton County has raised many of these exemptions, exclusions, and privileges in that appeal.

There is an automatic stay in place while an RTKL is pending. At least some of the information sought by Intervenor Dominion's RTKL request is, in Fulton County's view, already protected by its asserted exemptions and exclusions under the RTKL in that pending appeal.

Moreover, a requester's opportunity to present evidence when developing the evidentiary record is limited in the RTKL context. See *Dep't of Educ. v. Bagwell*, 114 A.3d 1113 (Pa. Cmwlth. 2015) (Bagwell 2015). "[N]either the RTKL nor the courts have extended rights to discovery ... to a requesting party under the RTKL." *State Emps' Ret. Sys. v. Pennsylvanians for Union Reform (SERS v. PFUR)*, 113 A.3d 9, 20 (Pa. Cmwlth. 2015), vacated on other grounds, 165 A.3d 868, (Pa., 344 MAL 2015, January 17, 2017) (citing *Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515 (Pa. Cmwlth. 2011)). See also *UnitedHealthcare of Pa., Inc. v. Baron*, 171 A.3d 943, 952 (Pa. Cmwlth. 2017).

Intervenor Dominion does not get to circumvent Fulton County's due process

rights and its assertions of exemptions and exclusions in the RTKL appeal process, which it will have done if it is allowed to be the fortuitous recipient of the information sought by Appellee Secretary through discovery in this proceeding.

4. Disclosures and Testimony from the Proposed Discovery would Violate the Individual Constitutional Rights of the Proposed Deponents and Other Potential Witnesses

The proposed discovery would potentially violate the individual constitutional rights of the proposed deponents and of other Fulton County members, employees, attorneys, consultants, and experts. (ATTACHMENTS [KO](#) through [MR](#)). The Secretary and Dominion seek information from the individual proposed deponents, and have propounded additional questions concerning communications, identities, and decision-making that if divulged in the Special Master’s proposed discovery proceeding could expose these individuals to investigations. Given the fact that current statements and information available by the Attorney General of Pennsylvania and the United States Department of Justice (DOJ) have characterized certain substantive statements and speech as “misinformation,” and as such other intentional and unintentional communications, speech, and/or statements (oral or written) are being “targeted” as potentially criminally punishable by potential prosecution, certain disclosures as sought here could potentially violate the constitutional rights of the proposed individual witnesses / deponents, including, but not limited to those under the Fifth Amendment of the United States Constitution and Article I § 9 of the Constitution of the Commonwealth of Pennsylvania.

The Fifth Amendment protects an individual from being compelled in any criminal case to be a witness against himself. U.S. Const. Amend V. The Fifth Amendment right not to be compelled to be a witness against oneself protects the innocent as well as the guilty. *Ohio v. Reiner*, 532 U.S. 17, 18 (2001). The Fifth Amendment Privilege applies in congressional investigations and administrative proceedings. *Watkins v. United States*, 354 U.S. 178, 187-88 (1957). An innocent person has the right to claim the Fifth Amendment privilege if the information requested could conceivably supply a link in the chain leading to prosecution. It is a safeguard against heedless, unfounded, or tyrannical prosecutions. *Quinn v. United States*, 349 U.S. 155, 162 (1955). Moreover, courts have held that the Fifth Amendment privilege extends to the communicative aspects inherent in the act of producing documents. *United States v. Hubbell*, 167 F.3d 552 (D.C. Cir 1999).

Also, “the availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites.” *Estelle v. Smith*, 451 U.S. 454, 462, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) (citation omitted). The Fifth Amendment privilege against self-incrimination can be asserted *in any proceeding* “in which the witness reasonably believes that the information sought, or discoverable as a result of his testimony, could be used in a subsequent state or federal criminal proceeding.” *United States v. Balsys*, 524 U.S. 666, 672, 118 S.Ct.

2218, 141 L.Ed.2d 575 (1998), accord *Veloric v. Doe*, 2015 PA Super 194, 123 A.3d 781, 786 and *Commonwealth v. Brown*, 2011 PA Super 47, 26 A.3d 485, 493-494 (Pa. Super. 2011).

To be clear, Fulton County asserts that these protections apply not only to the proposed individual defendant members of the Fulton County Board of Commissioners (the proposed “deponents”), but also to any and all those whose communication and statements may have been received by individual employees, agents, part-time and full-time contractors and subcontractors, including attorneys and experts, such that same would be protected by the Fifth Amendment to the extent that disclosure of such statements and communications (to the extent that they are not protected by other evidentiary exceptions, e.g., hearsay, etc., which Fulton County would specifically assert and which would be the subject of objection and/or additional exclusionary motions) would necessarily provoke an invocation of that privilege by such aforementioned individuals.

Although the Special Master concluded that this was a “civil contempt” proceeding, she did not address the specific argument that Fulton County not only has a right to raise Fifth Amendment and due process protections in this civil contempt proceedings, see discussion, *supra*, but also it has a right to raise these objections because submitting to testimony in these proceedings would constitute an automatic waiver of its rights to seek those protections in the other pending matters

where the same questions and issues have or will arise by virtue of the arguments and claims being asserted by Fulton County and Dominion therein.

5. ***Public Policy and Power of the State to Aid a Private Party and Tilt the Scales of Justice***

Disclosure of the information sought through the discovery contemplated in this proceeding threatens Fulton County's conducting of and operations concerning current and future ongoing elections. The security and lawful conducting of future elections necessarily depends on the information and records gleaned *from a full and complete audit and reports produced by past and ongoing investigations.* ~~That is an easy statement to understand.~~

If the Secretary, and Intervenor Dominion, can, working together, harass and harangue Fulton County using this Courts ostensible powers of contempt in a completely separate judicial proceeding in an attempt to force Fulton County to divulge information pertaining to its election procedures, make that public, and then to disparage Fulton County, then it can otherwise disrupt its proper and legal conducting and operation of current and ongoing elections (most pressingly, the rapidly approaching November 8th election). The disclosures and discovery should not be allowed precisely because Fulton County is still in the process of examining information, audits, and data, and implementing security measures, methods, practices, and procedures to ensure the security and safety of persons, property, confidentiality, integrity, and/or availability of computer and information systems

used during current and future elections.

Requiring disclosure through the discovery sought in this proceeding will prejudice the rights, privileges, immunities and protections that are afforded to Fulton County by virtue of its position in its other ongoing matters with Intervenor Dominion. In fact, in a real sense, the Secretary represents and takes the position of Intervenor Dominion in its discovery demands in this proceeding, even going so far as to have advocated for a dismissal of Fulton County's breach of contract lawsuit against Dominion! The Secretary's propounded discovery in this proceeding and the extent to which the nature and scope of that discovery *overlaps* with and *implicates* protected and privileged information and the rights and immunities held by and afforded to Fulton County, respectively, vis-à-vis Dominion, in the former's current and ongoing investigations, in the RTKL litigation, and in Fulton County's breach of contract action *all involving Dominion, may be* an accidental inevitability of the scope of the discovery sought in this proceeding. However, it cannot be allowed given these inexorable prejudices.

However, when the Secretary blatantly requests in its own Application for Contempt that it seeks as a potential sanction dismissal of Fulton County's breach of contract lawsuit *against* Intervenor Dominion, it does not appear accidental. Rather, it appears that the Secretary is directly representing and advocating for Dominion! This is an irreconcilable conflict and the very fact that the Secretary has

gone so far across the line from accidental consequence to direct advocacy should give the Court pause to these discovery proceedings to occur. Indeed, if left to proceed, the Secretary will be carrying much, if not all, of Dominion's water in its multiple disputes with Fulton County.

What is the remedy to undo this obvious conflict of interest and blurring of the lines between the Secretary's and Dominion's positions here? Are both "state actors"? Does Fulton County have a remedy against Dominion for a violation of its constitutional rights (discussed in more detail above) by Dominion acting as a de facto state actor indistinguishable from the Secretary and the power of the Commonwealth? Clearly, the Secretary is not entitled to discovery in this proceeding, where such would be a wholesale waiver and surrender of all the rights, privileges, and protections afforded to Fulton County not only here in this proceeding, but in the multiple ongoing disputes it has with Dominion. Again, to allow the Secretary to get at this information would be tantamount to the Secretary's taking laboring oar as counsel for Dominion and potentially achieving adjudication through mootness or dismissal of Fulton County's litigation with Dominion. The Court cannot allow such abuse of the adversarial process by giving the Secretary and Dominion concurrent, indeed indistinguishable concurrent authority, power and *jurisdiction* to summarily decide and effectively destroy Fulton County's procedural and substantive rights to due process. This goes beyond simply forcing Fulton

County into a position where its rights are automatically violated. This would obligate Fulton County to provide information that would result in it surrendering (and waiving) its rights to assert the privileges and protections it is afforded in its RTKL appeal and in its separate litigation with Dominion in the breach of contract action.

This begs the question. How is Dominion even allowed to participate in the discovery in these proceedings where the Secretary asks the Court to exercise its powers of contempt and punish Fulton County, which punishment is in part a request to tilt the scales of justice in Dominion's favor, and potentially forever alter Fulton County's legal rights and responsibilities vis-à-vis Dominion in current and ongoing litigation between the two parties? This is a fundamental question and it must be addressed by the Court *before* the Secretary, acting for and on behalf of Dominion is allowed to circumvent the administrative and judicial processes [that provide the due process and constitutional protections](#) to which Fulton County is entitled.

[The Special Master did not answer this question, even though Fulton County raised it in its motion objection to the discovery. \(ATTACHMENT B\). In fact, the Special Master did not understand that requiring Fulton County to disclose the overlapping information that the Secretary \(and Dominion\) seek here will constitute an automatic waiver of the objections through ordinary motion practice that Fulton County might raise in those other pending proceedings involving Dominion.](#)

(ATTACHMENT A). This is especially pertinent since the due process and constitutional rights of Fulton County’s individual members could be involuntarily surrendered if it is required to proceed with the scheduled depositions.

CONCLUSION AND REQUESTED RELIEF

~~A party seeking a preliminary injunction must establish the following elements: (1) A clear right to relief; (2) immediate and irreparable harm in the absence of an injunction; (3) restoration of the status quo; (4) no adequate remedy at law exists and the injunction is appropriate to abate the alleged harm; (5) greater injury will result by not granting than by granting the injunction; and (6) the preliminary injunction will not adversely affect the public interest. *Wyland v. West Shore School District*, 52 A.3d 572, 582 (Pa. Cmmw. 2012) (citing *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995 (Pa. 2003)).~~

~~Fulton County is being subjected to onerous discovery proceedings before the predicate legal issues it has raised before the Court and the Special Master have been decided. This Court clearly required the Special Master to decide the legal issue of whether the contempt proceedings are “civil” or “criminal” in nature. (ATTACHMENT D, ¶ 2). Moreover, Fulton County has raised the issue of whether this Court’s January Orders even apply to the particular examination performed by Fulton County in its due diligence to ultimately pursue a breach of contract action or other action against Dominion. Finally, a multitude of rights, privileges, and~~

~~protections are at stake if the discovery is allowed to proceed, not only in the current underlying litigation, but in the other matters pending between Fulton County and Dominion. Fulton County is entitled to have the propounded discovery enjoined (at least temporarily) pending a legal determination by this Court of the predicate legal issue that Fulton County has raised.~~

~~Disclosure and testimony gleaned from the proposed discovery will immediately and irreparably harm Fulton County. Not only will it divulge and therefore waive its right to object to and raise privileges and protections with respect to disclosures in the ordinary course of the underlying pending litigation in this case, but it will give up its current rights to protect information from the public on an ongoing basis in accordance with the exemptions and exclusions of the RTKL, as well as its rights to object to and raise all available privileges and protections in the pending RTKL appeal and breach of contract action, the latter two of which contain issues and factual matters that overlap with the issues and facts in the current underlying litigation, and sought by the Secretary's and Dominion's discovery requests. This will result in irreparable harm because the consequences disclosure and testimony will have on Fulton County cannot be undone.~~

~~Restoration of the status quo would be allowing this Court to address the pending appeal and the underlying litigation. Legal rulings can be made with respect to Fulton County's arguments concerning the scope of this Court's January Orders~~

~~as well as the scope of this Court's October 21 Order as it pertains to the discovery that the Special Master has initiated.~~

~~There is no other adequate remedy because this Court cannot affect or adjudicate the underlying litigation before it addresses the appeal, nor can it adjudicate those other matters in which Fulton County and Intervenor Dominion are engaged. The only way to abate harm to Fulton County in both the underlying litigation and the other matters is to stop the propounded discovery in the Special Master's proceeding at this juncture. Fulton County is required to respond to the~~

~~discovery by noon tomorrow. — This includes document production, responses to interrogatories and requests to admit, and motions and briefs concerning objections.~~

~~On balance, greater harm will result to Fulton County's interests if an injunction is not granted than will any harm come to the Secretary or Dominion. The public interest will also not be adversely affected in the circumstances. Indeed, Fulton County would submit that the public interest would be served by avoiding a situation in which Fulton County and its individual board members, employees, attorneys, consultants and experts will be required to divulge critical information and produce documents that prejudice its rights (and by extension those of its citizens) in the underlying and in those other matters in which it is involved with Dominion. On the other hand, there is no harm to the public in allowing the appeal and underlying litigation to proceed. Ultimately, even if discovery is allowed to~~

~~proceed, although Fulton County submits that there is no issue of fact because it has admitted to having had the inspection performed, rulings on the predicate legal issues are the minimum required before any discovery is allowed to proceed.~~

WHEREFORE, for the reasons stated above, Fulton County respectfully requests the Court to issue an [order granting this application for an emergency injunction on the proposed discovery proceedings.](#)

Respectfully submitted by:

/s/ Thomas J Carroll

Attorney ID: 53296

Attorney for Petitioners

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Date: November ~~1~~7, 2022

Document comparison by Workshare 10.0 on Monday, November 7, 2022 9:31:46 AM

Input:	
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Rendering set	Standard

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Padding cell	

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Total changes	297

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 3 MAP 2022

**COUNTY OF FULTON, FULTON COUNTY BOARD OF ELECTIONS,
STUART L. ULSH, IN HIS OFFICIAL CAPACITY AS COUNTY
COMMISSIONER OF FULTON COUNTY AND IN HIS CAPACITY AS A
RESIDENT, TAXPAYER AND ELECTOR IN FULTON COUNTY, AND
RANDY H. BUNCH, IN HIS OFFICIAL CAPACITY AS COUNTY
COMMISSIONER OF FULTON COUNTY AND IN HIS CAPACITY AS
RESIDENT, TAXPAYER AND ELECTOR OF FULTON COUNTY,**

Petitioners/Appellees,

v.

SECRETARY OF THE COMMONWEALTH,

Respondent/Appellant.

Appeal from the January 14, 2022
Single-Judge Order of the Commonwealth Court (Leavitt, J.),
No. 277 M.D. 2021

DECLARATION OF JONATHAN M. MARKS

I, Jonathan M. Marks, declare and affirm under the penalties of 18 Pa.C.S. § 4904 that:

1. I am the Deputy Secretary for Elections and Commissions at the Pennsylvania Department of State (the Department). I have been employed as Deputy Secretary since February 2019. Prior to serving as Deputy Secretary, I served as Commissioner for the Bureau of Commissions, Elections and Legislation, and before that, the Division Chief for the Statewide Uniform Registry of Electors (SURE). I have worked at the Department since 1993 and been involved with the Department's election-related responsibilities since 2002.

2. My duties as Deputy Secretary for Elections and Commissions include overseeing the Bureau of Elections, the Bureau of Campaign Finance and Lobbying Disclosure and the Bureau of Notaries, Commissions, and Legislation. The Bureau of Elections is responsible for overseeing election technology, ensuring data integrity, and developing secure administrative procedures related to election administration in Pennsylvania, including administration of the Statewide Uniform Registry of Electors database (SURE).

3. I submit this Declaration in support of the Acting Secretary's response in this matter. Given my role and years of experience at the Department, I am personally knowledgeable about the matters referenced in this Declaration and the

business records of the Department of State. If called as a witness, I could and would testify competently to the matters set forth below.

4. At approximately 1:00 in the afternoon on Friday November 4, 2022, the Commonwealth experienced an outage at the Enterprise Data Center that impacted multiple agencies, including the Department of State.

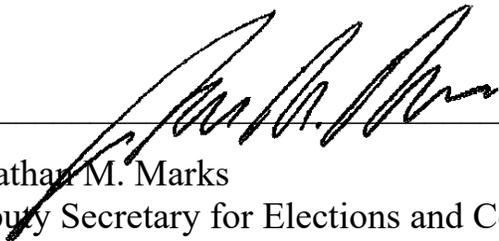
5. That outage, however, did not prevent county users from working in SURE and counties were able to continue to record returned ballots and process applications. While the outage did impact the ability to generate certain reports and poll books and print certain items, the issue was resolved, and all SURE-related functions were restored by 7:20 a.m. on Saturday, November 5, 2022.

6. After initial communications as to when the outage would be resolved, Fulton County printed its poll books on November 5. There were no further communications from Fulton County that its elections operations were in any way further impacted by this brief Enterprise outage.

7. While the timing of the outage was unfortunate, it was quickly resolved and all SURE functions were restored early Saturday morning. I cannot conceive of any reason why this brief Enterprise-wide outage and with its limited impact on SURE would have any residual or lingering effect on the administration of tomorrow's election.

I declare that the facts set for in this Declaration are true and correct. I understand that this Declaration is made subject to the penalties for unsworn falsification to authorities set forth in 18 Pa.C.S. § 4904.

Executed on this 7th day of November, 2022



Jonathan M. Marks
Deputy Secretary for Elections and Commissions
Pennsylvania Department of State