

DISTRICT COURT, ELBERT COUNTY, COLORADO 751 Ute Ave. Kiowa CO 80117		DATE FILED: April 21, 2022 2:43 PM FILING ID: 18B9C0C440790E38E9 CASE NUMBER: 2022CV30016
Petitioner: JENA M. GRISWOLD, Colorado Secretary of State v. Respondent: DALLAS SCHROEDER, in his official capacity as Clerk and Recorder of Elbert County		▲ COURT USE ONLY ▲ Case No: 2022CV30016
Respondent's Attorney: John Case, Atty reg. # 2431 John Case, P.C. 5460 S. Quebec St. #330 Greenwood Village CO 80111 Phone: (303) 667-7407 FAX: (303) 648-4786 E-mail: brief@johncaselaw.com		
AMENDED RESPONSE TO PETITION FOR ENFORCEMENT AND COUNTERCLAIMS		

Dallas Schroeder, Clerk and Recorder of Elbert County, pursuant to C.R.C.P. 15(a), files this Amended Response and Counterclaims as set forth below.

AMENDED RESPONSES TO INDIVIDUAL NUMBERED PARAGRAPHS OF PETITION

Each numbered paragraph below responds to the same numbered paragraph of the Petition. To the extent that Petitioner alleges legal conclusions and mischaracterizations of specific statutory provisions and election rules, Respondent denies all such legal conclusions and mischaracterizations.

- Respondent admits that Petitioner is Secretary of State and is chief state election official. The statutes and constitutional section cited speak for themselves. Respondent denies the remaining allegations of Paragraph 1.
- Respondent admits paragraph 2 of the Petition.
- Respondent admits that the parties are election officials. The statutes cited speak for themselves. Respondent denies the remaining allegations of Paragraph 3.

4. Respondent admits jurisdiction of the Court.
5. Respondent admits that Elbert County is the proper venue.
6. Respondent admits paragraph 6 of the Petition.
7. Respondent admits that the county clerk and recorder serves as the chief designated election official for a county. The statutes cited speak for themselves. Respondent denies the remaining allegations of Paragraph 7.
8. Respondent admits that the definition of “voting system” is set forth in C.R.S. § 1-1-104(50.8). Respondent denies the remaining allegations of Paragraph 8.
9. Respondent admits that C.R.S. § 1-5-605.5 speaks for itself. Respondent denies the remaining allegations of Paragraph 9.
10. Respondent admits that C.R.S. § 1-1-104(50.7) speaks for itself. Respondent admits that Election Rules 20.2, 20.5, 20.6, 20.10, and 20.19 speak for themselves. Respondent denies all other allegations of paragraph 10.
11. Respondent admits that Election Rule 20.19.1 speaks for itself. Respondent denies all other allegations of paragraph 11.
12. Respondent denies paragraph 12.
13. Respondent admits that in Elbert County the “trusted build” was performed on August 27, 2021, by one representative of the Department of State and two representatives of Dominion Voting Systems. Respondent admits that he and his authorized employee had criminal background checks and were identified to the Department of State prior to the “trusted build.” Respondent is without sufficient information to admit or deny how “trusted build” processes are conducted in counties other than Elbert, and therefore denies all other allegations of paragraph 13.
14. Respondent admits that the statutes cited speak for themselves. Respondent denies the remaining allegations of Paragraph 14.
15. Respondent admits that C.R.S. § 1-5-621(4) speaks for itself. Respondent denies the remaining allegations of Paragraph 15.
16. Respondent admits that the statutes cited speak for themselves. Respondent denies the remaining allegations of Paragraph 16.
17. Respondent admits that he received notification of a “trusted build” in April or May of 2021. Respondent is without sufficient information to admit or deny whether the Department of State notified all county clerks and recorders that county voting systems would be scheduled for a “trusted build” to prepare the systems for the next election cycle,

and therefore he denies all other allegations of paragraph 17.

18. Respondent admits that the Department of State did not find any anomalies in the Elbert County voting system at the time of the 2021 trusted build. Respondent denies the remaining allegations of paragraph 18.
19. Respondent is without sufficient information to admit or deny when the Department of State learned of an affidavit signed by Petitioner, and therefore denies same.
20. Respondent is without information to admit or deny whether “the Department” initiated an investigation, and therefore denies the first sentence of paragraph 20. Respondent is without sufficient information to admit or deny whether “the Department” sent him an email on January 13, 2022, and therefore denies same. Respondent denies the remaining allegations of paragraph 20.
21. Respondent admits that Exhibit 1 attached to the Petition is a copy of Election order 2022-02. Respondent admits that statutes cited in paragraph 21 speak for themselves. Respondent denies the remaining allegations of paragraph 21.
22. Respondent admits that Exhibit 2 attached to the Petition is a copy of his counsel’s written response to Election order 2022-02. Respondent denies the remaining allegations of paragraph 22.
23. Respondent admits that Exhibit 2 speaks for itself. Respondent denies the remaining allegations of paragraph 23.
24. Respondent admits that Exhibit 2 speaks for itself. Respondent denies the remaining allegations of paragraph 24.
25. Respondent admits that C.R.S. § 24-72-205.5(b) speaks for itself. Respondent denies the remaining allegations of Paragraph 25.
26. Respondent admits that Exhibit 3 attached to the Petition is a copy of Election order 2022-04. Exhibit 3 speaks for itself. Respondent denies the remaining allegations of Paragraph 26.
27. Respondent admits that Exhibit 3 attached to the Petition is a copy of Election order 2022-04. Respondent denies the remaining allegations of Paragraph 27.
28. Respondent admits that Exhibit 4 attached to the Petition is a copy of his counsel’s written response to Election order 2022-04. Respondent denies the remaining allegations of paragraph 28.
29. Respondent admits that Exhibit 5 attached to the Petition is a copy of a letter sent by Petitioner. Exhibit 5 speaks for itself. Respondent denies the remaining allegations of paragraph 29.

- 30. Respondent admits that Exhibit 6 attached to the Petition was sent by Respondent's counsel to Petitioner's counsel. Exhibit 6 speaks for itself. Respondent denies the remaining allegations of paragraph 30.
- 31. Respondent denies paragraph 31.
- 32. Respondent denies paragraph 32.
- 33. Respondent denies each and every allegation of the Petition that is not expressly admitted hereinabove.

AFFIRMATIVE DEFENSES

- A. The Petition fails to state a claim upon which relief can be granted.
- B. Exhibits 1 and 3 exceed the lawful authority of Petitioner.
- C. Respondent has no duty to comply with unlawful orders of Petitioner.
- D. The relief requested in the Petition exceeds the lawful authority of Petitioner.
- E. Petitioner and Respondent are "officers of election" who have duties under 52 USC § 20701 to preserve all election records, including electronic records of an election, for a period of twenty-two months after any general, special, or primary election in which candidates for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives are voted for.
- F. Respondent has a duty under C.R.S. § 1-7-802 to preserve "any election records for a period of at least twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later."
- G. Respondent has a statutory duty to make backup images of the Elbert County voting system.
- H. Respondent has a duty to protect election records against unlawful seizure.
- I. Images on the external hard drives are election records subject to provisions of the Colorado Open Records Act; Respondent has a duty to maintain custody of such election records to be able to respond to any request to produce such records.
- J. External hard drives that contain a backup image of the Elbert County voting system are not components of any voting system.
- K. Petitioner should not be permitted to access information that is attorney work product or that is subject to the attorney-client privilege.

WHEREFORE, Respondent requests that the Court dismiss the Petition with prejudice, and award Respondent his costs and reasonable attorney fees, and for all other appropriate relief.

COUNTERCLAIMS

FIRST COUNTERCLAIM VERIFIED PETITION FOR RELIEF UNDER C.R.S. § 1-1-113 AND C.R.C.P. 57

1. As Colorado Secretary of State, Jena Griswold (“Petitioner”) is a person charged with duties under the Colorado election code C.R.S. § 1-1-101 *et seq.*
2. Respondent Dallas Schroeder is an eligible elector and the Clerk and Recorder of Elbert County.
3. This Court has jurisdiction pursuant to C.R.S. § 1-1-113 (1), and C.R.C.P. 57.
4. As set forth fully below, Petitioner committed breaches and neglect of duty, and continues to commit breaches and neglect of duty, by certifying a computer voting system that does not meet minimum standards of the Colorado election code, and that was not fully tested by a federally accredited voting system testing laboratory.
5. As set forth fully below, Petitioner committed breaches and neglect of duty, and continues to commit breaches and neglect of duty, by prohibiting Respondent from imaging and testing the Elbert County voting system to ensure that the system complies with the election code.
6. Respondent seeks an order pursuant to C.R.S. § 1-1-113 (1), and C.R.C.P. 57 that prohibits the use of an illegal computer voting system to tabulate votes in Elbert County.
7. Petitioner’s breaches and neglect of duty require this Court to intervene before the special district election scheduled for May 3, 2022, the primary elections scheduled for June 28, 2022, and the general election scheduled for November 8, 2022 (hereafter “the 2022 elections.”).

FACTUAL ALLEGATIONS

8. Sixty-two Colorado counties use computer voting systems equipment and software provided by Dominion Voting Systems, Inc. (hereafter “Dominion”).
9. Two counties (Douglas and Garfield) use computer equipment and software provided by Clear Ballot Group.
10. Pursuant to C.R.S. § 1-5-601.5 and Election Rules 21.4.1 and 21.4.2 (8 CCR 1505-1), all county voting systems must, at a minimum, meet the objective performance and functional criteria contained in Federal Election Commission publication “2002 Voting System Standards” (hereafter “2002 VSS”).

11. In addition to meeting 2002 VSS minimum standards, all county voting systems software must comply with Federal and state statutes.
12. 2002 VSS standards, and Federal and state election laws, form a functional and performance checklist that is the minimum standard for Colorado computer voting systems.
13. All county voting systems software must be tested by a federally accredited laboratory (C.R.S. § 1-5-608.5).
14. Petitioner is the state's chief election official.
15. Petitioner's duties include supervising the conduct of elections and enforcing provisions of the election code. C.R.S. § 1-107(1)(a) and (b). Petitioner can promulgate election rules. C.R.S. § 1-107(2)(a).
16. On December 13, 2020, cybersecurity experts of the Allied Security Operations Group ("ASOG") submitted a report on the Dominion voting system that was used to tabulate votes in the November 3, 2020, general election in Antrim County, Michigan. A copy of the report is attached and incorporated herein as Exhibit 1.
17. Exhibit 1 found, *inter alia*, that Dominion voting systems software used to tabulate votes on November 3, 2020, in Antrim County failed to meet 2002 VSS standards.
18. On information and belief, Dominion received a copy of Exhibit 1 in December, 2020.
19. During the November 3, 2020, general election, Dominion Democracy Suite software version 5.11 (hereafter "DVS 5.11") was used to tabulate votes in 62 Colorado counties, including Mesa County and Elbert County.
20. On information and belief, Dominion was aware from Exhibit 1 and other information, that DVS 5.11 did not meet 2002 VSS standards.
21. On information and belief, Dominion knew that DVS 5.11 created unauthorized databases on the hard drive of the election management system server computers used in 62 Colorado counties.
22. On information and belief, Dominion wanted to conceal defects in DVS 5.11 software from Colorado citizens and Colorado election officials, including county clerks and recorders such as Respondent.
23. On January 13, 2021, Dominion submitted its application to install Dominion Democracy Suite software version 5.13 (hereafter "DVS 5.13") on Colorado county voting systems. A copy of Dominion's application is attached and incorporated herein as Exhibit 2.

24. Dominion designed DVS 5.13 to erase digital records that DVS 5.11 generated and stored on voting system computer hard drives.
25. DVS 5.13 is configured to automatically overwrite log files that exceed 20 MB, which violates 2002 VSS standards that require the preservation of log files.
26. DVS 5.13 is configured to allow any IP address in the world to access the SQL service port, (1433), which violates 2002 VSS security standards.
27. As installed on county voting systems, DVS 5.13 uses generic user IDs and passwords and a common shared password, some of which have administrative access. This feature violates 2002 VSS security standards.
28. On information and belief, one of Dominion's purposes in installing DVS 5.13 voting system software in Colorado counties was to erase log files and other artifacts generated by DVS 5.11, that were present on the hard drives of voting systems computers.
29. On information and belief, Dominion wanted to conceal from Colorado citizens and election officials the existence of defects in its voting system software.
30. On information and belief, one of Dominion's purposes in submitting Exhibit 2 to Petitioner, was to erase DVS 5.11 from Colorado county election voting systems, and to install DVS 5.13, before the Colorado citizens and election officials could discover the existence of defects in DVS 5.11.
31. Before installing DVS 5.13 software on Colorado voting systems computers, Colorado law required Dominion to have DVS 5.13 tested by a federally accredited testing laboratory.
32. Dominion submitted DVS 5.13 software to Pro V&V laboratory for testing.
33. On April 23, 2021, Pro V&V submitted to Petitioner its results from testing DVS 5.13. A copy of the Pro V&V test report is attached hereto and incorporated herein as Exhibit 3.
34. Exhibit 3 states that portions of the testing were performed prior to 2021.
35. C.R.S. § 1-5-608.5 and Election Rule 1.1.46 (8 CCR 1505-1) require voting systems software to be tested by a "federally accredited testing laboratory."
36. Pro V&V received a certificate of accreditation from the Federal Election Assistance Commission ("EAC") on February 24, 2015. A copy of Pro V&V's original certificate of accreditation is attached hereto and incorporated as Exhibit 4.
37. Exhibit 4 states that Pro V&V's federal accreditation expired February 24, 2017.
38. The EAC issued Pro V&V a new certificate of accreditation on February 1, 2021. A copy of the new accreditation certificate is attached hereto and incorporated as Exhibit 5.

39. From February 24, 2017, until February 1, 2021, Pro V&V lacked a valid certificate of EAC accreditation, and it was not a “federally accredited voting system testing laboratory.”

40. On June 7, 2019, Petitioner certified DVS 5.11 software for use on Colorado county voting system computers. A copy of Petitioner’s certification letter is attached hereto and incorporated herein as Exhibit 6.

41. Exhibit 6 states in pertinent part:

“Pro V&V, a federally accredited voting system testing laboratory, tested Democracy Suite 5.11 CO in accordance with the test plans my office approved on May 20, 2019 and May 23, 2019. My office also reviewed Pro V&V’s test reports dated June 3, 2019 and June 7, 2019, and the Colorado requirements matrix completed and transmitted by Pro V&V on June 4, 2019. Based on this review, I conclude that Democracy Suite 5.11-CO substantially complies with the requirements of the 2002 voting system standards (VSS) promulgated by the Federal Election Commission, and the Colorado standards contained in sections 1-5-601.5, 1-5-615, and 1-5-616, C.R.S., and Election Rule 21.”

42. Pro V&V tested DVS 5.11 voting system software when Pro V&V was not a federally accredited voting system testing laboratory as required by C.R.S. § 1-5-608.5 and Election Rule 1.1.46 (8 CCR 1505-1).

43. Petitioner unlawfully certified DVS 5.11 software in Exhibit 6, because DVS 5.11 software did not meet 2002 VSS standards, and the software was not tested by a federally accredited testing laboratory as required by C.R.S. § 1-5-608.5 and Election Rule 1.1.46 (8 CCR 1505-1).

44. On April 26, 2021, Petitioner certified DVS 5.13 for use on Colorado county voting systems. A copy of Petitioner’s certification letter is attached as Exhibit 7.

45. Exhibit 7 states in pertinent part:

“Pro V&V, a federally accredited voting-system testing laboratory, tested Democracy Suite 5.13 in accordance with the test plan my office approved on January 19th, 2021. My office also reviewed Pro V&V’s test report dated April 23rd, 2021 and the Colorado requirements matrix completed and transmitted by Pro V&V on April 23rd, 2021. Based on this review, I conclude that Democracy Suite 5.13 substantially complies with the requirements of the 2002 Voting System Standards (VSS) promulgated by the Federal Election Commission, and the Colorado standards contained in sections 1-5-601.5, 1-5-615, and 1-5-616, C.R.S., and Election Rule 21.”

46. Petitioner unlawfully certified DVS 5.13 software in Exhibit 7, because DVS 5.13 software did not meet 2002 VSS standards, and portions of the software had not been tested by a federally accredited testing laboratory, as required by C.R.S. § 1-5-608.5 and Election Rule 1.1.46 (8 CCR 1505-1).

47. On April 30, 2021, Petitioner's employee Jessi Romero sent an email to Colorado county clerks and recorders, including Respondent. A copy of the email is attached and incorporated as Exhibit 8.
48. Exhibit 8 instructed county clerks and recorders on procedures for installing DVS 5.13 software on county voting systems computers.
49. The process of installing new voting systems software on county voting system computers is called a "trusted build."
50. Exhibit 8 instructed county clerks and recorders in pertinent part:

"Backup any election projects on your voting system to removable media before our arrival."
51. Before the "trusted build" took place in Mesa County in May, 2021, an employee of Petitioner told the Mesa County clerk and recorder, Tina Peters, that the "trusted build" would erase digital files on the voting system election management system server hard drive.
52. Prior to the "trusted build" in May, 2021, to preserve digital files, Tina Peters made or caused to be made, a forensic image of the hard drive in the Mesa County voting system election management system server.
53. The forensic image made before the May, 2021, "trusted build" in Mesa County contained a copy of the voting system as operating under DVS 5.11.
54. After the "trusted build" took place in Mesa County, Tina Peters made or caused to made, a forensic image of the hard drive in the Mesa County voting system election management system server.
55. The forensic image made after the 2021 "trusted build" in Mesa County contained a copy of the voting system election management system server hard drive as operating under DVS 5.13.
56. Doug Gould, a qualified cyber-security expert, examined the forensic images of the Mesa County election management server hard drive that were made before and after the "trusted build."
57. On September 15, 2021, Doug Gould published a report of his analysis of the forensic images of the Mesa County voting system election management system server. A copy of Mr. Gould's report is attached and incorporated as Exhibit 9.
58. During a "trusted build" in 2019, Petitioner's employees installed identical "golden image" versions of DVS 5.11 software on the Mesa County voting system and the Elbert County voting system.

59. Voting system defects that are observable on the Mesa County DVS 5.11 voting system should also be observable on the DVS 5.11 Elbert County voting system.
60. Exhibit 9 made two findings that are critically important to this case. First, the Mesa County voting system software (DVS 5.11) did not meet 2002 VSS standards. Second, the “trusted build” process erased digital records of the 2020 election that had been present on the server before the “trusted build.”
61. 52 USC § 20701 states:

52 USC § 20701. **Every officer of election shall retain and preserve, for a period of twenty-two months** from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Boldface added)

62. Petitioner and Respondent are “officers of election” as defined in 52 USC § 20706.
63. Pursuant to 52 USC § 20701, Petitioner and Respondent have duties to preserve “all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election” for a period of 22 months.
64. The U.S. Department of Justice (“DOJ”) interprets the phrase “all records and papers” in 52 USC § 20701 to include all electronic files related to an election.
65. Exhibit 10, attached hereto and incorporated herein, is a DOJ publication dated July 28, 2021. It states in pertinent part at the top of page 3 of 8:

The materials covered by Section 301 extend beyond “papers” to include other “records.” Jurisdictions must therefore also retain and preserve records created in digital or electronic form.

66. C.R.S. § 1-7-802 states:

1-7-802 Preservation of election records.

The designated election official shall be responsible for the preservation of any election records for a period of at least twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later. Unused ballots may be destroyed after the time for a challenge to the election has passed. If a federal candidate was on the ballot, the voted ballots and any other required election materials shall be kept for at least twenty-five months after the election.

(Underline added)

67. Pursuant to C.R.S. § 1-7-802, Respondent has a duty to preserve election records for a period of 25 months.
68. The phrase “election records” in C.R.S. § 1-7-802 includes all electronic files, including log files and all other files on the computerized voting system, that relate to any event that happened on any component of the computerized voting system during an election.
69. Petitioner represented that the 2021 “trusted build” would comply with Federal and state election laws and regulations.
70. On August 25, 2021, Petitioner’s employee Jessi Romero sent emails to Respondent and the Elbert County Elections Manager Rhonda Braun. A copy of the emails is attached and incorporated as Exhibit 11. The purpose of Exhibit 11 was to confirm arrangements for the trusted build scheduled in Elbert County for August 27, 2021.
71. Petitioner scheduled the “trusted build” to install DVS 5.13 software on the Elbert County voting system for August 27, 2021.
72. On August 26, 2021, Respondent used a federally approved forensic copying device to copy the hard drives of the Elbert County election management server, two scanning computers, and the adjudication computer.
73. Respondent saved the forensic images to an external hard drive.
74. Approximately one week later, Respondent copied the first external hard drive to a second external hard drive.
75. Respondent made and saved the forensic images because he reasonably believed that he has continuing statutory duties to back up the voting system, and to preserve election records of the 2020 election that existed in digital form on the hard drives of the Elbert County voting system computers.

76. Respondent made and saved the forensic images before the “trusted build” took place, because he reasonably believed that the “trusted build” process scheduled for August 27, 2021, would erase digital records of the 2020 election that he had a duty to preserve.
77. Respondent’s actions were lawful.
78. Respondent did not violate any criminal statute by making a forensic image of the voting system hard drives.
79. Respondent’s actions did not violate any Election Rule that was in effect on August 26, 2021.
80. On August 27, 2021, Petitioner’s employee Eddie Morgan arrived at the Elbert County elections office at 440 Comanche St. Kiowa, Colorado with two technicians employed by Dominion.
81. Respondent’s employee Eddie Morgan was in charge of the trusted build process.
82. Elbert County Elections Manager Rhonda Braun asked Eddie Morgan, “Why do you erase election records during the trusted build?”
83. Eddie Morgan answered, “We wipe everything clean, and then reinstall it. That way, if there is anything bad on the system, we get rid of it.”
84. Eddie Morgan handed Rhonda Braun a checklist that showed tasks that would be performed during the trusted build, and who would perform each task. A copy of the checklist is attached and incorporated as Exhibit 12.
85. “CDOS” on Exhibit 12 means “Colorado Department of State.”
86. When Eddie Morgan handed Rhonda Braun Exhibit 12, he said, “Here is what we are going to do. You can watch.”
87. Eddie Morgan performed the tasks labeled “CDOS” in the column under the header “Responsible” on Exhibit 12.
88. Eddie Morgan installed DVS 5.13 software on the Elbert County voting system computer hard drives.
89. On information and belief, during the 2021 “trusted build,” Petitioner’s employee erased records of the November 2020 election that were stored in digital form on the Elbert County voting system computer hard drives.
90. The trusted build erased DVS 5.11 and other digital information from hard drives of voting

system computers.

91. Petitioner could have specified that counties remove and preserve the old hard drive, which contains DVS 5.11 and the records of prior elections.
92. Petitioner could have specified that counties replace the old hard drive with a clean new hard drive, and then install DVS 5.13 on the new hard drive.
93. Petitioner consciously chose to erase DVS 5.11 and digital records of previous elections from the hard drives of voting system computers during the trusted build.
94. The destruction of digital election records injured Respondent, and continues to injure Respondent, in the performance of his official duties, including his duties under 52 USC 20701 and C.R.S. § 1-7-802.
95. An independent forensic audit is necessary to determine the extent of deleted or damaged digital election records from the Elbert County voting system computer hard drives, and whether such digital records can be reconstructed.
96. On March 4, 2022, cyber-security expert Doug Gould published a supplemental report of his findings concerning the Mesa County voting system computers. A copy of the supplemental report is attached and incorporated as Exhibit 13.
97. Exhibit 13 explains in painstaking detail why the Mesa County voting system, as it existed before the trusted build in May 2021, fails to meet 2002 VSS standards.
98. On March 11, 2022, Doug Gould reported to undersigned counsel that his examination of the Mesa County voting system showed that, after the trusted build, the DVS 5.13 voting system failed to meet 2002 VSS standards. A copy of Mr. Gould's report is attached and incorporated as Exhibit 14.
99. Exhibit 14 shows that the DVS 5.13 voting system installed in Mesa County fails to comply with 2002 VSS standards in the following specific ways:
 - DVS 5.13 is configured to automatically overwrite log files that exceed 20 MB, which violates 2002 VSS standards that require the preservation of log files.
 - DVS 5.13 is configured to allow any IP address in the world to access the SQL service port, (1433), which violates 2002 VSS security standards.
 - As installed on county voting systems, DVS 5.13 uses generic user IDs and passwords and a common shared password, some of which have administrative access. This feature violates 2002 VSS security standards.
100. Because the Dominion voting system installed in May, 2021, in Mesa

County is identical to the Dominion voting system installed on August 27, 2021 in Elbert County, it is more likely than not, that the current Elbert County voting system does not meet 2002 VSS standards.

101. On March 21, 2022, cyber-security and database expert Jeffrey O'Donnell and computer science expert Walter Daugherty, PhD. published the report of their analysis of databases found on the pre-trusted build forensic image of the Mesa County voting server hard drive. A copy of the report is attached and incorporated as Exhibit 15.
102. Exhibit 15 shows that Dominion voting system software created additional unauthorized databases during the November 3, 2020, election in Mesa County.
103. Exhibit 15 shows that Dominion voting system software created additional unauthorized databases during the April 2021 Grand Junction municipal election.
104. Exhibit 15 shows that the creation of unauthorized databases in Dominion software was not accidental.
105. Exhibit 15 shows that ballots were manipulated in the unauthorized databases, rendering the election results of the November 3, 2020, election impossible to certify on the basis of electronic records in the voting system.
106. Exhibit 15 shows that ballots were manipulated in the unauthorized databases, rendering the election results of the April, 2021, Grand Junction municipal election impossible to certify on the basis of electronic records in the voting system.
107. Because the Dominion voting system software in Mesa County is identical to the Dominion voting system software in Elbert County, it is more likely than not, that forensic images of the Elbert County voting system stored on the two external hard drives will show the same defects in the Dominion voting system databases that were demonstrated in Mesa County.
108. On March 21, 2022, Respondent Dallas Schroeder requested Petitioner's permission to make a forensic image of each hard drive in the Elbert County voting system in its current configuration. A copy of Respondent's letter is attached and incorporated as Exhibit 16.
109. On March 22, 2022, Petitioner's employee Judd Choate responded to Respondent, requesting more information. A copy of Mr. Choate's response is attached and incorporated as Exhibit 17.
110. On March 24, 2022, Respondent provided the information requested by

Petitioner. A copy of Respondent's letter is attached and incorporated as Exhibit 18.

111. Exhibit 18 states in pertinent part:

My request in that letter, pursuant to Election Rule 20.6.3, was to create a forensic image of all the computers of the existing Elbert County voting system. I have backed up the 2020 and 2021 election projects. Thanks for the offer of assistance in doing this standard backup. The request for the forensic image is different than the Election Project backups.

A full image will assure both myself and the Department of State that no outside or unauthorized access to the voting system occurred. I also request cooperation in comparing the image that we have from August 26, 2021 to the proposed newly requested image to assure no log files or other election data has been erased during the "Trusted Build". These images would also provide evidence that our system conforms to 2002 VSS standards.

My plan for the preservation of these records would be to make two copies. One would stay at my office. The other would be stored at a separate location, under my control, for the preservation of the data in case of flood, fire, some other Act of God or burglary. It is my understanding that this is standard practice for sensitive information, both in the public and private arenas. I believe the SCORE back up is in a separate location also.

(Exhibit 18, underline added).

112. On March 25, 2022, Petitioner's employee Judd Choate wrote to Respondent:

"As to your request for a full 'forensic' image of the Elbert County voting system, we must deny that request . . ."

(Exhibit 19, attached hereto and incorporated herein, underline added).

113. Petitioner initiated this lawsuit to obtain possession of the two external hard drives that contain forensic images of the Elbert County voting system as it existed on August 26, 2021 ("the external hard drives").

114. Each of the two external hard drives should contain an unadulterated copy of Dominion DVS 5.11 election databases, together with election records in digital format of the November 3, 2020 election in Elbert County.

115. Petitioner's motive is to obtain possession of the two external hard drives, just as

she coordinated with law enforcement officials to seize the Mesa County voting system hardware and digital election records stored on the hard drives.

116. Petitioner's intent in attempting to obtain control of the two external hard drives is to prevent qualified independent experts from examining the Elbert County voting system as it existed on August 26, 2021.

117. Petitioner's intent in attempting to obtain control of the two external hard drives is to prevent Colorado citizens and election officials from fully understanding the defects in the Dominion voting system and election databases that were used in the November 3, 2020, election.

118. As shown in Exhibit 19, Petitioner refuses to allow Respondent to make a forensic image of the existing voting system in Elbert County.

119. As shown in Exhibit 19, Petitioner refuses to allow Respondent to employ a qualified independent expert to analyze a forensic image of the current voting system, and to compare that image to the forensic image on the two external hard drives.

120. Petitioner is aware that comparison of the current voting system to the forensic image on the external hard drives, will provide evidence that the "trusted build" erased records of the November 3, 2020 election, and her actions are intended to conceal this fact.

121. The two external hard drives under Respondent's control are believed to be the only hard drives in the United States that contain full forensic images of all hard drives in a county which utilized the DVS 5.11 voting system, and which also contain digital records of the November 3, 2020, election.

122. As alleged in Respondent's Second Counterclaim below, digital election records of the November 3, 2020, election on the two external hard drives, and digital election records of the November 2, 2021, election on the current Elbert County voting system hard drives, are public records Under the Colorado Open Records Act, which citizens of Colorado are entitled to see.

123. Exhibits 9, 13, 14, and 15 show that the voting system in Mesa County failed to meet 2002 VSS standards, both before and after the trusted build.

124. Since Elbert County uses the identical Dominion voting system as Mesa County, it is more likely than not that the Elbert County voting system did not meet 2002 VSS standards before the trusted build August 27, 2021, and after the trusted build.

125. No further elections should be conducted in Elbert County on any electronic

voting system about which there is reasonable doubt that the system complies with the 2002 VSS standards.

126. Before the Elbert County computer voting system can be used to tabulate votes in the 2022 elections, an independent forensic audit must be conducted to determine if the voting system, in its current configuration, meets 2002 VSS standards.
127. There will be no harm to Elbert County voters or to Petitioner if the Court orders forensic imaging and examination of the existing voting system to determine if the voting system meets 2002 VSS standards.
128. If forensic imaging and examination of the existing voting system shows that the voting system meets 2002 VSS standards, then the public can have confidence in the existing computer voting system.
129. On the other hand, if the trier of fact determines that the existing Elbert County voting system does not meet 2002 VSS standards, or if the Court determines that the computer voting system should not be used for some other reason, Respondent is prepared to tabulate votes in the 2022 elections in Elbert County by hand count.

WHEREFORE, on his First Counterclaim, Respondent prays that the Court enter Declaratory Judgment, and issue an Order pursuant to C.R.S. § 1-1-113(1) requiring Petitioner to comply with provisions of the election code in the following respects:

- A. Enter declaratory judgment that the current voting system does not meet 2002 VSS standards;
- B. Order Petitioner to de-certify voting systems that do not meet 2002 VSS standards;
- C. Order that Respondent shall maintain control of the two external hard drives;
- D. Order Petitioner to cease and desist from attempting to gain possession of the two external hard drives;
- E. Order that Respondent may make a backup forensic image of the hard drives in the current Elbert County voting system;
- F. Order that independent experts may examine the forensic image of the current voting system to determine if it meets 2002 VSS standards;
- G. Order that independent experts may compare the forensic image of the current voting system to the forensic image on the two external hard drives, to determine if the trusted build that Petitioner's employee performed on August 27, 2021, erased digital records of the November 3, 2020 election that were present before the trusted build;
- H. Order that Respondent may use a hand count to tabulate votes cast in Elbert County in the

A. 2022 elections.

Respondent prays that the Court award Respondent his costs and expert witness fees, reasonable attorney fees, and grant such additional relief as the Court deems just and appropriate.

VERIFICATION

I declare under the penalty of perjury pursuant to the law of Colorado that the factual allegations set forth in the foregoing Verified Petition for Relief Under C.R.S. § 1-1-113 are true and correct to the best of my knowledge, information, and belief.

Executed on April 1, 2022, in the County of Elbert, State of Colorado.

Dallas Schroeder

A handwritten signature in cursive script, appearing to read "Dallas Schroeder", is written over a horizontal line.

**SECOND COUNTERCLAIM
FOR DECLARATORY JUDGMENT THAT DIGITALLY STORED ELECTION DATA
ON THE ELBERT COUNTY VOTING SYSTEM COMPUTER HARD DRIVES IS
PUBLIC INFORMATION SUBJECT TO DISCLOSURE UNDER THE COLORADO
OPEN RECORDS ACT**

130. Respondent incorporates all allegations of his First Counterclaim as if fully re-written.

131. C.R.S. § 24-72-201 declares that all public records in Colorado shall be open for inspection by any person:

It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

132. C.R.S. § 24-72-202 (6) (a) (I) defines public records to include all “writings:”

“Public records” means and includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to *section 23-5-121 (2), C.R.S.*, or political subdivision of the state, or that are described in *section 29-1-902, C.R.S.*, and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(Underline added)

133. C.R.S. § 24-72-202 (7) defines the term “writings” to include digitally stored data, but not computer software:

“Writings” means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. “Writings” includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

(Underline added).

134. The contract between Dominion and Elbert County states in pertinent part:

13.3. Subject to the requirements of the Colorado Open Records Act, §24-72-200.1 et seq. (“CORA”), neither party shall disclose the other party’s Confidential Information to any person outside their respective organizations unless disclosure is made in response to, or because of, an obligation to any federal, state, or local governmental agency or court with appropriate jurisdiction, or to any person properly seeking discovery before any such agency or court.

13.5. The parties understand and agree that Customer is a public entity subject to the requirements of CORA. Therefore, any covenant of confidentiality given by the customer in this Agreement shall be governed by the provisions of CORA.

(Voting System and Managed Services Agreement By and Between Dominion Voting Systems, Inc. and Elbert County, CO dated 1/1/2017) (underline added).

135. The legislature intended that election records in digital format should be open to public inspection pursuant to CORA.

136. C.R.S. § 24-72-205.5 (2)(a) includes as a public record subject to disclosure under CORA “any digital image or electronic representation of votes cast:”

(2) As used in this section, unless the context otherwise requires:

(a) “Ballot” means a ballot voted by any acceptable, applicable, or legal method that is in the custody of an election official. “Ballot” includes any digital image or electronic representation of votes cast.

137. Forensic images that were made by Respondent on August 26, 2021, and saved to the two external hard drives, contain public records as defined in the above statutes.

138. Election records in digital format of the November 2, 2021, election that are stored on the hard drives of the current Elbert County voting system computers, are public records as defined in the above statutes.

139. Public policy favors transparency in elections.

140. Votes must be cast in secret, but counting the votes must be public, or citizens lose trust in the voting system.

141. Petitioner opposes any request to make the Colorado computer voting system transparent.

WHEREFORE, on his Second Counterclaim, Respondent prays that this Court enter Declaratory Judgment pursuant to C.R.C.P. 57 as follows:

A. Judgment declaring that forensic images that were made by Respondent on August 26, 2021, and saved to the two external hard drives, contain public records as defined in CORA.

B. Judgment declaring that Respondent may publish and release to the public forensic images that were made by Respondent on August 26, 2021, and that are preserved on the two external hard drives.

C. Judgment declaring that election records in digital format of the November 2, 2021, election, that are preserved on the hard drives of the current Elbert County voting system computers, are public records as defined in CORA.

D. Judgment declaring that Respondent may publish and release to the public election records in digital format of the November 2, 2021, election that are preserved on the hard drives of the current Elbert County voting system computers.

Respondent prays that the Court award Respondent his costs and expert witness fees, reasonable attorney fees, and grant such additional relief as the Court deems just and appropriate.

RESPONDENT DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted April 1, 2022.

JOHN CASE, P.C.
Counsel for Respondent

s/John Case
John Case, #2431

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2022, a true copy of the foregoing, together with copies of Exhibits 1-19, was filed with the Court and served on opposing counsel electronically via ICCES to:

Elbert County District Court
751 Ute Ave.
Kiowa CO 80117

Heather Kelly, First Assistant Attorney General
Jennifer H. Hunt, Senior Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver CO 80203

I further certify that I served a copy of the foregoing, together with copies of Exhibits 1-19, upon Dominion Voting Systems Inc. by email to contracts@dominionvoting.com and david.stahl@dominionvoting.com

s/John Case
John Case