Robert Mancini

4 Guernsey Lane
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Fax- None

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Representing Self

Jeanne White

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North Wales, PA 19454
267-577-2120

None

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Representing Self

Eddie L. Moye

201 Harvest Circle
Norristown Pa 19403
484-213-8231

None

EdMoyeforPA@gmail.com

Representing Self as Candidate

IN THE CIVIL COURT OF MONTGOMERY COUNTY OF PENNSYLVANIA

Jeanne C. White, Resident, Taxpayer,	:	Preliminary Injunction
Registered Voter of Montgomery County		
Robert Mancini, PA resident, taxpayer,	:	
Registered Voter of PA		
Individually	:	
Petitioners Pro Se,	:	2024-21813
v.	:	
Montgomery County,	:	PeTITIon
Respondent	:	

APPLICATION FOR EMERGENCY RELIEF AND SEEKING A

PRELIMINARY INJUNCTION

Petitioner, Pro Se, pursuant to PA. R.A.P. 123, PA R.A.P. 1532(a) and PA R.C.P. submits the following Application for Emergency Relief Seeking a Preliminary Injunction and avers as follows:

Introduction

1. Petitioner Jeanne White is a resident, taxpayer, and registered voter with the address of 4402 Congress Court; North Wales, PA 19454.

2. Petitioner Robert Mancini is a resident, taxpayer, and registered voter with the address of 4 Guernsey Lane, Media PA 19063

3. Petitioner is Eddie L. Moye is a resident, taxpayer, registered voter and a Candidate for PA House District 70 with the address of 201 Harvest Circle, Norristown PA 19403

4. Respondent is Montgomery County (the "County") is a jurisdiction and Government Agency with a business address of One Montgomery Place, P. O. Box 311; Norristown, PA 19404.

5. The Election Assistance Commission is a federal agency located at 633 Third Street, NW, Suite 200; Washington, DC 20001

6. The Election Assistance Commission is a federal agency responsible for overseeing all Electronic Voting Systems approval in United States of America.

7. The Department of State of Pennsylvania is a Government Agency with a business address of 401 North Street; Harrisburg, PA 17120.

8. The Department of State of Pennsylvania is responsible for certifying all Electronic Voting Systems for use in Pennsylvania, given the Election Assistance Commission has also certified the system.

9. The 05 November 2024 election is a federal election and all votes in PA count equally toward the determination of the Pennsylvania Electoral College and the determination of the Pennsylvanian Senator

10. On January 17, 2019, the acting Secretary of the Commonwealth certified the Dominion Democracy Suite 5.5A[1].

11. Montgomery County uses Dominion Democracy Suite 5.5A

12. In the Pennsylvania Department of State Certification P40 , it states

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[1] https://www.pa.gov/content/dam/copapwp-pagov/en/dos/programs/voting-and-elections/voting-systems/certification/Dominion-Democracy-Suite-Final-Report-scanned-with-signature-020119.pdf

IV. Conditions for Certification

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

<u>2</u>

13. In the Pennsylvania Department of State Certification P40 Condition A , it states

A. This certification for Democracy Suite 5.5A is based on the EAC initial certification decision dated December 20. 2018, and will be appended with the final EAC certification documentation after the final EAC certification is issued.[4] Any jurisdictions purchasing and implementing the system before the final EAC certification must perform a trusted build validation after the final EAC certification to ensure that the certified system components are installed. This validation must happen even if the jurisdiction has done a trusted build validation during the system acceptance.

3

14. The Election Assistance Commission defines a trusted build (Exhibit A)
"Trusted Build – A software build is the process whereby source code is converted to machine readable binary instructions (executable code) for the computer. A trusted build is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. The primary function of a trusted build is to create a chain of evidence that allows stakeholders to have an approved model to use for verification of a voting system.

15. Montgomery County has NOT (emphasis added) performed the Trusted Build Validation and does not believe it is required to. On July 18, 2024, Joshua C Wertheimer, Agent of

[2] https://www.pa.gov/content/dam/copapwp-pagov/en/dos/programs/voting-and-elections/voting-systems/certification/Dominion-Democracy-Suite-Final-Report-scanned-with-signature-020119.pdf
[3] https://www.pa.gov/content/dam/copapwp-pagov/en/dos/programs/voting-and-elections/voting-systems/certification/Dominion-Democracy-Suite-Final-Report-scanned-with-signature-020119.pdf

Open Records Officer, replied to my Open Records Request,# OR-2024-535, the following: (Exhibit B)

> 19. As noted above. the County does conduct logic and accuracy testing on every single voting machine used in elections in Montgomery County. but has not performed the particular trusted build test that is the subject of the Request. The County's position. based on the guidance it has received from the Pennsylvania Department of State and from its legal counsel. is that trusted build tests are not legally required.

16. Logic and Accuracy Testing is a prerequisite for use of all Electronic Voting Systems in Pennsylvania before an Election (Primary or General).

17. 52 USC 21081(a)(5) states

(5) ERROR RATES

The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on October 25. 2002.

18. Section 3.2.1 of voting System Standard (Exhibit C), which was Addressed in Appendix C8 of VVSG 1.0 (Exhibit D), the standard that Dominion 5:5 was tested to. The EAC, the PA Department of State never performed a test that included the 1,576,501 ballots required to comply with this statute.

4.1 Requirements

The **Dominion D-Suite 5.5-A** will be tested to the approved VVSG 1.0 requirements. Modifications made to the **Dominion D-Suite 5.5-A** voting system are detailed in section "1.1.2 Modifications" and dictate evaluation against the following pertinent VVSG requirements:

- 2.4.3 Producing Reports
- 2.1.4 Integrity
- 2.1.6 Election Management System
- 5.2 Software Design and Coding Standards
- 7.4 Software Security
- 9.7.1 Physical Configuration Audit
- 9.7.2 Functional Configuration Audit

4

https://www.eac.gov/sites/default/files/voting_system/files/Attachment_D_-_Dominion_D_Suite_5.5_A_As_Run_Test_Plan.pdf, P21

ARGUMENT

19. In Pennsylvania, a party must establish the following six prerequisites to obtain a preliminary injunction.

   a. [The] injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;

   b. [G]reater injury would result from refusing an injunction than from granting it, and concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceeding;

   c. [A] preliminary injunction will properly restore the parties to their status as it existed immediately prior to alleged wrongful conduct;

   d. [The] activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest or, in other words, must show that it is likely to prevail on its merits;

   e. [The] injunction it seeks is reasonably suited to abate the offending activity; and

   f. [A] preliminary injunction will not adversely affect the public interest.

---

4 https://www.eac.gov/sites/default/files/voting_system/files/Attachment_D_-_Dominion_D-Suite_5.5-A_As_Run_Test_Plan.pdf

Warehime v. Warehime, 860 A.2d 41, 46-47) (Pa. 2004) (internal quotations and citations omitted); see also ALL-PAK, Inc v. Johnston, 694, A.2d 347,350 (Pa Super Ct. 1997) (the purpose of a preliminary injunction is "the avoidance of irreparable injury or gross injustice until the legality of the challenged action can be determined.")

20. Here, Petitioner can ably meet all six prerequisites.

The Injunction is Necessary to Prevent Immediate and Irreparable Harm

21. In the absence of a preliminary injunction, Montgomery County will conduct a Federal Election without meeting Department of State Conditions for Use of the Dominion Democracy Suite 5.5A Electronic Voting System. Montgomery County will conduct and complete a Federal Election on a system that does not meet 52 USC 21081(a)(5). There will NOT [emphasis added] confidence in the results of the election if Montgomery County cannot prove the system is as compliant with the Pennsylvania Department of State's Conditions for Use.

22. Additionally, commercial-off-the-shelf software on the Dominion Democracy Suite 5.5A Electronic Voting System must be tested. The presence of any other software than the secure trusted build violates the condition set forward by the Pennsylvania Department of State and the Election Assistance Commission.

23. A preliminary injunction is necessary to avoid immediate and irreparable injury that cannot be compensated for in damages. All candidates, residents, taxpayers of Montgomery County, residents of PA, and citizens of the United States of America deserve to have a fair election.

Greater Injury Would Result from Refusing Injunction

24. Greater injury will result to the Petitioner, Voters of Montgomery County, Taxpayers of Montgomery County, Residents of Montgomery County, Resident of PA, and Citizens of the than will be by Respondent if the requested injunctive relief is not granted.

25. Specifically, if an injunction is not granted, every resident or voter of Montgomery County cannot be confident in the results of the Election (Primary or General), because

Montgomery County violated federal law as set forth in the Help America Vote Act. A county in the 2020 Election, Antrim Michigan, performed a full forensic audit on their election results using Dominion 5.5 below are some of the statements from the finding

Scanner	Hash of election definition files from:		
	Memory Card	Initial Package	Revised Package
Banks (a)	ff03cbbb51cc3a5d	ff03cbbh51cc3a5d	ff03cbbb51cc3a5d
Central Lake (b)	c00dcf5a.a37cf756	7b8591f074005805	c00def3ea35cf710
Chestonia	f391bbd613ffc6c4	f391bbd613ffc6c4	74a7117cfd151c4f
Custer	bb54f4385445aale	bb54f4385445aale	ba8a-12c2b-863bd
Echo	0cc14f4957910a81	0cc14f4957910a81	34715b0f5c2f0f23
Elk Rapids 1	c02565674b0f5c98	c02565674b0f5c98	20970f5cb4169c97
Elk Rapids AV	112ced0d110c5a3b	112ced0d110c5a3b	e7ccd7a16e512890
Forest Home	178c3d04faf039d3	178c3d04faf039d3	876199455b0c2734
Helena	50bf34c5dafa0089	50bf34c5dafa0089	df345c890f679fba
Jordan	564abae2kddffebd	564abae2kddffebd	ce2cdf5cf6513c62c63
Kearney	b21d18033261056b7	b21d18033261056b7	103-124c38603df0
Mancelona 1 (c)	1a98842abc440234	8201c24b3791nf3	1a98842abe440234
Mancelona 2 (c)	f72b1e8cc3d4c2f2	5c1c5f2843f6979116	f72b1e8ce3d4c2f2
Milton 1	d6707193f8ac434	d6707193f8ac434	13c-afaa33f6415d1
Milton AV	f12ac9d71f3c56fc	f12ac9d71f3c56fc	b61c12678d3c0279
Star	8137bf3babid-8769	8137bf3b0dde8769	77c07dfc5.ad05f02
Torch Lake	2f2dc2a0f8bffbdb8	2f2dc2a0f8bffbdb8	b15c50f8fae5ba390f
Warner	850d06f1a744f588	850d06f1a744f588	3cb6246c93c5db8a

Notes: (a) Definition is same in both packages; (b) Used initial definition Nov. 3 but rescanned Nov. 6 with revised definition; (c) Revised definition loaded before Nov. 3.

Table 3: Scanner Election Definitions. Only four of 18 scanners (Banks, Central Lake, Mancelona 1 and 2) used election definitions that matched the revised election package. Each entry shows the truncated SHA-256 hash of the election definition files. Matching hashes (highlighted) indicate files that are identical. [5]

It shows the difference in the hash code. The changes in the percentage of votes were enormous.

5

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[5] https://www.michigan.gov/-
/media/Project/Websites/sos/30lawens/Antrim.pdf?rev=fbfe881cdc0043a9bb80b783d1bb5fe9

7 | P a g e

		Results published on:					Differences:			
		11/4 (a)	11/5 (b)	11/6 (c)	11/16 (d)	11/23 (e)	b-a	a-b	d-c	e-d
President	Biden	7769	7289	5960	5960	5960	-480	-1329	0	0
	Trump	4509	9783	9748	9748	9748	5274	-35	0	0
	Jorgensen	93	197	189	189	189	104	-8	0	0
	Blankenship	20	22	16	16	16	2	-6	0	0
	De La Fuente	12	8	8	8	8	-4	0	0	0
	Hawkins	20	28	28	28	28	8	0	0	0
U.S. Sen.	Peters	7863	6807	5441	5758	5758	1056	-1366	317	0
	Squier	47	81	79	83	86	34	2	4	3
	James	4481	9345	9340	9924	9924	4861	-5	584	0
	Willis	91	960	81	82	82	869	-879	1	0
	Dern	19	26	26	27	27	7	0	1	0
U.S. Rep.	Ferguson	7745	6603	5235	5235	5235	-1142	-1368	0	0
	Bergman	4794	10344	10292	10292	10292	5550	-52	0	0
	Baren	125	266	263	263	263	141	-3	0	0
State Rep.	Burke	7697	6143	4800	4800	5578	-1554	-1343	0	778
	Borton	4729	8772	8761	8761	9936	4243	-11	0	1175

Table 1: Election Results. Antrim published five results reports, two labeled unofficial (a, b) and three labeled official (c, d, e). Results and differences for the first five contests are shown here, but many others were also in error. The initial report (a) was badly incorrect due to the election definition mismatch. The second report (b) added results entered by hand from poll tapes but failed to remove all of the bad data. The third (c) fixed this, but the manual inputs contained data entry errors that were corrected in two subsequent reports (d, e).

[6]

Over 6000 votes out of 14,000 were miscounted (EMPHASIS ADDED).

26. By Contrast, Respondent will suffer no harm by the granting of the injunction and will insure that the votes cast in the Federal Election will be ACCURATELY (emphasis added) tabulated as an error in any one county can swing the results of the county, and therefore the results of the state, and therefore the 19 Electoral votes to either candidate for the Office of the President, which could mean the Office of Presidency for the next four years.

<u>The Preliminary Injunction will Maintain the Parties in their Original Places</u>

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[6] [6]https://www.michigan.gov/-/media/Project/Websites/sos/30lawens/Antrim.pdf?rev=fbfe881cdc0043a9bb80b783d1bb5fe9

27. Granting the injunction will restore the status quo with respect to the Petitioner's constitutional and statutory rights as they existed prior to the Respondent starting Logic and Accuracy Testing and 52 USC 21081(a)(5).

28. If the injunction is granted, all Respondent would have to do is perform a secure Trusted Build validation as required by the Pennsylvania Department of State for Certified use of the Dominion Democracy Suite 5.5A Electronic Voting System (on all equipment) and then perform a new Logic and Accuracy Test pre- and post-election. Respondents would also have to perform an accuracy at an accredited Lab to comply with 52 USC 21081(a)(5)

Petitioner's are Likely to Prevail on the Merits

29. Petitioner's right to relief is clear, and there is a reasonable likelihood of success on the merit, as set forth in more detail in the Petition.

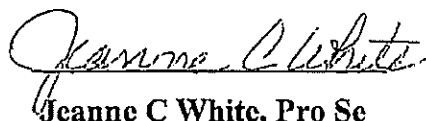### Injunction is Reasonably Suited to the Offending Activity

30. As the offending activity here, or the lack of activity (the requirement to perform a Secure Trusted Build validation on the Dominion Democracy Suite 5.5A Electronic Voting Systems injunctive relief staying the Logic and Accuracy Testing or use of the Dominion Democracy Suite 5.5A in the election process until this matter has been Judicially determined is reasonably suited to address the offending lack of performing a Secure Trusted Build Validation.

The Public Will Not Be Adversely Affected by the Injunction

31. Respondent has control over all election activities in Montgomery County. In execution of every election, respondent is required to follow federal law, state law, and Pennsylvania Department of State requirements. Posting a notice that order any activity involving the Dominion Democracy Suite 5.5A Logic and Accuracy Testing is stayed during the pendency of this litigation is easy, inexpensive, immediate, wide-ranging, and effective.

32. Moreover, the requested relief enables Respondent to halt the Logic and Accuracy Test, comply with the Pennsylvania Department of State for use of the Dominion Democracy Suite 5.5A Voting Systems and perform a Logic and Accuracy Test on a validated system. **WHEREFORE,** Petitioner respectfully asks this Honorable Court to enter a Preliminary Injunction;

33. Staying the use of the Dominion Democracy Suite 5.5A Electronic Voting Systems until the issues raised herein have been finally judicially determined.

34. Staying the use of the Dominion Democracy Suite 5.5A Electronic Voting Systems until the system has completed a Error Rates Test at an Voting System Test Laboratory[7] accredited by the EAC.

35. Voiding Logic and Accuracy Test Results performed prior to a Secure Trust Build Validation on every piece of Dominion Election equipment including central server located at One Montgomery Plaza in Norristown, PA; in-person precinct scanners, ballot-marking devices, and ePoll Books stored at 1006 West Washington Street, Norristown, PA; and County scanners located at Health and Human Services building in Norristown, PA) and every piece of software used on the systems in all 429 precincts of Montgomery County, the system used to count the mail-in ballots, and the system used to tabulate all of the ballots.

36. Directing Respondent to take all reasonable steps possible to notify the Public, Candidates, Voters, Taxpayers, Residents, and the Pennsylvania Department of State of the existence of this litigation, and the deficiency of the Respondent in the Election Process.

37. Entering such other relief as this Court deems just and proper.

Date: 09 / 13 /2024

Jeanne C White, Pro Se
4402 Congress Court
North Wales, PA 19454
Jcwhite4402@gmail.com
267-577-2120

Robert Mancini (signature)

Robert Mancini, Pro Se

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Media PA 19063

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Eddie L. Moye (signature)

Eddie L. Moye, Pro Se

201 Harvest Circle
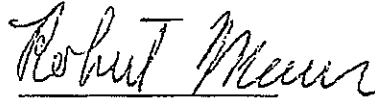
Norristown, PA 19403

EdMoyeforPA@gmail.com

484-213-8231

VERIFICATION

Robert Mancini states is making this verification. I verify that the statements are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 PA. C.S,Subsection 4904, relating to unsworn falsification to authorities
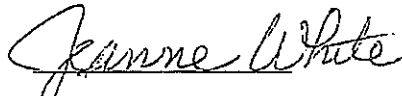
Date : 09 September 2024

Robert Mancini

Robert Mancini

Jeanne White states is making this verification. I verify that the statements are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 PA. C.S,Subsection 4904, relating to unsworn falsification to authorities
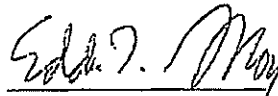
Date : 9 September 2024

Jeanne White

Jeanne White

Eddie Moye states is making this verification. I verify that the statements are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 PA. C.S,Subsection 4904, relating to unsworn falsification to authorities
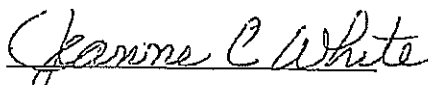
Date : 9 September 2024

Eddie Moye
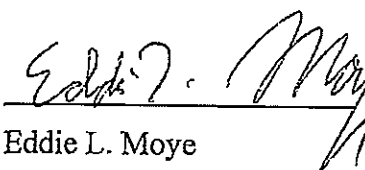
Eddie Moye

CERTIFICATE OF COMPLIANCE

I certify that this filing confirms 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 the filing of confidential information and documents differently than non-confidential information and documents.

Jeanne C White

Jeanne C White

Robert Mancini

Robert Mancini

Eddie L. Moye

Eddie L. Moye

4

Exhibit A

This day of action is dedicated to encouraging Americans to sign up to be poll workers, and Help America Vote!

Click here to learn more and sign up today!

UNITED STATES
ELECTION ASSISTANCE
COMMISSION   Menu

What is a trusted build and why is it used?

Thursday, September 16, 2021

Share

New EAC Blog

There are many steps than must be taken for a voting system to be certified by the EAC. One of the most important of these steps is the process of creating a trusted build. But what is the trusted build and why is it required?

Firstly, we should define what a build is. Software is typically written by programmers in a human-readable programming language. This is referred to as source code. This code needs to be transformed into a format that can be executed by a computer, known as machine code. This process of transforming, or compiling, source code into executable machine code is known as a software build.

A trusted build is a build that is performed with several security and verification measures to a such an extent that the executable machine code can confidently be shown to be a faithful and authentic representation of the source code.

Before the trusted build process is started, it is required that an EAC accredited voting system testing laboratory (VSTL) receive the source code from the voting system manufacturer, and perform a review of the code, verifying it's compliant with all applicable VVSG requirements.

Following the source code review, the VSTL is required to obtain all necessary commercial off the shelf software, such as operating systems and anti-virus programs, from trusted third party sources. These executables get incorporated into the voting system trusted build. These items are confirmed to be unmodified from their third-party source by verifying their file signatures, also referred to as hash codes.

The trusted build process is then conducted by the VSTL. It consists of three distinct steps:

1. A build environment is created. This environment is constructed and controlled by the VSTL, but the voting system manufacturer may observe the process. This environment is a computer that has been completely erased with a Department of Defense or NIST approved method.
2. The VSTL reviewed manufacturer source code for the voting system as well as the pre-built dependencies are placed in the build environment. File signatures of the source code modules are checked to verify the code is unchanged from the code that was previously reviewed prior to the trusted build. File signatures are also produced for the created executable code and installation media.
3. The VSTL then installs the executable code on the voting system hardware, producing file signatures on each voting system file. This is the voting system configuration that is tested by the VSTL against VVSG requirements.

The purpose of performing the trusted build is to show that the source code · · as examined, tested, and approved – was used to create the executable code and demonstrate that no additional elements have been introduced into the software build for the system. The trusted build is the origin of the chain of custody for software components of the voting system.

This process creates a chain of evidence allowing election officials to verify that their voting system software matches the version tested by the VSTLs and certified by the EAC, and unauthorized code has not been introduced into the system.

U.S. Election Assistance Commission

633 3rd Street NW, Suite 200,
Washington, DC 20001

🌐 ⓘ ✉ 𝕏 in ᯤ

Contact the EAC

Phone: 1 (866) 747-1471 (toll free)
Email: clearinghouse@eac.gov
Website: Contact Us

About EAC

Accessibility Statement

FOIA Request

No FEAR Act Data

Office of the Inspector General

Privacy Policy

Plug-Ins

For more U.S. government information
visit USA.gov

Exhibit B

	:	PA Office of Open Records
	:	
JEANNE WHITE	:	Docket No. AP 2024-1822
v.	:	
COUNTY OF MONTGOMERY	:	
	:	

ATTESTATION OF JOSHUA C. WERTHEIMER
AORO AND ASSISTANT SOLICITOR AT MONTGOMERY COUNTY

I, Joshua C. Wertheimer, Esquire, hereby attest that the statements made below are true

and correct to the best of my knowledge, information, and belief. I understand that false statements

made herein are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to

authorities.

1.   I am an Assistant Solicitor for the County of Montgomery (the "County").

2.   I serve as the Agency Open Records Officer ("AORO") for the County, and I am

responsible for responding to all Right-to-Know requests filed with the County.

3.   In my capacity as the AORO, I am familiar with the records of the County.

4.   I am aware of the June 3, 2024 Right-to-Know request (the "Request") submitted

to the Agency by Jeanne White (the "Requester").

5.   The Request sought the following:

"1. Request for each MontCo. Primary and General Election in years 2019, 2020,
2021, 2022, 2023, and 2024 Pre and Post Hash Test Results on all In Person (all
precincts) and Mail-In-Ballot Dominion voting systems."[1]

6.   The County requested a 30-day extension of time in which to respond to this

Request.

---

[1] The Request begins with the number "1," but does not contain any additional numbered
paragraphs; the language quoted here is the entirety of the Request received by the County.

7.   After receipt of the request, the County conducted a good faith search by inquiring with Francis Dean, the Director of Elections for Montgomery County Voter Services (MCVS), about the existence of records that would be responsive to the Request.

8.   In Montgomery County, the Board of Elections (BOE) is comprised of the three County Commissioners. The BOE is supported by the staff of MCVS, led by Mr. Dean, the County's Director of Elections.

9.   Mr. Dean, in his capacity as Director of Elections and the head of MCVS, is the most likely custodian of records responsive to the Request, as the Request seeks copies of results of testing performed on voting systems.

10.   Mr. Dean explained to me that one way of verifying the reliability of software used in electronic voting systems is through a test known as a trusted build. The output of the trusted build process is known as a hash code.

11.   Based on the information provided by Mr. Dean, I interpreted the Request to be seeking the hash codes from trusted build tests performed by the County during the timeframe specified in the Request, 2019 – 2024.

12.   Mr. Dean informed me that the County takes the security and reliability of its electronic voting systems very seriously and conducts logic and accuracy testing on every single voting machine used in general and primary elections in Montgomery County. However, the County does not perform the particular test for which the Requester seeks records, a trusted build, and has not performed trusted build tests for any of the elections from 2019 – 2024. Accordingly, since the County has not performed trusted build tests for any elections from 2019 – 2024, the hash codes that would be the output of such tests do not exist.

13.   I responded to the Request on behalf of the County on July 11, 2024. In my response letter, I advised the Requester that the County had no records responsive to the Request in its possession, custody, or control.

14.   The Requester appealed the County's response to the Office of Open Records that same day. In her appeal, the Requester provides a greatly expanded description of her request from what she submitted to the County; on appeal the Requester now describes her request as seeking "for each Montco Primary and General Elections for years 2019, 2020, 2021, 2022, 2023, and 2024 pre- and post-election Trusted Build Audits for all Dominion Democracy v5.5a voting systems including, but not limited to, ImageCast Central Station (ICC), utilizing two Commercial Off-the-Shelf scanners and ImageCast X (ICX) scanners (Prime and Classic)--ImageCast Precinct Optical Scanners (ICP), Ballot Marking Devices, ePool books and each years Primary and General Election results of pre-Election and post-Election Trust Build Audits as part of their Logic and Accuracy Testing for the central server equipment at One Montgomery Plaza, Norristown, PA 19404; in-person voting scanners at ~429 polling locations; and Health and Human Services centralized scanning equipment at 1430 DeKalb Pike, Norristown, PA 19404 and 1006 West Washington Street, Norristown, PA 19404."

15.   However, it is well-established that a requester is not permitted to modify a request on appeal, and the Office of Open Records will evaluate a request as written. *See Michak v. Dep't of Pub. Welfare*, 56 A.3d 925, 930 (Pa. Cmwlth. 2012) ("Thus, where a requestor requests a specific type of record . . . the requestor may not, on appeal, argue that an agency must instead disclose different records in response to the request."); *see also Dep't of Corr. v. Disability Rts. Network of Pennsylvania*, 35 A.3d 830, 833 (Pa. Cmwlth. 2012) (holding that on appeal a requester is "not free to request records that were not requested below or which it did not identify with sufficient specificity").

16.   It appears, however, that this lengthy new description of her request is still seeking the same records the County understood her to be asking for in her original Request: the hash codes which serve as the output from trusted build tests conducted on the County's electronic voting systems.[2]

17.   Along with her appeal, the Requester submitted a 2019 report, which runs over 100 pages, published by the Pennsylvania Department of State. The Requester claims this report demonstrates that counties were required to conduct trusted build testing for the elections that are the subject of her Request.

18.   The Requester also makes clear that her goal is to ensure the County's future compliance with what she understands the law to require, asking (presumably rhetorically) in her appeal, "why can we not get [the County] to comply with the PA Secretary MUST not shall comply with this DIRECTIVE to conduct a pre-election and post-election Logic and Accuracy Testing of Trusted Build file on each and every Dominion voting equipment utilized in our county starting with the 2024 General Election on 11-05-2024?" (emphasis in original).

19.   As noted above, the County does conduct logic and accuracy testing on every single voting machine used in elections in Montgomery County, but has not performed the particular trusted build test that is the subject of the Request. The County's position, based on the guidance it has received from the Pennsylvania Department of State and from its legal counsel, is that trusted build tests are not legally required.

20.   Indeed, Mr. Dean informed me that he is aware of only one county in Pennsylvania that has performed trusted build tests for recent elections.
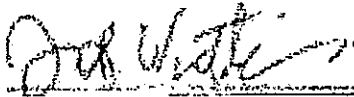
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[2] In her appeal, the Requester asks for the "Trusted Build Audits" themselves. But since a trusted build audit is a type of test – that is, a process that is performed – and the hash codes are the output or documentation created by that process, I understand her new formulation of her request to still be seeking the same hash codes referenced in her original Request.

21.   Even if the Requester were correct, however, and trusted build testing were mandatory, a Right-to-Know appeal to the Office of Open Records is not an appropriate way to compel compliance with substantive legal requirements that have nothing to do with records access.

22.   The Requester believes the County *should* have conducted trusted build tests for the elections from 2019 – 2024, but as Mr. Dean made clear to me, the County did not perform trusted build tests for those elections and therefore the hash codes sought in the Request do not exist.

23.   Accordingly, the instant appeal should be denied, because the County has demonstrated that no responsive records exist within its possession, custody, or control.

Respectfully submitted:

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Exhibit C

   c. Vote data management requirements, where no differentiation is made
       between requirements for paper-based and DRE systems;

   d. Vote recording requirements, where separate and distinct requirements are
       delineated for paper-based and DRE systems;

   e. Conversion requirements, which apply only to paper-based systems;

   f. Processing requirements, where separate and distinct requirements are
       delineated for paper-based and DRE systems; and

   g. Reporting requirements, where no distinction is made between requirements
       for paper-based and DRE systems, but where differences between precinct and
       central count systems are readily apparent based on differences of their
       reporting.

The performance requirements include such attributes as ballot reading and handling
requirements; system accuracy; memory stability; and the ability to withstand specified
environmental conditions. These characteristics also encompass system-wide
requirements for shelter, electrical supply, and compatibility with data networks

Performance requirements for voting systems represent the combined operational
capability of both system hardware and software. Accuracy, as measured by data error
rate, and operational failure are treated as distinct attributes in performance testing. All
systems shall meet the performance requirements under operating conditions and after
storage under non-operating conditions.

3.2.1   Accuracy Requirements

Voting system accuracy addresses the accuracy of data for each of the individual ballot
positions that could be selected by a voter, including the positions that are not selected.
For a voting system, accuracy is defined as the ability of the system to capture, record,
store, consolidate and report the specific selections and absence of selections, made by
the voter for each ballot position without error. Required accuracy is defined in terms
of an error rate that for testing purposes represents the maximum number of errors
allowed while processing a specified volume of data. This rate is set at a sufficiently
stringent level such that the likelihood of voting system errors affecting the outcome of
an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote
data is processed by different types of voting systems. Paper-based and DRE systems
have different processing steps. Some differences also exist between precinct count
and central count systems. Therefore, the acceptable error rate applies separately and
distinctly to each of the following functions:

a. For all paper-based systems:

1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests;

2) Conversion of selections detected on paper ballots into digital data;

b. For all DRE systems:

1) Recording the voter selections of candidates and contests into voting data storage; and

2) Independently from voting data storage, recording voter selections of candidates and contests into ballot image storage.

c. For precinct-count systems (paper-based and DRE):

Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data; and

d. For central-count systems (paper-based and DRE):

Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.

For testing purposes, the acceptable error rate is defined using two parameters: the desired error rate to be achieved, and the maximum error rate that should be accepted by the test process.

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

3.2.2   Environmental Requirements

The environmental requirements for voting systems include shelter, space, furnishings and fixtures, supplied energy, environmental control , and external telecommunications services. Environmental conditions applicable to the design and operation of voting systems consist of the following categories:

♦ Natural environment, including temperature, humidity, and atmospheric pressure;

♦ Induced environment, including proper and improper operation and handling of the system and its components during the election processes;

♦ Transportation and storage; and

♦ Electromagnetic signal environment, including exposure to and generation of radio frequency energy.

Exhibit D

C.5 Accuracy Testing Criteria

Some voting system performance attributes are tested by inducing an event or series of events, and the relative or absolute time intervals between repetitions of the event has no significance. Although equivalence between a number of events and a time period can be established when the operating scenarios of a system can be determined with precision, another type of test is required when such equivalence cannot be established. It uses event-based failure frequencies to arrive at ACCEPT/REJECT criteria. This test may be performed simultaneously with time-based tests.

For example, the failure of a device is usually dependent on the processing volume that it is required to perform. The elapsed time over which a certain number of actuation cycles occur is, under most circumstances, not important. Another example of such an attribute is the frequency of errors in reading, recording, and processing vote data.

The error frequency, called "ballot position error rate," applies to such functions as process of detecting the presence or absence of a voting punch or mark, or to the closure of a switch corresponding to the selection of a candidate.

Certification and acceptance test procedures that accommodate event-based failures are, therefore, based on a discrete, rather than a continuous probability distribution. A Probability Ratio Sequential Test using the binomial distribution is recommended. In the case of ballot position error rate, the calculation for a specific device (and the processing function that relies on that device) is based on:

> HO: Desired error rate = 1 in 10,000,000
> H1: Maximum acceptable error rate = 1 in 500,000
> a = 0.05
> b = 0.05

and the minimum error-free sample size to accept for qualification tests is 1,549,703 votes.

The nature of the problem may be illustrated by the following example, using the criteria contained in the *Guidelines* for system error rate. A target for the desired accuracy is established at a very low error rate. A threshold for the worst error rate that can be accepted is then fixed at a somewhat higher error rate. Next, the decision risk is chosen, that is, the risk that the test results may not be a true indicator of either the system's acceptability or unacceptability. The process is as follows:

> The desired accuracy of the voting system, whatever its true error rate (which may be far better), is established as no more than one error in every ten million characters (including the null character)

If it can be shown that the system's true error rate does not exceed one in every five hundred thousand votes counted, it will be considered acceptable. This is more than accurate enough to declare the winner correctly in almost every election

A decision risk of 5 percent is chosen, to be 95 percent sure that the test data will not indicate that the system is bad when it is good or good when it is bad

This results in the following decision criteria:

d. If the system makes one error before counting 26,997 consecutive ballot positions correctly, it will be rejected. The vendor is then required to improve the system

e. If the system reads at least 1,549,703 consecutive ballot positions correctly, it will be accepted

f. If the system correctly reads more than 26,997 ballot positions but less than 1,549,703 when the first error occurs, the testing will have to be continued until another 1,576,701 consecutive ballot positions are counted without error (a total of 3,126,404 with one error)