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12:00:59

(Proceedings begin at 1:23.)

01:22:56

THE COURT: Thank you, everyone. Please be seated.

Counsel, are we ready to resume? Does anybody have anything that they need to take up before we do?

MR. PARKER: We are ready, Your Honor.

01:23:11

MR. GAONA: Nothing from us, Your Honor.

THE COURT: All right.

MR. LARUE: Nothing from us, Your Honor.

THE COURT: Okay. Mr. Parker, if you have any more witnesses, please call your next witness.

01:23:22

MR. PARKER: Thank you, Your Honor. The plaintiffs call Clay Parikh.

THE COURT: Mr. Parikh, you would step up to my courtroom deputy she'll swear you in.

COURTROOM DEPUTY: If you can please state your first and last name for the record, please.

01:23:37

THE WITNESS: My name is Clay Uday Parikh. That's P-A-R-I-K-H.

COURTROOM DEPUTY: And Clay is just C-L-A-Y?

THE WITNESS: Yes.

01:23:53

THE COURT REPORTER: And your middle name?

THE WITNESS: Uday. U-D-A-Y.

(CLAY U. PARIKH, a witness herein, was duly sworn or affirmed.)

THE COURT: Sir, I think I mispronounced your name.

01:24:09

Is it Parikh?

01:24:14

THE WITNESS: Yes. It gets mispronounced a lot.

THE COURT: You are free to take you've your mask
origin nor.

THE WITNESS: Thank you. May I also have a drink of
water.

01:24:30

DIRECT EXAMINATION

BY MR. PARKER:

Q. Good afternoon, sir. State your name, please, and spell
your last name for the record.

01:24:42

A. My name is Clay Parikh, P-A-R-I-K-H.

Q. And Mr. Parikh, what is your current employment?

A. I am with Northrop Grumman. I'm the lead information
systems security officer for the ground missile defense system.

Q. And how long have you been at Northrop?

01:25:06

A. Just over two years.

Q. Where did you work before that?

A. I was with Leidos and also Lockheed Martin at the time of
transition.

Q. So they are the same company?

01:25:22

A. What? Lockheed Martin sold off the division to Leidos in
a merger.

Q. How long were you with Lockheed Martin/Leidos?

A. Ten years.

Q. And what work did you do for them?

01:25:36

A. I was at the deputy cybermanager for the Army Corps of Engineers. 01:25:38

Q. Have you done any work for accredited testing labs in the U.S. EAC protocols?

A. Yes, sir. From 2008 to 2017 I worked in Bode system test labs. 01:26:06

Q. And which -- were you a contractor?

A. Yes, sir, I was a contractor.

Q. And what was your title?

A. I was the security subject matter expert. 01:26:24

Q. So were you the one that did testing on electronic voting machines?

A. Yes, sir. And to be more specific, I did the security testing.

Q. And would you say you've done a hundred or more security tests? 01:26:48

A. Yes, sir.

Q. And these are on electronic voting machines like ES&S and Dominion voting systems?

A. Yes, sir. 01:27:02

Q. Was this a part of the certification process for EAC?

A. Yes, it was and also for Secretaries of State.

Q. Do you have any certifications?

A. Yes, sir. I have the CISSP which is a Certified Information Systems Security Professional. Then I also have 01:27:24

the certified ethical hacker and I'm also a certified hacking forensics investigator.

01:27:29

Q. As a central piece of your job to hack into electronic voting machines.

A. Yes.

01:27:42

Q. And this was from 2008 to 2017; correct?

A. That is correct.

Q. Did you ever have occasion to be testing or hacking into Dominion voting systems?

A. Yes, sir.

01:28:00

Q. And a number of times?

A. Repeatedly.

Q. Were you able to hack into the systems?

A. Yes, sir, I was.

Q. How long would it take you to do that?

01:28:12

A. On average, five to ten minutes.

Q. And what would you ES&D systems, were you able to -- or did you have occasion to test and try to hack into ES&D systems?

A. Yes, sir.

01:28:33

Q. And were you able to do that?

A. Yes, sir, I was.

Q. Repeatedly?

A. Repeatedly.

Q. over all of those years?

01:28:43

A. Yes, sir and I tested other voting systems by other vendors as well.

01:28:45

Q. How long would it take you to hack into the ESand S system?

A. I think my best time was two and a half minutes. On average, though, it was usually five to ten minutes. It really didn't make a difference on the vendor.

01:28:55

Q. And then would you record that information that you were able to hack in?

A. Yes, sir.

01:29:10

Q. And, again, this was part of the EAC certification process?

A. Yes, it was.

Q. So you reported this up the chain for the purpose of the process.

01:29:26

A. All my reports and findings were given to the voting system test labs.

Q. Now, have you had occasion to look at the Dominion voting systems that they are intending to use in 2022?

A. I have reviewed that analysis and reports of the systems that have been done up to date to include Maricopa County's report and I find that they are the same configuration of those versions that I tested previously.

01:29:50

Q. That you were able to hack into in five to ten minutes?

A. Yes, sir.

01:30:11

Q. And what about ESand S and their configuration, have you reviewed those? 01:30:15

A. Yes, I have.

Q. And are those configurations the same as what you reviewed as intended to be used in Arizona? 01:30:27

A. Yes.

Q. Which of the accredited testing labs did you work for between 2008 and 2017 as a contractor?

A. I worked for Wiley laboratories which then transitioned into NTS and then I worked for pro V&V. 01:30:54

MR. PARKER: I have nothing further, Your Honor.

THE COURT: All right. Thank you, Mr. Parker.

Mr. Gaona, do you have questions for this witness?

MR. GAONA: A couple, Your Honor. Yes.

THE COURT: Okay. 01:31:27

CROSS - EXAMINATION

BY MR. GAONA:

Q. Good afternoon, Mr. Parikh.

A. Good afternoon.

Q. Are you being paid for your testimony here today? 01:31:37

A. Yes, sir, I am.

Q. What's your hourly rate?

A. \$250.

Q. Have you been paid to do any work to prepare for your testimony today? 01:31:50

- A. I have not been paid yet, no. 01:31:51
- Q. Are you going to be paid for any preparatory work you did in order to testify today?
- A. Yes. Yes.
- Q. Who is going to be paying you? 01:31:59
- A. The law firm.
- Q. Mr. Parker's firm?
- A. Yes.
- Q. Do you have some understanding that an entity controlled by Mike Lundell may be actually funding your services here today? 01:32:06
- A. My services here today are provided to technical data and the findings that I know happened.
- Q. That wasn't my question, Mr. Parikh. My question was whether you have some understanding that Mike Lundell is actually financing this case and your testimony today? 01:32:21
- A. I was unaware of that.
- Q. Have you ever had any conversations with Mr. Lundell?
- A. No, I have no.
- Q. Do you know who Mr. Lundell is. 01:32:36
- A. Yes, I do. I use several of his products.
- Q. I never have. You'll have to tell us if they are comfortable sometime.
- A. They are the best pillows.
- Q. Have you -- let me back up a moment. 01:32:54

Before testifying here today, did you actually examine in any way the Electronic Voting Systems that are currently being used in either Maricopa County or Pima County?

01:32:58

A. Not physically, no.

Q. And are you aware of any third party maliciously hacking in to any of the electronic voting systems that are currently used in either Maricopa County or Pima County?

01:33:21

A. I am going to state that on what was provided for forensic audit was inadequate and you cannot make a determination based off what was provided.

01:33:44

Q. My question though, Mr. Parikh was whether as you sit here now under oath, are you aware of any third party maliciously hacking into the Electronic Voting Systems currently used in Maricopa County, Arizona, or Pima County, Arizona?

A. You cannot simply answer that yes or no.

01:34:04

Q. You don't have have any direct evidence of that, do you, sir?

A. What I do know --

Q. Sir, this was a yes-or-no question. Do you have --

A. And you cannot --

01:34:17

Q. Do you have any direct evidence of any third party maliciously hacking in to any of the Electronic Voting Systems used in either Maricopa County or Pima County? Yes or no?

A. You can not answer that yes or no.

Q. Fair enough, sir.

01:34:33

A. I could expand on why.

01:34:36

Q. I don't want you to do that, sir. It seems like an easy question to answer and are you being evasive and not giving me a yes or no to it.

Are you -- where do you live, sir?

01:34:47

A. I live in Huntsville, Alabama.

Q. Have you been to Arizona before today?

A. Yes, sir, I have.

Q. When was the last time you were here?

A. In Tempe, Arizona, probably about 2008, 2009.

01:34:57

Q. Sir, do you believe that President Trump was the actual winner of the 2020 general election?

A. Sir, I believe that Joe Biden is the duly elected president.

Q. Okay.

01:35:18

A. Now, from my security professional opinion, do I believe there were issues with the voting system? Yes, that require further things, that's why this hearing is being conducted.

Q. Okay.

Q. Backing up a minute. You said you stopped working's a contractor for the EAC testing labs or the EAC approved testing labs rather back in 2017; is that right?

01:35:39

A. That is correct.

Q. So you've not had occasion to actually attempt to hack into the, for example, the current version of the voting

01:35:54

system, Dominion voting system, in use in Maricopa County; is that correct?

01:35:57

A. Not physically, no. I have reviewed the reports and analysis and they are basically the same system and if given opportunity probably could be executed, yes.

01:36:14

Q. Okay. But you haven't actually done that correct.

A. No.

Q. And the same is true with respect to the ESand Ssystem that is currently used in Pima County; correct?

A. I'm unaware of what exactly what version that is so I can't speak to that.

01:36:26

Q. You mentioned you are currently employed with Northrop Grummon?

A. Grummon, yes.

Q. Grummon, I'm sorry. Can you remind me of your title again there?

01:36:41

A. I'm the lead information system security officers.

Q. And you had mentioned that's your ground miss sell defense systems. Is that right what I wrote down. Yes, that's correct.

01:36:54

Q. Does your employer know that you are here testifying here today?

A. Yes, they do.

Q. All right. I don't have any further questions. Thank you.

01:37:03

- Cross

THE COURT: All right. Gaona, thank you.

01:37:04

Mr. LaRue?

CROSS - EXAMINATION

BY MR. LARUE:

Q. Thank you, sir, for being here today. We appreciate it. You testified that part of your job when you were with one of the accrediting laboratories was to attempt to hack into the voting systems. Am I repeating that correctly?

01:37:11

A. That is correct. I was also one of the Bode system test labs was contracted by the federal government to oversee the overseas draft requirements which including a penetration test which I participated in.

01:37:32

Q. Okay. And when you performed that hacking, were the machines connected to the Internet?

A. Some were, some weren't.

01:37:50

Q. Okay. Let's focus on the once that weren't. When you performed that hacking, did they have available -- and I'm not a computer technology expert, I may use it's wrong term. If you don't understand the question, please ask me to clarify. But did they have ports that you could plug like a thumb drive or some other type of memory device into?

01:38:07

A. Yes, they did and they had other available connections on the motherboards which were a concern.

Q. I'm sorry. I'm sorry. My apology. Were you finished?

A. Yes.

01:38:27

Q. I apologize for interrupting.

01:38:27

So you were anal to take the machine apart as part of your hacking attempt; is that correct?

A. No.

Q. Again, I'm not a computer expert but I'm curious how you could observe the motherboard if you didn't take it apart?

01:38:39

A. They opened up some of the panels, right. They are available. As a security professional, you have to use a whole list holistic approach. There are many different attack vectors that can be associated with vulnerability. Right. Off an initial assessment, right, and I will give an example of the DS200 -- before you give the example, sir, what I asked was whether you opened the machine and you said they --

01:38:58

A. Sir the point I'm trying to get to is -- the labs told me not to do certain tests. They will not allow me to do certain tests.

01:39:18

Q. But the machine was open so that you could see the admitted board; is that correct?

A. On some, yes, because they do inspect the internals, they inspect all kind of things. At while Lee labs they the electrical tests, vibration tests because they are actually a large testing laboratory that does more than just voting systems. That was their software division.

01:39:28

Q. Okay. All right. Thank you.

Are you aware that the base coding that Dominion uses

01:39:45

- Redirect

in their democracy suite system was rewritten in 2018?

01:39:49

A. I am unaware that it was rewritten. The one thing in the certification process is that source code was never really ever looked at, touched, let alone examined from a security perspective because anybody in programming knows you do an initial code review, right, and with an automated system that would standard coating checks and then you run it through a security application that tested code for specific vulnerabilities. And I can tell you I never saw --

01:40:09

Q. Mr. Parikh. That's good enough. Thank you so much.

01:40:27

Your Honor, that's all that I have for this witness. Thank you.

THE COURT: Okay. Mr. LaRue, thank you.

Mr. Parker, do you have any redirect?

MR. PARKER: Very briefly, Your Honor.

01:40:37

REDIRECT EXAMINATION

BY MR. PARKER:

Q. Mr. Parikh, just as a preliminary question, I want to go back to your testimony that the configuration of the Dominion voting systems that you see now that they intend to use in 2022 is the same configuration that you were testing in 2017?

01:40:57

A. Yes, sir, from everything that I've examined, it looks basically the same. And even from then the analysis done by Mr. Cotton, you saw the same things that I saw.

Q. And in terms of the motherboard question, would you have

01:41:15

- Redirect

had these electronic voting machines of the Dominion back when you were testing it, would you have had those particular machines open? 01:41:23

A. They examined them and checked them for certain things because we did go over the hardware base lines and stuff and there were a lot of things that relate to supply chain issues that I saw in their technical data packages, it's TDPs. 01:41:35

Q. But in terms of the hack be job that you had, would you open them up to do that or you could do it without opening it up? 01:41:53

A. I could do it without opening them up and did you in fact?

A. Yes.

Q. You were going to give an example of the DS200 hacking. That is a component that is still currently used; correct?

A. Yes, it is. I actually vote, put my ballot into a DS200, sir. 01:42:13

Q. And it is planned to be used in 2022 in Pima and Maricopa correct.

A. Yes, from testimony that I've seen, yes.

Q. And were you able to hack into the DS200 when you were in that position? 01:42:29

A. Yes, I was.

Q. Did that take I was long time to do?

A. No. I was stopped from going further.

Q. So you were going to but you didn't complete it. 01:42:43

- Redirect

A. Because my approach -- I wanted to actually get in and control the software because you can actually manipulation the statistical data on the system. 01:42:47

Q. And you wanted to show that that could be done.

A. Yes. Before it even gets to the EMS. Yes, I did. 01:43:00

Q. But you were stopped from doing that at that point.

A. Yes.

MR. PARKER: Nothing further, Your Honor.

THE COURT: May the witness be used, Mr. Parker.

MR. PARKER: Yes, Your Honor. 01:43:12

THE COURT: Mr. Gaona.

MR. GAONA: Yes, Your Honor.

THE COURT: And Mr. LaRue.

MR. LARUE: Yes, Your Honor.

THE COURT: All right. Thank you. 01:43:18

Mr. Parikh, you may step down and I can excuse you.

Thank you, sir excused exude.

THE COURT: Mr. Parker, please call your next witness.

MR. PARKER: The plaintiffs have no further witnesses at this time, Your Honor. We'll reserve our time. 01:43:28

THE COURT: All right. Thank you.

MR. PARKER: Thank you.

THE COURT: Mr. Gaona, would you like to -- if either defendant wishes to make an opening at the beginning of their 01:43:42

- Redirect

presentation they may or they can waive it and simply go into the presentation of witnesses.

01:43:43

MR. GAONA: Your Honor, the secretary would waive opening.

MR. LARUE: Your Honor, so does Maricopa County?

01:43:53

THE COURT: Okay.

MR. GAONA: And Your Honor at this time then the secretary would call Ryan Macias to the stand?

THE COURT: Mr. Macias, if you would pass the bar and come up to the courtroom deputy, she'll swear you in.

01:44:05

COURTROOM DEPUTY: If you can please state your name and spell your last name for the record.

THE WITNESS: Ryan Macias. M-A-C-I-A-S.

(RYAN MACIAS, a witness herein, was duly sworn or affirmed.)

01:44:18

MR. GAONA: Your Honor, before I begin the examination of Mr. Macias, one preliminary matter which is that the secretary has submitted what we've marked as defendants Exhibit 1 through six that I believe the Court has a binder of. There's a stipulation as to the admissibility of all six of those exhibits I believe so I would like to move their admission at this time.

01:44:45

THE COURT: I don't typically move them in for a preliminary injunction hearing but the Court is considering them. They are part of the record and they are part of what

01:45:00

United States District Court

the Court will core.

01:45:02

MR. GAONA: Okay. Thank you.

DIRECT EXAMINATION

BY MR. GAONA:

Q. Good afternoon, Mr. Macias. Thank you for being here today. I know it was -- you had some difficult times getting here but I appreciate that you were able to make it and make it for the entirety of the hearing.

01:45:06

Could you please state your full name for the record?

A. Yes. It's Ryan Macias. MACIAS.

01:45:18

Q. And could you describe to the Court your current work and profession?

A. Yeah. I'm an expert consult apartment in election tech nog, election security and voting systems. I work across Allstate, local territorial tribal Government's, election Government entities or what we call SLTT as well as work with the federal government that overseas election technology and election security as well as I work in other areas of critical infrastructuring including health care, ICT owe information and communications technology as well as I have been advising recently the space industry on whether or not it should be critical infrastructure or not.

01:45:33

01:45:58

Q. So when you mentioned that you're an expert consult apartment in election technology and security, what does that actually mean? What do you do?

01:46:15

A. Yso I work as I stated I work with federal and SLTT election entities on building resiliency in the elections process so a lot of what web talking about here today is sickly voting systems but the voting system is one small subset of the overall election technology, the overall election infrastructure as well as the overall elections process.

01:46:17

01:46:36

And so what we try to do is provide best practices for states and local Government's that oversee elections and provide elections officials with mitigative measures, compensating controls, training, on how to build resiliency and mitigate any risks in the election infrastructure.

01:46:54

Q. You mentioned working with a lot of different governmental entities at good morning, Your Honor. Levels, could you tell the Court how many different jurisdictions you've consulted with on issues related to election security?

01:47:17

A. Yes. So my major job is working directly with the dome of Homeland Security cybersecurity and infrascar security agency or sis is a and they work with all 50 states, all five territories as well as with the over 8800 election jurisdiction that is run elections across the United States.

01:47:43

And then I work directly with two states on their voting system certification including Arizona and Idaho as well as with many local jurisdictions directly as well.

Q. Have you ever done any work internationally as it relates to elections and Lex security?

01:48:05

A. Yes. So I object -- worked through the department of state specifically the USA ID with countries like ewe green, Georgia, north Macedon nah and Armenia on assessing their election infrastructure and doing cybersecurity assessments on their infrastructure and looking into whether or not they should continue to do hand count or implement election technology as well.

Q. In terms of your work for various jurisdictions aren't the country, would it be safe to say that you've worked for elections officials on both sides of the political aisle?

A. Oh. Yeah. I've done tremendous work with all elections officials on both sides of the aisle including Republicans, Democrats, independents and that not just in my consulting job but also in my entire career in elections.

Q. So I just want it to be clear for the Court, you have your own consulting business in which are you sometimes retained by jurisdictions that need assistance; is that right?

A. That's correct.

Q. And then separately you have a role with sis is a, the Government agency when sometimes you're also asked to consult with various jurisdictions; is that right?

A. That's correct.

Q. Could you describe what CISA's role is in elections in the United States?

A. Yes. First and foremost the Department of Homeland

Security cybersecurity and infrasecurity surety agency or CISA 01:49:32
the nations Rick advisor on critical infrastructure so that is
both on the cybersecurity and physical security side of things.
And as has been stated many times today, going back to January
six of 2017, then secretary of Department of Homeland Security 01:49:49
James jocks named elections critical infrastructure and so CISA
is what is called the sector Risk Management agency which means
that they are the lead agency in the federal government to
oversee and assist the election community. The election
infrastructure community in building resilience in the overall 01:50:13
leks process. CISA's general mission is just that, to provide
as the nation's Rick advisor to mitigate Rick and provide
compensating controls for all of critical infrastructure
including all 16 sectors but they are the sector Risk
Management agency for elections. 01:50:30

Q. Have you ever done any work on behalf of voting system
represents by Dominion and ESand Swho have been mentioned quite
a bit today?

A. No, I have not. I've never worked directly for any voting
system vendor or any election technology provider for that 01:50:50
matter. In my role assist is a, one of the -- as a consultant
ptosis is a, one of the things that CISA does is provides its
services, resources and you know mitigative measure to say the
entire election infrastructure community which would include
voting system vendors as well as all election technology 01:51:12

providers so I do work directly with them but I have never been paid, I've never been on their payroll nor do I have any financial interest in any voting system or election technology company. 01:51:15

Q. Know we've spoken a bit at the macro level about your experience around the country and object to the form have you ever done any security election related work here in Arizona? 01:51:30

A. Yes. So I have worked tremendously with Arizona secretary of state.

A. In my role with CISA I have worked directly with their election curt Darcy to have. We have provided a lot of our services, resources, to Arizona Secretary of State. I have been consulted to advise their election equipment advisory certification committee which is the entity that does their voting systems certification as well as I advise them on some of their methodology and testing for their logic and accuracy testing as well. 01:51:48 01:52:12

And then I was in 2021, I served as secretary Hobbs' election observer expert for the sentence 2021 review of Maricopa County. 01:52:39

Q. And that review sometimes is referred to thed audit; is that correct?

A. Some refer to it as that.

Q. Okay.

Q. Based on your experience in Arizona, are you familiar with 01:52:50

the voting systems currently in use here in our state?

01:52:52

A. Yes, I am.

Q. Would you say you're very familiar with those systems?

A. I am very familiar from not just my work in Arizona put my work at the elections assistance commission as well.

01:53:02

Q. And you're familiarity would extend to the security and reliability of those systems.

A. That's correct.

Q. How long have you been working in this field?

A. I object working in this field for almost 17 years so over 16 years now starting with the California secretary of state's office where I led their office of voting systems technology assessment. It has the most stringent certification for all election technology. They don't just test voting is there anything else but they test all levels of election technology which I think is really important in the conversation here today because a lot of the conversation has been around Epol books and voter registration systems and other devices that are not actually part of the voting system.

01:53:18

01:53:37

But our part of the leks process.

01:53:52

So we did testing on all of those devices in California concluding having the most robust security testing where we actually had open ended vulnerability testing.

So I was there for ten plus years leading their -- what is ultimately know split into their office of

01:54:10

cybersecurity as well as their office of election technology but was called the office of votingly systems technology assessment at the time.

01:54:13

I also served in the capacity. I was appointed by then secretary of state Alex PA Dee yes to be the State of California's representative on the United States elections assistance commission's standards board which is the entity that overseas the development of the voluntary voting systems guidelines or the standards that are used for the testing and certification of voting systems.

01:54:25

01:54:44

Upon leaving I was actually recruited by the then Republican commissioner of the elections assistance commission to go work for the U.S. EAC where I spent three years and my last role there was acting director of the voting is there anything else program at the United States Election Assistance Commission and then last I was leaving and going into my consulting role and in addition to the roles and responsibilities that I have explained 'also served as the expert advisor to the Idaho National Laboratory which is a federally funded research and development accept or one of the national laboratories and I worked specifically with their national and Homeland Security cybercore independent immigration center on the hemmed doling and development of what is called the critical product evaluation which was open ended vulnerability testing of critical infrastructure systems

01:55:04

01:55:24

01:55:40

including election technologies and voting items.

01:55:45

Had of the capabilities that they had there were to attempt to hack the systems as we heard about here today as well as looking into the supply chain risk as well as doing full source code reviews, doing reversion engineering on the software to get to the source code and full open ended vulnerability testing and that was funded by CISA and so it is a federally funded but through Idaho national laboratory.

01:56:01

Q. Okay. One last point on your experience and qualifications. We talked -- I mentioned earlier delay in travels. Where did you come here directly from?

01:56:23

A. I was actually speaking at the national association of -- excuse me of state elections directors or what they call Nsaid which is comprised of the elections directors for all 50 states and five territories. And this was their per conference in Madison, Wisconsin.

01:56:44

Q. And generally speaking, what to picks were you asked to speak on at that conference?

A. So I specifically did a panel on insider threats but I did the prep work and facilitation of the two paths that led into that was an oversue of CISA's election security and resilience division as well as supply chain Rick was the -- were the three topics of the day.

01:57:00

Q. Did you provide me with a current copy of your résumé before the hearing today?

01:57:22

A. Yes, I did.

01:57:24

MR. GAONA: Your Honor judgment err just for the record, Mr. Macias's résumé is what we've marked as defendant's Exhibit 4 if the Court would like further information about his experience.

01:57:35

THE COURT: Thank you.

BY MR. GAONA:

Q. Mr. Macias, based on your experience and expertise, do you believe that the voting systems currently in use in Arizona are secure, accurate, and reliable?

01:57:43

A. Yes, I believe that the voting systems in Maricopa County and in Arizona are secure, accurate and reliable inclusive of all of the compensating controls and all of the processes that go into place and the resiliency measures in the leks process.

Q. So when you talk about resiliency measures, what do you mean by that, what sit that lives you confidence in those systems?

01:58:02

A. So as I had discussed voting is there anything else is one subset of the overall elections process and it's also one subset of the election infrastructure. And so the voting system in and of itself has many layers of security as we talk about in security you have to have defense and depth.

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And so starting with the federal certification process, the state certification process, preelection testing, post election testing like we have been talking about -- what

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some call logic and accuracy testing. That is one subset of preelection and post election testing as well as what we call system software validation or hash checking to ensure that the software has not been altered in any way and then obviously we have a paper ballot that we can go back to at any point and this was a term that was coined way Dr. Ron reinvest which is software in depen dense in the elections process which ultimately minute moving to where you didn't have to trust the technology put you always had an analog backup to go to and so we have a paper ballot here.

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01:59:14

There's a multitude of physical security measures that are in place concluding chain of custody. We have got protective measures like locks, detective measures like the seals. We've got continuous monitoring of those protective and detective measure measures, internal logging then we have things such as the canvass process where you do ballot reconciliation so basically determine how many ballots you initially had, how many have been given out, verifying that against things like how many voters came in to the process to be able to detect that there wasn't ballot stuffing or ballot deletion and then ultimately you have the ability to do post election audit and recounts as well and that's just some of the mitigative measures that written place.

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Q. Now, a couple of witnesses earlier today mentioned an issue that occurred in Williamson, County, Tennessee. Are you

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familiar with what they were referring to?

02:00:18

A. Yes, I am.

Q. Could you tell us what the issue was and how you're familiar with it?

A. Yes. And first it made media. So it made headlines and so I saw it when it first came forward. If it was a true issue, I knew that through the EAC's certification process they have what is called quality monitoring for all certified voting is there anything else whereby the vendors Sal report any anomalies that are determined.

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And so I figured through their investigative process that if there was an issue that a report would come out.

Ultimately, a report came out by the EAC through its formal investigation and the vendor did what is called a root cause analysis report and when that came out as the leading expert for CISA's election security and resilience division, they asked me to read the report and analyze it, assess it and be able to give them a readout on any impacts that it may have to the overall election infrastructure community.

02:01:00

Q. So what was the actual issue or anomaly that was in Williamson continue see?

02:01:24

A. In short without getting into the technical details, there was a bug in the software as is in many soft wares. There was a bug in the software rabbit read a piece of data on the ballots and it thought that that ballot was a provisional

02:01:41

ballot.

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Now understanding what a provisional ballot is which is that the election official needs to verify the eligibility of that voter to be able to vote and basically compartmentalizes those ballots. Though provisional ballots.

02:01:59

So the certainly flagged that ballot as a provisional ballot and set it to the side the way that you would naturally do with a provisional ballots.

Simultaneously our -- it ended up flagging every ballot thereafter as a provisional ballot as well and so at the end of the night when poll workers closed the polls and they printed out the results tape, the number of results that were being reported was not matching and when I was talking about the ballot reconciliation process was not matching how many voter has come in to vote that day.

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And so they flagged it as an issue that they should look into.

Ultimately, none of the data was lost. They both had the paper ballot back ups and the paper ballots were rerun but there was a determination by the election official. Shot election official have moved forward and wept ahead and uploaded those results into the Election Management System and/or aggregated it with the rest of the system, what would have happened is on the EMS or the Election Management System through the adjudication process is it would have said you have

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this bucket of provisional ballots that you need to look at and adjudicate and determine eligibility and move forward and either accept or reject those ballots. 02:03:10

Now, was this anomaly a system issue or was it specific to a particular device? 02:03:26

A. Yes. So is that so is done in EAC reporting they report an systems but as we talked about here there's multiple different configurations on systems. He include many different devices. This was specific to one device which is call the ICP or the I'm catch cast pressings the which is the scanner that the voter walks into and submits they are ballot into. 02:03:45

Actually had I reviewing the report that was one of the things I had flagged is I could understand what the vulnerability was, I could understand what the bug came from, what the root cause analysis was but I couldn't determine what the impact was to the overall election community because all that was being reported was this was in the Dominion voting system and specifically in the ICP. So I reached out to both the elections assistance commission as well as to the vendor to 02:04:01

determine the impact whereby I was told that this specific configuration, by the way is not used in Arizona or in Maricopa County, and it only impacted Tennessee and one other jurisdiction in the country. 02:04:18

Q. You just said something important which is that the configuration and the dice in fact that were affected by this 02:04:38

anomaly are not in use in Maricopa County; is that correct?

02:04:41

A. That is correct.

Q. And Maricopa County is the comb County in Arizona that uses the Dominion voting system?

A. That is correct.

02:04:48

Q. Are issues like this based on your experience common with Electronic Voting Systems?

A. There's basions in systems but where a bug becomes what we call a defect failure or fault and I should have stated this earlier, the U.S. EAC is not the only entity that requires these type of bugs to be reported. When an anomaly occurs in the election process or through any portion of the leg process including preelection or post election testing. I actually helped write the law and get the legislation passed in California where represent Vos to report these types of anomalies as well.

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And so to the rarity of it, in my 16 plus years of doing this work concluding the EAC's tracking of this since 2005, I may have seen a dozen to two dozen of these type of anomaly reports over that span of time.

02:05:46

Q. And just to be clear this anomaly that occurred in Tennessee did not cause any voter to be disenfranchised; is that correct?

A. That is correct nor did it have any impact on the outcome of the election or the accuracy or security of the results.

02:06:01

Q. Th based on your experience and expertise does this anomaly that popped in Williamson County that you just described cause you to believe that Arizona should discontinue using Electronic Voting Systems in order to have safe and secure elections?

02:06:06

02:06:19

A. Absolutely not. As a matter of fact again as I had stated this device is not even used in Arizona. But more importantly is as is built into the elections process, those resill insee measures did exactly what they were supposed to do and that why we have a time frame and the ability to be able to detective and recover from issues that may occur like this.

02:06:34

Q. So is the Williamson County anomaly and how it was handled is that an example of the system working?

A. Yes.

Q. Before you testified today you reviewed the briefing on the plaintiff's defendant for a preliminary injunction; is that right?

02:06:52

A. That's correct.

Q. Do you recall reading several references to the *Curling v. Raffensperger* litigation in Georgia and for the court reporter.

02:07:04

Do you recall that?

A. Yes.

Q. And with respect to that litigation, are you familiar with the recently released coordinated vulnerability disclosure from

02:07:16

CISA regarding the Dominion Democracy Suite 5.5-A ballot marking domestic violence?

02:07:20

A. Yes, I am.

Q. How are you familiar with that?

A. In my role as the lead expert on election technology in election systems for CISA, when they were compelled by the Court to do this coordinated vulnerability disclosure process and look into the researchers's report or his statements on vulnerabilities, both due to my role within CISA but also my years long relationship with both the researcher and for familiarity with the researcher and with the voting system company, they wanted me to be a part of that coordinated vulnerability process to work that coordination amongst them and help advise that process.

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02:07:59

Q. And as the coordinated vulnerability process a normal process of CISA. Yes. So it's up on their website you can look into the overall process but coordinated vulnerability disclosure is just a normal process in cybersecurity as well as in critical infrastructure and basically this allows for researchers who may be looking in to systems or devices to be able to look for anomalies. To look for bugs because as has been reported multiple times today every system has some sort of vulnerability and this provides them the opportunity to be able to report these basically to a third party or an arbiter in this case CISA and CISA then analyzes the vulnerabilities

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02:08:41

02:09:01

and works between the researcher as well as whomever the vendor may be to ultimately find compensating controls, mitigative measures and then releases a report on what the issues may be. 02:09:04

Q. Could you very briefly summarize what CISA's CVD report said with respect to -- said in that litigation rather? 02:09:27

A. Yes. So ultimately it found nine vulnerabilities in a single device in the Dominion 5.5-A voting system. That device was the ImageCast X ballot Marking device which is a device that provides the opportunity for voters with specific needs so voters with disabilities, language access needs, to be able to Mr. Parker their ballot privately and independently and then be able to print that ballot in order to go and have that ballot be tabulated. 02:09:52

And so they found nine vulnerabilities in that device. But ultimately their conclusion was that the typical compensating controls and mitigative measure that is are in the elections process that resill insee that I have talked about, would reduce the risk such that there would be no impact on the overall elections process. 02:10:09

Q. Does the CVD report from the *Curling* litigation lead you to believe that Arizona should discontinue using Dominion voting systems or any electronic voting system for that measure to continue to have safe and secure elections? 02:10:29

A. No, it does note. As a matter of fact if you go through those compensating controls and mitigative measures most of 02:10:46

those are already implemented here in Arizona and so it does not.

02:10:48

Q. And you had mentioned that the report identified I believe nine vulnerability. Was there any evidence -- is there any evidence that you're aware of that any of those vulnerabilities were actually exploited?

02:11:01

A. No. So CISA has come out and said they have no evidence of a any exploit. In fact the researcher himself came out and said there was no evidence of exploit that these were solely vulnerabilities that had been identified and should be patched.

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Moreover, the researcher himself in previous years has stated that if you have a paper record and an electronic record that you can compare to one another, it is very unlikely that that would go undetected and so this device is a paper ballot printing device and so ultimately the system has exactly what he said would be unlikely to go undetected.

02:11:40

Q. Mr. Macias, based on your experience and expertise, do you believe that the existence of vulnerabilities means that Arizona should be required to get rid of its voting systems and pivot to hand counts?

02:11:58

A. No. As a matter of fact, there's vulnerabilities in every single process and so this would be the equivalent to -- I'm going to draw a quick analogy to saying that your house could be broken into even though there is no signs of any intrusion in your neighborhood or even in your city and, therefore,

02:12:17

you're going to go ahead and expose yourself and get rid of your home and go and exposures to having no shelter and living on the streets.

02:12:20

Q. Did you review prior to testifying today annual analysis set forming in a declaration by a gentleman named Walter Daugherity?

02:12:39

A. Yes, I did.

Q. And Mr. Daugherity did any review of something known as a cast vote record; is that right?

A. Yes.

02:12:54

Q. What is a cast vote record?

A. So a cast vote record is the machines's interpretation or understanding of the marks on the ballot and so again you have the analog or the paper record that you place into a scanner that when the scanner reads that ballot, what it does, it says I see a vote cast for this individual so each ballot has an associated cast vote record that goes with it that says what it interprets to be on each ballot.

02:13:08

Q. Putting Mr. Daugherity's purported CV Ralong asides are you aware of any author CV Rannual cease that were done arising out of the 2020 general election in Maricopa County?

02:13:35

A. Yes, in Maricopa County, yes, I am.

So I can't remember the name of the group. I want to say it's called the you had guys. But it was Benny white, Larry Moore and Tim hall very son. Benny white is the former

02:13:52

data analyst for the Republican party of Arizona I believe and so he is used to looking at data and has a long history in data analysis here in Arizona and assessing basically the elections process.

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Larry Moore was actually the -- Larry Moore and Tim Hall very son direct Larry Moore was the CEO of what is called clear ballot which is one of the voting stem vendors. But what they actually started as was an auditing firm and so they created technology to actually interpret Cast Vote Records and be able to sort and review Cast Vote Records generally across all the different election -- excuse me all the different voting systems and it was the first software to be able to do that and Tim Hall very son, who works alongside with him was his chief technology officer who developed that software.

02:14:16

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Q. Are you familiar with the exclusions of the CV R analysis that those gentlemen did?

02:14:56

A. Yes, I am.

Q. What were their conclusions?

A. If I recall --

MR. PARKER: Objection. Objection, Your Honor. This is hearsay and it's hearsay that could be remedied by bringing these witnesses in so that we can cross-examine them and this witness does not have the background to speak to the statistical analysis that he is now speaking to and they are trying to get into evidence that analysis without having those

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witnesses.

02:15:31

THE COURT: All right. Thank you, Mr. Parker.

The objection is overruled. FRE 703 governs this analysis and the Court would deem such a report the type of evidence that an expert would rely on in reaching their conclusions and they are, therefore, permitted to discuss it with the caveat that the underlying report or its results are not going to be admissible and before the Court. It's simply for me to -- to allow me to evaluate the logic, the consistency of the presentation, whether it fits into the opinion that this witness is giving to the Court.

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MR. PARKER: Your Honor, just a competent. If it was his report I wouldn't have the objection. But it isn't so that's the basis.

THE COURT: Understood. Thank you, Mr. Parker.

02:16:22

Please proceed.

BY MR. GAONA:

Q. Let me repeat the question again, Mr. Macias. You answered in the affirmative that you were aware of the conclusions of that CV R analysis that was done. To the best of your recollection, what were those conclusions?

02:16:31

A. That if I recall the exact number, I believe it was 14 ballots that were in question from the actual Maricopa County election and by the time that they actually spoke with Maricopa County they were able to get it down to one ballot difference.

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One CV R difference that Maricopa County was looking into it.
But ultimately what it says was that Maricopa County's results,
their certified results in the 2020 election and the outcome of
that election were correct.

02:16:57

Q. Now, you have had in the courtroom throughout the course
of the hearing today; is that correct?

02:17:14

A. That's correct.

Q. And you listened to the testimony from all of the
witnesses that the plaintiffs presented?

A. That's correct.

02:17:21

Q. You also reviewed all of the declarations that were
submitted along with their motion for a preliminary injunction;
is that right?

A. Of the witnesses, yes.

Q. Based on your experience and expertise, does anything in
any of the declarations that you read or any of the testimony
that you heard today lead you to believe that there's any
meaningful likelihood that the Electronic Voting Systems
currently used in Arizona cannot securely and accurately
tabulate votes?

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A. No.

Q. Now, are you familiar with any of the witnesses who
testified or provided declarations in this case?

A. Yes.

Q. Are any of those individuals considered to be experts in

02:18:01

your field?

02:18:04

A. No, they are not.

Q. Do you have any special experience with any of those witnesses. Yes. I have interacted with directly or indirectly with three of the witnesses.

02:18:16

Q. Which of the witnesses?

A. With the very first one that testified, Ben Cotton in terms of the Maricopa review in 2020. Same with Doug Logan from the same exact instance. As well as Shawn Smith.

Q. What was your experience with Shawn Smith?

02:18:34

MR. PARKER: Objection, Your Honor. What's the relevance of this?

THE COURT: Yeah. I'm not sure I see that yet. Can you --

MR. GAONA: Certainly, Your Honor. The Court indicated that it had read and I believe is planning on at least considering the declaration of Shawn Smith and I believe that what the answer that Mr. Macias will provide and I will avow will go to Mr. Smith's credibility.

02:18:43

THE COURT: All right. With that understanding, I will temporarily at least overrule the objection.

02:18:56

Mr. Parker, are you free to reraise it after we've heard the question and answer?

THE WITNESS: Yes. See I have interacted with like I said indirectly with Shawn Smith on many of the Colorado cases

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that are going on concluding it's review in Mesa County as well as some of the other work that has taken place in Colorado. 02:19:18

BY MR. GAONA:

Q. Have those experiences been positive?

MR. PARKER: Objection, Your Honor. This sort of evidence is not add anything. It doesn't go to credibility. It's a character attack and nothing more. 02:19:33

THE COURT: Well, I don't know fully I've heard the answer and that's my point and we're not in front of a jury so I can unring the bell if there's a problem. So you may reraise it, Mr. Parker. 02:19:44

MR. PARKER: Thank you, Your Honor.

THE COURT: I need to hear the answer.

THE WITNESS: Can you repeat the question?

BY MR. GAONA: 02:19:52

Q. My question was whether your interactions with Mr. Smith have been positive.

A. I would say generally they have not been positive, correct.

Q. And why do you say that? 02:20:04

A. I have had my deem for -- my name tried to be diminished by him in many -- in some of these cases including one that I was just listening in to at a County commissioner meeting on voting systems and election technology whereby my name was raised in a negative light as well as information that had been 02:20:25

I believe tweeted out by I know went out on social media negatively about me generally when I was just in listen only mode.

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Q. Now, with respect to all of the purported experts that plaintiffs put up today, are you aware of any of them --

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THE COURT: Hold on for a sec.

Mr. Gaona s that the conclusion of your question and answer with regard to Mr. Smith's specifically.

MR. GAONA: Yes, Your Honor.

THE COURT: Thank you.

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Mr. Parker, your objection is sustained. I don't think that the answers wept far enough to qualify under any of the evidentiary rules for me to consider that and so I will consider the responses regarding Mr. Smith stricken.

Please go forward.

02:21:08

BY MR. GAONA:

Q. Mr. Macias, regarding all of the plaintiffs' proffered experts in this case whether they testified today or simply provided a declaration, are you aware of any of them being involved in the election security field prior to the 2020 general election?

02:21:21

A. No.

Q. Mr. Macias, based on your experience and expertise, are you aware of any actual malicious intrusion or any instances of altered votes within the voting systems used in Arizona?

02:21:37

A. No, I am not. And as a matter of fact the intelligence community came out with the report that they have no evidence of it. Department of Homeland Security, CISA, FBI, and Dodge put out a joint statement that they have no evidence that any vote has been altered or changed as well.

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And to the work that I have conducted across this nation, concluding some of the work that I did at Idaho national laboratories where we are looking specifically for indicators of compromise to determine whether or not a breach has occurred, I have never seen any evidence of a breach that would affect the outcome of an election.

02:22:12

BY MR. GAONA:

Q. Do you have any experience with hand counts in elections?

A. Yes, I do.

Q. What is that experience?

02:22:28

A. So going -- well, first and foremost, I've conducted hundreds if not thousands of hand counts in the certification work that I have done. We have had to hand count everything from range choice voting which is the most complex type of election the you can do a hand count on to just general logic and accuracy tests before each and every election over my 13 years in federal and state elections as well as I was the technical lead on the secretary of state's then secretary of state Debora Bowen 2011 risk limiting audit board to conduct the very first pilot of a risk limiting audit which is

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basically comparing a paper record to the Cast Vote Records and conducting hand counts. I have participated in and/or advised on many different post election audits where hand count are conducted as well as risk limiting audits and recounters he counts.

Q. And based on your experience and expertise do you believe that pivot to go 100 percent hand count for the November 2022 election here in Arizona would be more accurate than using a electronic voting item to tabulate the results?

A. It would be way less accurate, way less secure than tabulating on electronic voting.

Q. Why do you say that?

A. The evidence has shown that hand counting is not accurate. There is a level of accuracy that you just have to accept or excuse me inaccuracy that you have to accept in a hand count and so that is just generally in terms of a hand count. Were other than trying to do it in the time frame that you are looking at between now and the 2022 election we have what are called lock out periods where we don't each make changes to the technology. We don't make changes to anything in the elections process and we are already coming up on that time frame right now and to go ahead and overhaul the entire elections process that the entire State of Arizona is doing in such a short time frame would actually make it more susceptible to be susceptible and a higher likelihood for it to be inaccurate.

Q. Based on your experience and expertise, do you think that if complete hand count of just take Maricopa County, for example, could be completed in the time frame in which its required to under state law for the canvass?

02:24:58

A. Absolutely not. I mean we saw how long it took for two contests to be counted in Maricopa County from the 2020 election.

02:25:09

Q. Are you aware of any state in the United States that conducts a 100 percent hand count for their leg results?

A. I am 100 percent certain that there is no state that does a 100 percent hand count for all of its elections across -- in the United States.

02:25:25

As a matter of fact, that conference I told you I just flu from last night, one of the panels was on hand counting and one of the state's that was there testifying talked about the time frame that it would take for his state to be able to conduct a hand count and was doing it in terms of a recount, not in terms of official official count. I can't remember the time frame that he had said but he said that the data that they have from every recount that they have ever conduct San Diego that it is five times the cost of a machinery count.

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02:26:03

Q. Thank you, Mr. Macias, I don't have any further questions.

THE COURT: Mr. Liddy or Mr. LaRue, any questions.

CROSS - EXAMINATION

02:26:19

BY MR. LARUE:

Q. Good afternoon. Guarantees.

Q. You were just talking about the difficulty of doing a full hand count of all the ballots. Are you familiar with the hand count that was done in Georgia?

02:26:35

A. Yes, I am.

Q. Did they do a full hand count? Let's start there.

A. They did a full hand count of one contest.

Q. Okay. Thank you very much.

02:26:52

THE COURT: Okay. Thank you, Mr. LaRue.

And Mr. Parker?

MR. PARKER: Thank you, Your Honor.

CROSS - EXAMINATION

BY MR. PARKER:

02:27:14

Q. Good afternoon, Mr. Masses ya'll.

A. Good afternoon.

Q. Thank you for being with us. I wanted ask you about your -- am I right that you own a company called RSM election solutions?

02:27:25

A. That's correct.

Q. How long have you owned that company?

A. 2019.

Q. 2019?

A. Correct.

02:27:32

Q. And what does that company do?

02:27:34

A. It does exactly what I started my statement with. I am a consultant in election technology and election security both internationally and with federal, state, local territorial, tribal, Government entities.

02:27:47

Q. So you're a consultant?

A. Yes.

Q. And do you get hired by -- who? Let's talk about the United States.

A. Yeah.

02:27:56

Q. Who are your customers?

THE COURT: Before you answer that, Mr. Macias, I hesitate to interrupt, Mr. Parker, but I want to make sure that you and I are on the same waive length. It at the outset when I gave the parties their time indicated you a desire to reserve 30 minutes and I had said at that point I would ask ask you to rely on your colleagues 20 tell you that. On the chance that that wasn't understood clearly I just want to make sure that you have 20 minutes remaining for everything so the cross and any closing and I didn't want you to get to the end of this and find that you were in trouble on that. So that's all I want to do is make sure that you had that.

02:28:08

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MR. PARKER: I really appreciate that, Your Honor. Understood.

THE COURT: Sorry for the interruption.

02:28:37

MR. PARKER: Thank you.

02:28:39

BY MR. PARKER:

Q. RSMelections your customers are who.

A. Pain the Government. State local tribal Government entities.

02:28:49

Q. So you are hired by the Government to come in and run their elections or consult about their elections?

A. To consult and advise on election technology, election security, election resiliency and voting systems as I had stated I work directly with multiple states on their societaling system certification process as well.

02:29:06

Q. And you believe in electronic voting machine systems and their security correct.

A. I believe that in the United States, that with the complexion systems and systems and complex ballots that we have that, yes, electronic voting or electronic tabulation of a paper record is the safest and securest way to conduct an accurate election in the United States.

02:29:22

Q. And did Arizona ever do its elections by hand count of ballots? They did; right?

02:29:45

A. I'm sure that it did at some point.

Q. Yeah. And the first electronic tabulation was in 2002; right?

A. Potentially. That I do not know.

Q. You do not know.

02:30:00

A. I do not know.

02:30:01

Q. Okay.

Now, you were the -- I think you said you were the director of the EAC; right?

A. No. The acting director of the voting systems program at the EAC, yes.

02:30:07

Q. How long were you in that position?

A. I believe I was in that position for six months before I ended up resigning from the federal government and specifically from the United States elections assistance commission.

02:30:21

Q. Isn't it more accurate that you were in the position for two months?

A. Potentially, yes. It's on my résumé. I don't know the exact dates.

Q. Okay. Now, you said that you have done or work on hundreds of hand counts and the most complicated are rang choice voting. Where did you do rank choice voting hand counts?

02:30:30

A. I've done them in San Francisco, in Alameda, in San Leandro, Oakland.

02:30:53

Q. Local elections?

A. Local electiones in the State of California when I worked there, yes. I actually developed the methodology for testing and certifying the voting systems that did rank choice voting.

Q. But these were hand count that you did?

02:31:09

A. You end up having to do a hand count to determine the results and I participated in a hand count that ended up having to be done on a single contest in San Francisco in 2008 I believe it was because they did not have any --

02:31:11

Q. All right. My question was just it was a hand count that you did.

02:31:29

A. That is correct. I did a hand count on a single election.

Q. Okay.

Q. And did it work out?

A. It worked out.

02:31:43

Q. So this highly flimsy rank choice voting you used hand counts and it worked out. You did it and it came back and those were the certified results; is that correct?

A. That is correct.

Q. All right. Now, you talked about Williamson County and you said there was a bug in the software as is often the case. Now, this software and in fact the stem was certified by the EAC before this bug was found; right?

02:32:00

A. That is correct.

Q. So the bug got through the certification apparently; right?

02:32:21

A. That is correct.

Q. And in terms of the CISA advisory related to the nine vulnerabilities that you had talked about, that relates to a Dominion voting system's system that had also been certified by

02:32:43

the EAC; correct?

02:32:47

A. It has to do with a single device just as William soon.

Q. But it had been certified by the EAC; correct?

A. That is correct.

Q. Okay.. And you says that CISA found this issue and the vulnerabilities. In fact it was expert professor Alex Halderman that called this out, CISA then look autopsist is a then determined that, yes, these vulnerabilities are there; correct?

02:32:57

A. I do not recall stating that CISA found this. No. As a matter of fact what I had stated was that the court had sent this to CISA to look at but, yes, and I had talked pow both the researcher, which was Dr. Alex Halderman --

02:33:20

Q. And you know who Dr. Alex Halderman is; correct?

A. Very well.

02:33:39

Q. You've relied on him before. You respect his ability; correct?

A. I know of had is work.

Q. And you've relied on him before in sworn statements that you have submitted; correct?

02:33:54

A. That I do not know.

Q. Do you recall being --

A. That I do not recall.

Q. Do you recall being involved in a occasion in the Eastern District of North Carolina?

02:34:04

A. Yes, I do.

02:34:06

Q. Okay. And you submitted a declaration in that case; correct?

A. Yes, I did.

Q. And you cited and relied on Alex Halderman in that declaration; correct?

02:34:12

A. That I do not recall but if it is in there, then, yes, I did.

Q. Are you familiar with the hacking convention?

A. Yes, I am.

02:34:30

Q. Did they hack electronic voting machines at that convention nowadays almost every year; correct?

A. They hack -- well, it's a deaf couldn't generally is the largest hacking --

Q. I'm just asking whether every year they hack into electronic voting machines at that convention?

02:34:47

A. They bring in usually old technology to allow people to take a apart and try to hack into the systems, yes.

Q. But not always old technology?

A. Yes. There has only been older technology in use at the hacking village -- excuse me at the voting system village each year that it has taken place.

02:35:05

Q. So if say Doug Logan who attends that says you're wrong about that you say he's wrong about that; right?

A. I've been at it every single leer and I I've worked with

02:35:28

hair seahorse city who puts it on as well.

02:35:32

Q. Have you heard of Steve bell Layamon professor of chewed science it's a Columbia?

A. I have not.

Q. You have not.

02:35:47

You would agree with me that all computer systems are susceptible to foreign election interference potentially; correct?

A. Well, foreign, all election systems, no, I do not believe all election systems. The election system is a broad terminology as I had stated. This case here is about voting systems and so when we were talking about election systems, many of the --

02:36:19

Q. Okay. But you're missing my question. I'm talking about Electronic Voting Systems, not voting systems. I'm talking about the ton 96, the computer systems that are used for elections, those are hackable by foreign entities. Would you agree with that or not?

02:36:33

A. Every system is vulnerable to hacking.

Q. Every system is.

02:36:51

A. Every technology and every system, a system is a system of processes. It is not just electronic and so, yes, every process has vulnerabilities which is why you build defense and depth which is just a general terminology in security.

Q. Is there any ongoing investigation today into the Arizona

02:37:09

voting system?

02:37:13

A. To my knowledge, no.

Q. Now, you -- when were you first retained for this case, sir?

A. In the past week.

02:37:32

Q. And did you have to change your schedule to get out here to testify?

A. Yes, I did.

Q. Have are you being paid for this testimony?

A. Yes, I am.

02:37:47

Q. And how much are you being paid for the testimony?

A. It is an hourly rate of \$250 for nontestimony and \$350 for testimony.

Q. Have you been paid anything yet?

A. Nope.

02:37:59

Q. And who is it that is paying you?

A. States united democracy center.

Q. Who is states united democracy center?

A. It is the co-counsel to the secretary of state.

Q. What does that organization do?

02:38:14

A. They are a nonpartisan organization. NGO, nongovernmental conversation.

Q. Did you say nonpartisan?

A. Yes.

Q. That organization is nonpartisan.

02:38:32

A. Yes, it is.

02:38:34

Q. And what do you base that on?

A. That is to my knowledge is -- I should actually step back on it. I do not know if they are nonpartisan or bipartisan. They are not a partisan organization.

02:38:45

Q. But my question is, what do you base that statement on?

A. Their credentials.

Q. Credentials. Can you name any of them?

A. No.

Q. During the audit, did you attempt to get into the audit location?

02:39:11

A. I was in the audit location, in the review location inside the Coliseum almost every single day for the eight weeks.

Q. We've got entered into evidence a video reflecting that you attempted to get in surreptitiously by indicating you were a member of the media when, in fact, you were not and you were sent there by an interested party involved.

02:39:28

A. That is incorrect.

Q. So the video that we see is incorrect. That never happened. Is that your testimony?

02:39:44

A. So what happened was --

Q. My question is whether --

A. I have not seen the video that you are talking about but what I am saying is that your statement is incorrect and that is not how things transpired.

02:39:56

Q. Who were you working for when you went there?

02:39:59

A. I was actually not working for anybody. I was there on my own.

Q. You were there on your own?

A. Yes, I was.

02:40:05

Q. Okay. So you weren't directed by anyone to go there.

A. No, I was not. I was in conversation with multiple people of what was happening at that location that day including former secretary of state indirectly who was running the audit or was the liaison to the Senate at that time who was aware that I was on my way in and knew I was coming.

02:40:23

Q. Who is that?

A. Former secretary of state ken Bennett.

Q. And so if ken Bennett is seen on video saying that you attempted to get in to this space on false pretenses, you would say he's not being honest about that?

02:40:41

MR. GAONA: Objection, Your Honor. If we're going to continue to talk about a video I think the witness deserves to be shown the video if he's going to be specific questions about what was said or not said and on that note I would say that we've never had a video disclosed to us it's a any point despite the handwritten note I received just before the Court took the bench indicating that YouTube videos were sent to us on July 20 which is emphatically not true.

02:40:57

THE COURT: Mr. Parker.

02:41:14

MR. PARKER: We did produce the video. It be a produced into evidence with the Court well. As it relates to the testimony, I think the specific question in front of this witness simply relates to ken Bennett's statement and whether this witness agrees with that or not.

02:41:14

02:41:32

THE COURT: The objection is overruled with regard to the question about whether or not you, Mr. Macias, agree or disagree with this attorney, the questioner's characterization of a statement which is not before the Court right now and is in much danger of becoming satellite litigation.

02:41:50

So you may answer that question much the objection is overruled.

THE WITNESS: I disagree with the statement.

BY MR. PARKER:

Q. Okay.

02:42:00

MR. PARKER: Your Honor, if I pay, I want to check on this evidence issue regarding the video and we'll play it if we need to play it. But I think the Court just as with the other evidence presented to the Court, can view it in the Court's own time.

02:42:17

I have no further question for this witness, Your Honor. I would like to check to make sure that I am accurate in my statement that this has been produced and that the Court has a copy but I believe that is the case.

THE COURT: All right. You may do that and when we

02:42:35

come back to you the next time you can give me an update on that. I don't want to burn anybody's time on this issue. If it's not presentation of evidence in the moment.

02:42:37

Is there any redirect, Mr. Gaona.

MR. GAONA: I don't have any questions, Your Honor.

02:42:50

THE COURT: All right. And is there any redirect, Mr. LaRue.

MR. LARUE: No, there's not, Your Honor. Thank you.

THE COURT: Then may the witness be excused. Mr. Gaona?

02:42:59

MR. GAONA: Yes.

THE COURT: Mr. LaRue?

MR. LARUE: Yes, he may.

THE COURT: Mr. Parker?

MR. PARKER: Yes, Your Honor.

02:43:06

THE COURT: All right.

Then you may step down.

And, Mr. Gaona, you may call your next witness.

MR. GAONA: Your Honor, the Secretary doesn't have any further witnesses. The County will be calling --

02:43:15

THE COURT: Hold on just a second, please.

THE COURT REPORTER: Can we take a break?

THE COURT: Yes.

Counsel, we're going to take our afternoon break now. It's 2:43. Let's plan on coming back at 3 o'clock. We will

02:43:27

SCOTT JARRETT - Direct

finish out the presentation. We'll go into -- if there's remaining time closings and then I'll have questions for both counsel.

02:43:32

I'm going to stay in the courtroom so feel free to move about the well.

02:43:40

On recess. thank you.

(Recess at 2:44; resumed at 3:02.)

THE COURT: Thank you, all. Please be seated.

Mr. Liddy or Mr. LaRue, do you have a witness for me?

MR. LARUE: Yes, Your Honor. At this time, Your Honor, we would like to call Scott Jarrett.

03:02:23

THE COURT: Mr. Jarrett, if you can come up past the bar and my courtroom deputy will swear you in.

COURTROOM DEPUTY: Can you state your name and spell your last name for the record?

03:02:32

THE WITNESS: Scott Jarrett. J-A-R-R-E-T-T.

(SCOTT JARRETT, a witness herein, was duly sworn or affirmed.)

COURTROOM DEPUTY: Thank you. You can have a seat up there.

03:03:10

THE COURT: Go ahead, Mr. LaRue.

MR. LARUE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LARUE:

Q. Good afternoon, Mr. Jarrett?

03:03:25

SCOTT JARRETT - Direct

- A. Thank you. 03:03:27
- Q. Please state your name for the record.
- A. Scott Jarrett.
- Q. And what is your position where you work?
- A. I am the company director for the Maricopa County Elections Department and I -- my specific title is Director Of In-person Voting and Tabulation. 03:03:32
- Q. How long have you held this position?
- A. So I was appointed in June of 2019.
- Q. Briefly describe your duties. 03:03:49
- A. So as the director of in-person voting and tabulation, I oversee all poll worker recruitment efforts, temporary recruitment efforts, that includes training, all of our temporary employees that work during an election process. That includes all of our warehouse functions as well as overseeing all tabulations functions. 03:04:07
- Q. Okay. What did you do professionally until before you were the co-director of the elections department?
- A. For 13 years I worked as a certified internal auditor and a certified fraud examiner. 03:04:24
- Q. And for whom did you work?
- A. I worked for the Maricopa County so auditing all 50 plus different departments within the County and also an auditor for the airbag community college district.
- Q. Mr. Jarrett, what is your educational background. So I 03:04:40

have a bachelor's degree in accounting and then I also have certifications through -- as not only in audit field but also through the Secretary of State's office.

03:04:44

Q. Okay.

Q. Mr. Jarrett. In your role, are you familiar with how voters in Maricopa County cast their ballots?

03:04:58

A. Yes, I am familiar.

Q. Are you also familiar with how voters in other counties cast their ballots?

A. Well, other counties in Arizona, yes, specifically, generally across the nation, yes.

03:05:15

Q. But in Arizona was what I intended to ask.

A. Yes, I am familiar with how Arizonans cast ballots.

Q. Do voters in Arizona cast their ballots on paper ballots?

A. Yes, they do.

03:05:32

Q. And do they physically fill out the paper ballot with a pen?

A. Yes, they do.

Q. Is there any other option for casting a ballot in Arizona besides physically filling out a paper ballot?

03:05:48

A. Well, over 99.9 percent of all voters fill out a paper ballot using a pen but we do offer an accessible voting device in our in-person voting locations and those voters would then use touchscreen. We call that and an ICX in Maricopa County. The counties will have similar type devices there was thank you

03:06:11

ESand Svoting systems or whatever their tabulation vendor Sso those that use the touchscreen or what oh whatever other device that is connected to that accessible voting device. Sometimes it's called an ATIdevice. Sometimes they say disabled voters sip and puff device so that 23 they don't have the ability to move their arms, then that let's them progress through the accessible voting device.

03:06:15

03:06:38

And ultimately then a paper ballot is printed and then that voter is able to then review that paper ballot, all the contests that they voted. And then that would be -- if it's on election day, it would be inserted into the precinct-based tabulater. If it's during early voting, that would go through an affidavit envelope, signature verified, and then ultimately tabulated at central count.

03:06:56

Q. Let me ask you a couple of just follow-up questions about that. You referred to these I believe as accessible voting devices. Are these also sometimes called ballot marking devices?

03:07:11

A. That's correct.

Q. And so and the parties in the papers have sometimes used an acronym BMD. To your knowledge, would that be these accessible voting devices?

03:07:23

A. A ballot -- not typically. What we refer to them at least as an ICXor an accessible voting device.

Q. Okay. You mentioned disabled voters who typically uses

03:07:43

hacks set responsible able voting devices?

03:07:54

A. Well, we don't discriminate so if a voter asks to use that device, we would allow them to. But typically, it is would be a voter that does need the services of the device. So if you have a vision impairment it allows to you enlarge the ballot on the screen. You can actually flip the colors in the background so it's black on white or white on black making it easier for them to be able to view the ballot.

03:08:09

Again, I mentioned if you had even further vision impairments and we record the audio for every angle single contest on the ballot reading each candidate's name the ballot measures in their entirety so they are listening to the device and then using what we call the ETI device to move through the progression of the ballot or again they are bring their own sip puff device which if they didn't have the ability of their arms.

03:08:26

03:08:47

So the importance of that is that it allows every voter, even a voter that that is disabilities to be able to vote in person. They could do it in private, right. They don't need the assistance of another person for them to cast their ballot.

03:08:59

Q. Okay. Do you recall how many total ballots were cost in Maricopa County for the 2020 general election?

A. 2,089,563.

Q. And how many of those ballots in Maricopa County were cast

03:09:21

on an accessible voting domestic violence?

03:09:26

A. 453.

Q. So were all you have the rest of the over two million ballots cast by voters physically marking paper ballots?

A. That's correct.

03:09:40

Q. Are the accessible voting devices connected to the Internet?

A. No.

Q. Do you believe that the accessible voting devices switched anyone's votes?

03:09:53

A. It did not.

Q. Why do you say that?

A. Because we go through extensive logic and accuracy tests before every election not only of our tabulation equipment but of these accessible voting devices so in Maricopa County that has been for over two years now up wards of nine different elections that we have been -- put these through a prelogic and accuracy test. We've also then performed a post logic and accuracy test on every one of those devices and not in any of those instances have we ever found an accuracy issue with those devices.

03:10:07

03:10:28

Q. Okay. We're going to come back to logic and accuracy in just a little bit. Let's focus or just a minute on who manufactures the equipment used in Maricopa County. So who manufactures the accessible voting devices?

03:10:44

A. Dominion.

03:10:46

Q. And what version of the Dominion equipment and software does Maricopa County use?

A. Let me say this. Dominion Voting Systems. I used the short term. So we use the Democracy Suite five.5 B.

03:10:55

Q. Are you aware that a lawsuit called *Curling v. Raffensperger* challenged what we call accessible voting devices in Georgia?

A. Yes, I am.

Q. Are you aware of what version of accessible voting devices Georgia used that was the subject of that lawsuit?

03:11:21

A. Yes. It was a different version than what's used in Maricopa County. It was Democracy Suite 5.5-A.

Q. Okay. Are you aware that the United States cybersecurity and infrastructure security agency issued a report that recommended certain -- what I'm going to call security measures for the equipment that Georgia uses?

03:11:39

A. Yes, I am.

Q. Are you familiar with the report?

A. I am familiar with the report.

03:11:54

Q. Tell us how the safeguards employed by Maricopa County compare with the recommendations made by that report?

A. Well, in large part, the vulnerabilities that were identified had to do with someone being able to access the accessible voting device and had unrestricted access or

03:12:12

physicallling says on that so there were several then
recommendations that were implemented. All recommendations
that we use through 2020 and currently implement those include
never conducting the device to the Internet. Our device is not
connected to the Internet. It includes ensuring that we do
preand post testing, security tests as well as logic and
accuracy tests, things that we do in Maricopa County. It also
ensures that we maintain chain of custody over that equipment,
something we do and that we document. Making sure that the
ports on the device itself are restricted. That if someone
were to access it, we be able to detect that. Every one of
our -- those ports it's actually locked. Then that machine has
tampered evidence seals that goes over those.

We send out precinct ballot reports to all of our
poll workers. Let me back up a little bit. When we do a logic
and accuracy test, that's when we affix these tamper evidence
seals. We then scan those into our system that then we can
print out a precinct ballot report. On that precinct plot
report it says here's every piece of equipment that is being
assigned oh this voting location. Then we train our poll
workers, bipartisan teams Republicans, Democrats independent
voter toes take that precinct pistol report investigate it make
sure that the seals that are affix the to that device match
the -- what is on that report. If for any reason that seal
does not match or that seal is broken or it has been removed,

they are to immediately call us and then we don't use that device and then we would replace device. However there's not been an instance in the lek where we've ever had one of those seals rev moved or broken during voting.

03:13:50

Q. What tabulation equipment does Maricopa County use?

03:14:05

A. Dominion voting systems, Democracy Suite 5.5-B.

Q. That's the same version as the accessible voting device.

A. That's correct but we use specifically in our precinct based voting what would be called an ICP2. That's what we call our precinct base tabulate and our central count we have two different versions and we call those our ICCs but one is a Canon and then one is a high pro voting device so nine total central count tabulateds.

03:14:24

Q. Okay. Are Maricopa County tabulateds connected to the mental health?

03:14:46

A. No, they are not.

Q. Do they have ports?

A. Yes, they do.

Q. Okay. And how are they secured?

A. So with just like with every one of our devices we use port blockers and we'll say since 2020 based on doing a threat assessment, something that I heard Ryan Macias testify earlier to about in sider threats, we've even implemented further security controls since 2022 meaning we're not relying on generic port blockers on our equipment. We've ordered

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serialized port blockers with a customized key that is unique to us.

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So every single one of our ports is blocked on all of our central count equipment. That includes our adjudication stations, our high pro scanners. Our EMS stations but not only that we've also invested in security containers to then enclose that equipment. I heard testimony earlier today that a mouse or a keyboard could be at risk. Well, this then prevents access to all of those ports even where we have a keyboard or a mouse plugged in. No one within that room can then without getting the keys that are looked he locked in our secure server room, there's only three people in our department that even have access to that security room. Every time we go in we log why we are going into that room. They would need access to that key to open up the canister and, again, all of that is on 24/7 livid streaming.

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03:16:10

Q. Okay. So earlier today I believe Mr. Cotton testified that the antivirus software on Maricopa County's election equipment had not been updated since August 2019 and patches had not been, I don't know if he said add or updated but either way since August 6, 2019. Do you agree with that statement?

03:16:41

A. For the tabulation equipment that was used in the 2020 election, yes, that is correct. That's when we first installed and purchased that equipment and we're implementing it in Maricopa County and that's when we would have updated the

03:17:04

antivirus software or at least installed it at that point in time.

03:17:07

Q. And why do you not do antivirus updates on a regular basis? Is there a reason that you don't do that?

A. Well, there's a few reasons. First it would violate state statute. State statute says that we have to use federally certified equipment. So the U.S. election commission would -- if we were to install or update or implement patches on any piece of that equipment, it would immediately then be decertified at the federal level.

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So we don't do that because it would violate federal statute and then violate state statute.

Seconding it's an air gap system meaning it's an isolated network. It's not connected to the Internet. It's not exposed to the same risks that other computer systems would be so that's how the U.S. election assistance and the general community and elections safeguard those systems when we aren't upgrading those patches.

03:17:56

Also when you are implementing or rolling out a patch to any of your equipment, you need to go through extensive testing. The patch itself could introduce vulnerabilities. Or operational challenges. So how the elections community addresses that is it requires every patch, every change to go through recertification or *di minimis* change Roses at the U.S. elections commission level.

03:18:12

03:18:34

Once it gets approved there, then the vendor which is
come out and then implement those patches on our equipment. 03:18:36

Q. Are you aware of whether the certification process that
you just described is a quick process or a lengthy process?

A. It's a lengthy process. It could take years to get
something through recertification at the federal level and then
it has to be reviewed the the state level again and they have
to make a determination because that warrant it going through a
state recertification as well. 03:18:51

Q. Mr. Cotton also testified earlier today that he observed
evidence of multiple remote accesses into the EMS or the
Election Management System. Do you ever a response to that? 03:19:10

A. So within our closed network, how the devices themselves
communicate with each other is -- and it's through a switch.
But each device has IT own IP address. So we do have an EMS
terminal that our staff can work at and they can remote in
again within our tabulation center, not leaving the tabulation
center, through a closed network wire from that EMS they can
remote in to the server to make changes and updates and run
reports that we need to do on a daily Bates as we're going
through doing tab. 03:19:32 03:19:54

When you are a adjudication boards are going through
and reviewing ballots for voter intent issues, they are keeping
manual logs. At the end of every shift we produce a system
generated log those add Joint Notice of Discovery Dispute 03:20:09

occasion boards, again Republican and Democrat sitting together making determinations. They are manually logging that. We we then generate a system log that is then compared by those boards to make sure that everything that they log manually matched what was entered in the system. 03:20:11
03:20:24

To do that, we have to run that report from the server. We do that without entering the server room. We would remote in from that EMS station. Again, not remoting in from an external network outside or through the Internet. It's within the closed air gap segregated networks. 03:20:40

Q. Okay.

Q. Mr. Cotton also testified that there was a breach of the voter registration system in 2020. Are you familiar with that?

A. Yes, I am.

Q. Okay. Are you familiar with the voter registration system? 03:20:57

A. I am the. That's within the purview of the Maricopa County recorder but we use it extensively to check in voters at our in-person voting locations.

Q. Is the recorder's voter registration system connected to the Election Management System? 03:21:11

A. No, it's not.

Q. And you mentioned you use it to check in voters. What is the Election Management System actually do? I don't know if we've talked about that? 03:21:27

A. So the Election Management System is a piece of the tabulation equipment. So it's what all the applications are installed on or sub components of those applications -P it's what allows the central count tabulation equipment to run and operate and then us to be able to scan in ballots, have those ballots tabulated them to go into our results and tally reporting, be able to use the electronic adjudication functionality within the system, be able to produce the cast vote record. Again, it's all related to tabulation, not voter registration.

03:21:28

03:21:43

03:22:03

Q. Okay.

A. Or our check-in systems that are at our voting locations.

Q. Okay. And you testified that the voter registration system is not connected to the EMS. Does the voter registration system have anything at all to do with tabulation?

03:22:14

A. Other than we do need to get voter registration totals into our tabulation system. So we have a stand alone computer that we upload information into that using a unique brand new USB device from that system into our tabulation system and that's I don't remember canvass reporting purposes and then so when we're doing our post election audit for us to be 8th Amendment determine at what percent of voters participated, right. Everyone is interested was it an 80 percent turn out, 70 percent turn out. It's all derived from investigate voter registration numbers and down to the precinct level.

03:22:38

03:22:55

Q. Thank you.

03:22:58

Now, let's talk about the actual breach itself. Can you please explain what happened?

A. So first I will say I am not an IT guy or an IT professional. But my understanding is that someone accessed our website and scraped publicly available voter registration data and a few records from our website and then was able to get access to that information. Again, nothing to do with our tabulation equipment. Just from the website itself.

03:23:11

And we make the available, that voter registration system information to the public because they are informing voters. We have a fantastic website called Be About ready, dot, vote. So if you are Maricopa County voter wanting to know what your ballot status is or where your closest voting location is or what's on your ballot, you can log in to that site and see, you are signed up on active early voting list? Are you registered as an independent, Republican or Democrat? All of that information comes from our voter registration system to our voters and that is what was accessed.

03:23:34

03:23:50

Q. To your knowledge, did this particular bad actor gain access to the nonpublic side of the voter registration database?

03:24:09

A. No, they did not.

Q. Okay. To your knowledge, were they able to change any data in the voter registration database?

03:24:22

A. No, they were not. They are just able to take data from the website.

03:24:25

Q. Okay. And again just so that the record is clear, did that in any way affect the be a tabulation of ballots?

A. No, it did to the.

03:24:37

Q. Mr. Cotton testified earlier today that some files on the Election Management System were treated. Do you agree with that statement?

A. I disagree. There were no files from the tabulation equipment that were deleted?

03:24:54

Q. What happened?

A. So as with every election we will go through a standard archival process. That means that we have to keep that election whole and autonomous to itself. So. I believe the dates that he's referring to were in late February but I would like back up to, let's start with November.

03:25:11

Q. Mr. Jarrett, November of what year?

A. November of 2020. Zoophori time we performed an election, state statute requires us to perform a post Lex logic and accuracy test that. Has been discussed here. So as part of that post election logic and accuracy test we have to create a zero file. So during that logic and accuracy test we're starting with no results in the system. So at that point in time, in November, based on statutory requirements we had to archive those filing and store those results not only on a

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03:25:51

backup driver in our server but also in undisclosed off-site location for our disaster recovery purposes so after we went and wedded to that prior to the canvass. So that happened in November.

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Then in December we had lots of contests of the election itself from all sorts of parties, state level as well as federal level. That point in time we needed to restore those results back on the Election Management System so we can run reports and do data analysis to be able to respond to those court hearings.

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Then as we rolled into early January 2021 we start preparing for our March jurisdictional elections, our EMS server is running out of space or needing to then take those results that we had restored to run that analysis for a court hearings and then also or kind of them back on to a backup device.

03:26:49

We also did that because at that point in time we hired a voting system laboratory pro V&V. We also already SLI complies but we asked pro V&V to do a logic and accuracy test of their own.

03:27:08

So in doing that logic and accuracy test, they needed to have those results zeroed out so they can run a results file so they are not adding Ron top of what was already in from the 2020 general election so that's Woo those results were zeroed out but there was no data deleted. It was all on archived

03:27:26

backup copies.

03:27:30

Q. Thank you, Mr. Jarrett.

You mentioned logic and accuracy tests and you're right they have been talked about before but I would like you if you would to explain what a logic and accuracy test is and whether or not it's important or not?

03:27:44

A. It's incredibly important to the election process and we take that very seriously. First before we do every logic and accuracy test we perform what we call is a hash code verification. So at the U.S. elections commission and with on escrow with NIST there is hash code that shows every piece of equipment and software that should be installed on the Election Management System. And we do a one for one check to make sure that there's not any erroneous software, make sure that there hasn't been any malicious software added to the equipment so this is done before every election.

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After we've gone through that process, then we make sure that all of our ballots are tabulatable and accurate so even before we get to the actual logic and accuracy tests ourselves, we're running our ballots through every possession of equipment to make sure that we programmed the election accurately.

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If we didn't we want to catch it ourselves before we even get to that logic and accuracy test and once we get to the logic and accuracy test, that's when we invite in the political

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partiesment so the County chairs for each political party, it's either them themselves or their appoint tees. They come in and I heard earlier that a logic and accuracy test is only 100 ballots. That not true. In Maricopa County for the 2020 general election be did over 8,100 ballots. We make sure that for our test. We make sure that every candidate, every rotational position is tested to make sure that every ballot style will accurately tabulate.

We then also invite in the secretary of state. They are required to by state law to perform their own logic and accuracy test. We are -- we don't -- those results are blind to us, right. They. We give them the ballots. They are going to fill out themselves. They then know the results of what those ballots should be. They come in and test, an independent party, verifying that we have rammed that tabulation equipment accurately. Once we go through that, the political parties are there present observing every step. They are the ones signing off on those results. They sign off on the zero report at the beginning of logic and accuracy test. They sign off on the results at the end to know that it's accurately programmed.

It's at that point in time when we start affixing all of those security seals to all of the different equipment, let the recording them down that we know that that system has not been modified and then if there are devices had are going out to our voting locations so though pro sing the base tabulated,

those successful voting devices, that's when the poll workers would check back to those log seals that were affixed right after that logic and accuracy test.

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Q. Okay.

And Mr. Jarrett, do you similarly do a logic and accuracy test after the election?

03:30:49

A. That's correct. After every election and, again, in November 2020 that was over 8,000 ballots that were run after the election as well.

Q. There was testimony earlier today about passwords. What's Maricopa County's protocol with regard to passwords for the equipment that it uses?

03:31:13

A. So we have a multitier authentication system within Maricopa County. First access to 'piece of our -- any tabulated within Maricopa County, you need a physical security fob that we keep restricted and we only issue for that day. If it's central count for our inspectors we deliver that to our inspectors the day or two before. They are opening up of that voting location so that's the first level. That first authentication tier; that you can't access you can't even turn on the equipment without having that security fob key.

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Secondly, for every election in our central count environment we have two separate passwords. The password to get to the actual election system is changed before every election. It has been ever since we introduced this equipment.

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So over the course of the last two years it has been changed
dozens of times then is a unique password for that election.
So you would need to access a tabulated in central count not
only that security key to passwords at our voting location is
the security key and one password. That is also changed before
every election.

Q. Okay.

A. I will say also that there are other passwords so if
you're going to update the firm ware on the tabulated, if you
wanted to install any piece of malicious hardware, you would
need another password. Any different security key that is
maintained by the vendors themselves. So we could not even
inadvertently update and install malicious software on that
equipment. So that's another pass wore entirely.

Q. Okay.

Q. Mr. Jarrett, I'm changing the subject now. Are you aware
that Texas rejected Dominion equipment for use in Texas
elections?

A. Yes, I am.

Q. Do you know whether Maricopa County uses it's same
equipment that was rejected in Texas?

A. They do not.

Q. Are you aware of how long Maricopa County has used
electronic tabulators to count ballots?

A. I know since -- so we purchased the current versions of

our tabulation equipment in 2019. Prior to that the system that we had purchased was in 1996 and prior to that we used the punch card ballots.

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So for decades and decades we using tabulation equipment to tabulate results.

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Q. All right. Mr. Jarrett, we're going to now discuss the difficulties that might be generated if any if you had to hand count every ballot cast in Maricopa County.

How many candidate races typically appear on each general election ballot?

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A. So they are typically on average over 70 different contests. You asked about candidates. So usually there's in the neighborhood of anywhere from the mid-- low sixties to midsixties of for candidate specific contests.

Q. What are the other contests if they are not candidates?

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A. So citizen initiatives, legislative initiatives, propositions.

Q. Okay. Do you anticipate that being true for the 2022 general election?

A. Yes. It would be very similar to every general election, that number of contests.

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Q. Do you have an understanding of whether Arizona statutes set a deadline for the County to certify its election results?

A. Yes. So for a November general election, it's 20 days after the election. For an August primary, it is actually 14

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days. That was extended in this last legislative session. It was ten days after election date. 03:35:42

Q. Let's focus on general elections. So are you saying that you have 20 days to get the count done?

A. No. That is not accurate. That is 20 days to present the campus to the Maricopa County Board of Supervisors. In order to present to canvass to the Maricopa County Board of Supervisors we need to be done counting at least six days before so we can then ensure that we've -- we get all of the reports, we do our quality control checks and all to havees canvass reports so we're meeting the 24-hour agenda item being able to place it on the clerk of the board and on our website owe maybing it available to the public. So we really only have 14 days post election to complete the count. 03:35:56 03:36:16

Q. Have you had occasion to make a projection of how many ballots are likely to be cast by Maricopa County voters in the 2022 general election? 03:36:37

A. Yes. So since 2020 we have been producing election plans and as part of that protection plan I 'perform a forecast and wait time analysis and part of that is to project how many voters would participate. 03:36:54

So in May I went through and did a projection using historical vote totals and turnout numbers for similar like -- similar and like elections also looking Autolykus from presidential contests and how -- what is the typical amount 03:37:12

that its lower in a gubernatorial election year so our range was up to 1.9 million potential ballots would be cast in this upcoming November general election.

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However, if you look at the nation, there's just a lot of interest in people participating. All of our August -- not August. August primary in Maricopa County but the primaries throughout the entire country, they are surpassing what was happening in 2020 so I would anticipate that we could -- it wouldn't be unheard of for us to be very similar to the same turnout that we had in November 2020 which was almost 2.1 million voters.

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Q. Okay.

Assuming the likely number of ballots that you just said and the likely number of election contests that you testified earlier on each ballot, have you determined how many total ballot contests will need to be counted for the 2022 general election?

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A. Yes. It's just over 146 million contests that would have to be counted.

Q. Is there a best practices for conducting hand counts?

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A. Yes. And those are established in not only state statute but also in the Arizona State election procedures manual but in Maricopa County itself. We're doing hand counts for deck eights and we have never lived doing a hand count.

Now, I say we. I need to put a caveat to that

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because really it's the political parties that dot hand count. They are the ones that sleek the ballots through central count that would be then randomly drawn. They are the ones that actually performed the random draw and it's the political party appoint tees, not Maricopa County employees, that perform the hand count.

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So, y I would say that we've established best practice for how you would conduct a hand count.

Q. Do you have an understanding of if whether with your corporate employees you could count by hand all of the candidate races and ballot 30(b)(6) initiative races, all of the contests, on all of the ballots that are likely to be cast in the 2022 general election within the 14 days you said they would have to be counted in order to perform the canvass by the 20th day?

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A. It would be a near impossibility. Well, with my current employees, it would be an impossibility.

Q. Have you considered what you would have to do if this court were to order Maricopa County to forego the use of tabulateds and instead count all of the ballots by hand?

03:40:08

A. Yes. I've done some initial analysis and I still say even if I had all of the resources available to me, I still would believe it's an impossibility. But I've entertained the thought of how I would go about doing that. We would need to hire 25,000 temporary workes to be able to accomplish that in

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the time frame of -- it's not just the 14 days. We would have so in Maricopa County and in Arizona we allow voter toes vote 27 days before the election. Our state legislators have allowed to us start counting those ballots as long as we perform a logic and accuracy test upon receipt so we do have a head start.

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However, the vast majority of people are pro craft the '98s, right, so they class to return toes ballots to us very late in the process. So the vast majority of pal lots are coming in that last week before election day.

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So essentially the vast majority of those ballots would have to be counted over a 25-day period. So in order to get it done in that 25-day period, based off our current analysis of how we perform hand counts, I would project that 25,000 temporary workes would be needed.

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Q. Okay. And could you house that operation in any County building?

A. No. Our current facility -- if you don't continue our warehouse where we store all of the equipment that has poll lots remarks already there. The large of the room we have is already 8,000 care feet and that's actually are we perform our hand count. We hire a hundred board members, 30 different boards to do that so essentially we can fit just over 100 people within that 8,000 square foot room so not even those to life twice.

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Q. Have you had opportunity to consider how much space you would need to be able to conduct a full hand count of Maricopa County's ballots?

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A. Yes. I -- my projectiones are over 2000 square feet of situation would be needed to be able to perform that within a 25 day period.

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Q. Mr. Jarrett, you just said 2000 square feet.

A. I'm sorry. 2 million square feet of space. Thankee thanks for pointing that correction out.

Q. Have you had opportunity to consider whether there is any building large enough in the State of Arizona to house that operation?

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A. Well, I've not done a full complete audit of every single building in the State of Arizona but I did look at what would be the largest buildings and State Farm stadium where there's a card analysis plays most likely the largest building in the State of Arizona. And it's currently 1.7 million square feet. So not the two million that we would need.

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And that counts not only the field but all of the stayed diam seats, that counts all of the concessions, that counts all of the locker rooms. None of those would be available to us to be able to perform a hand count to set up tables for the hand count process. So it doesn't come even close to the space we would neither.

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So through that 25-day period, for us to get that

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space we would need would be asking the Arizona card analysis to forego football. We would be asking the Phoenix Sundays to forego playing basketball during that period. We would be asking local state and high schools to forego their basketball games. We would be asking the ASU done 53 velocity to for go playing basketball in their stadiums. We would be asking the Phoenix convention accept to stop holding conventions so we can try oh find enough space and that does not mention then all of the security vulnerabilities we would have with doing this hand count and all of those different locations.

Q. Let's talk about hiring just the 25,000 temporary staff that you estimate you would need. Have you considered whether you could successfully hire that many workers between now and the 2022 general election?

A. Absolutely not. We can't even get the 3,000 poll workers, our temporary staff members that we need for this August primary. We recently had to use federal grant funds to offer a bonus for people that come work at the central count facility, a thousand dollars on top of their pay rate to work 240 hours or four weeks or get a thousands 750 dollar pho work four00 hours or eight weeks. We also recently raised all. Our pay rates. We used to pay just over minimum wager 14 dollars. We've to increase that up to \$19 an hour and we're still woefully short on the people we need for this upcoming August primary.

So we would not be successful in identifying not only the 3,000 that we need to run the election but then the 25,000 people that we would need to perform the count. 03:45:06

Q. Okay. Mr. Logan earlier today testified that it would be quicker to count the ballots in smaller groups sump as by precinct I believe he suggested. Does Maricopa County currently vote in precinct based polling locations? 03:45:27

A. No. We don't.

Q. Do you believe that you could successfully transition to precinct polling based locations for the 2022 general election if you had to do it starting today? 03:45:48

A. No. We could not. We would need significantly more voting locations than right now for August primary we're offering 211. For the November general we're look to go expand that to 225. We would need significantly more if we're going to go back to the precinct base model. 03:46:06

Q. And what model do you?

A. A vote center model. A vote center model and it's a fab tag stick model because it provides redone dance and reliability for voters. If a precinct based -- if we were using precinct based he base and one lost Powell error it wasn't open because we had the owner foreclose on that facility, those voters would be out of luck to be able to participate. The vote center model that's no longer the indicates. You can go anywhere in Maricopa County and get the 03:46:24 03:46:40

correct ballot, vote the correct ballot and then have that if it's during early voting put into an affidavit envelope come in to central count or to be tabulated in our precinct.

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But more important is we're an early voting state. Web for decades. Currently our active voting numbers are at 78 percent actually an uptick from 2020 so more people are choosing to participate early and through the mail.

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Well, those come in randomly. So we go to the post Assistant U.S. Attorney. We pick up those ballots every single day and they are from all over the County. They are not in precinct base order so they are random. They are from Wickenburg. They are from heel will bend, Cave Creek, Queen Creek, central Phoenix. All of those ballots are then together so they are not sorted were 'presince the but we do keep themment in our chain of custody records are all in the order chin they came.

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Q. Mr. Jarrett, I heard was said and I don't want you to thinking it were impossible. Let's suppose it were possible to transition to a precinct based model. If you were to count by hand all the ballots cast in Maricopa County in precinctings, would you need fewer workers to get that job done within the time period that you have if you're going to canvass the leg on time?

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A. I would anticipate we would need more if we're hand counting every one of those precincts.

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Q. Okay.

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Q. Do you anticipate that it would be quicker to do it that way?

A. No. Absolutely not. Also I heard in testimony earlier that the more ballots that you're hand counting the difficulty exponentially increases. I will say not only the more ballots, the more contests on the ballot exponentially increases. The more dedicated you are to the precision and accuracy of that hand count, the exponentially increases and let me describe for you.

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So what the Cyber Ninjas audited they audited the two top contests on the ballot. Every single ballot had those two top contests. As soon as you start going down the down ballot contests, they are not all the same on the ballot. So that means -- so for this upcoming August primary we have over 6,000 different ballot styles. When you consider all the different precinct, parties, when you consider the splits, the school district split versus a fire district split. So you would need six,000 different hand count force for every one of those ballots.

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And then you need a way to aggregate those results. So you're not doing that manually. You're entering it into a computer. Well, probably not a certified computer that went through federal certification or went through state certification and I don't know about you but aye 'time that I'm

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hand keying those fubs into a computer, I make mistakes.

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Receive one, every human, every person is making mistakes doing the aggregate. I imagine that's part of why Cyber Ninjas counted those ballots in three months but it took them two more months to release the report. Because they are going through and doing all of those quality control measures.

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And the biggest challenge when you are talking about results and voter confidence is how long it takes you to release those results and this would take forever.

Q. Okay?

03:50:25

MR. LARUE: Your Honor, just one moment.

COURTROOM DEPUTY: Just a reminder all cell phones need to be turned off completely.

BY MR. LARUE:

Q. Mr. Jarrett, just one final question and it's just simply this: Is there anything else that you want to add?

03:50:37

A. Yeah. I would say that it's not new for voters not to have confidence, right, in the election results. Usually there's a small percentage of voters that they are candidate lost or their preferred candidate lost and so they think that maybe through fraud in the leg process. I believe post 2020 because we did not have a candidate concede and one that had a very, very large platform that that percentage of voters now increased.

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But if you were going to want to get ZIP code

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confidence to be at an all time low get voters 90 percent, 100 of them not believing in the results of the election, you would implement a hand count process; right? You would video stream it. You would see all the mistakes that those hand count boards are making.

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I know that they make those mistakes and Maricopa County we have those hand count boards do a hand count of 200 ballots at a time because they are notoriously bad counters. But not only those 200 ballots at a time. We have them stack in batches of ten and they will still make mistakes.

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So one way so we overcome that is when they are selecting their batches rerun the results report immediately. Again, the political parties are selecting those batches.

So we keep those results sealed and then we have our hand count board members appointees from the political parties themselves attempt to reconcile with themselves out of -- in 2020, the 30 hand count board members first just not counting the contests on the ballot, counting the total number of ballots in that batch of 200.

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About 20 percent of the boards -- oh, they couldn't each reconcile that initially. Let alone once they started hand counting those contests themselves.

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So what we have done is make sure that they get agreeance first that they each logged all of that information. They have the correct.

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Q. Numbers and then we open up the results and verify that they match at that point in time but every time I logged in and watched the hand count process that was happening at veterans memo I don't rememberral cholesum and seeing those lay see sue sans going around and there wasn't a time I logged in and didn't see a hand count board member writing and tally a result as the ballot went past them. That is not a way to build confidence in your elections. People will have so much more distrust over the process tan the current process.

Q. Thank you Mr. Jarrett.

A. I will say there are always opportunities for improvement. We are looking to improve and we're making strides in the elections department. And we're always open to recommendations and suggestions.

Q. Thank you. Mr. Jarrett?

MR. LARUE: That's all I have, Your Honor.

THE COURT: All right. Mr. LaRue. Mr. Gaona, Mr. LaRue as left you exactly no time. We are at limit for defendants.

Mr. Parker, you have five minutes if you wish to conduct cross-examination.

MR. PARKER: Thank you, Your Honor. I will use my five minutes.

CROSS - EXAMINATION

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BY MR. PARKER:

03:54:09

Q. Good afternoonment thank you for being here. I'm going to go back to his hand count issue for a minute. You count ballots at tables; right and you've got your people there. They get their stack and they are counting and the hand count process. That's generally how it works; right?

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A. That's correct.

Q. And you've got a team at that table that is counting those ballots; right?

A. That's correct.

03:54:36

Q. So let's say you've got five tables in a particular counting location and we've got a few people manning each table.

Q. And let's say that each of those tables was responsible for counting 2000 ballots. How long would it take them to count 2000 ballots?

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A. Correctly and accurately?

Q. Yes.

A. I would have to go back and do the numbers so I'm probably not going to be asked but 2000 ballots, 70,000 different contests so what is that, 140,000 different ballot positions and then tally it up that they don't do it correctly they will make a mistake and when they do that reckon sillllation --

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Q. I'm not asking you those questions, Mr. Jarrett. My question only is, how long will it take the team to count 2000

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ballots. You count ballots all the time and you count them with 70 different races on the ballot every year because you do your two percent audit so you know how long it would take to count 2000 ballots. That's all my question is.

03:55:34

A. So when we did --

03:55:49

Q. That's a time period, Mr. Jarrett. How long will it take to do 2000 ballots at a table?

A. At a table. Several days.

Q. Several days.

A. At one table.

03:56:04

Q. Less than a week, though, for that one table; right?

A. Sorry. That would be if you're only counting five contests. All 70, it would take months.

Q. Months. All right. So if you're counting the federal contests, it would take you less than a week?

03:56:17

A. Just the two contests, yes.

Q. So if you had five tables in the location, you could count 10,000 ballots and you have, what, 200 locations you said, 216 and 225?

A. 211 for August, 225ish for the November general.

03:56:44

Q. All right. I think we can all do the math whether this is possible or not.

I want to ask you about these -- the *Curling* comparison that was made before. You said that can you recall and what's going on in Georgia is the same Dominion voting

03:57:05

system but a different version; right? They are both Democracy Suite but one is 5.5-A and one is 5.5-B; correct? 03:57:10

A. That is a different version.

Q. 5.5-A and 5.5-B?

A. That's correct. 03:57:25

Q. Have you put these two side by side before?

A. I have not.

Q. You have not? But would you be surprised to heroin that while they are a different version, they are effectively the same when it relates to security? 03:57:33

A. I have no knowledge of that.

Q. You have no knowledge. Okay?

MR. PARKER: And I refer the Court to Exhibit. which indicates the sameness of these two versions.

BY MR. PARKER: 03:57:46

Q. Mr. Jarrett, in terms of the voter registration hacking that occurred, you're saying that they didn't get into nonpublic information? Is that your testimony?

A. That's correct. So the information is public.

Q. So all of the data that is in there that they obtained didn't violate anybody's rights; correct? 03:58:12

A. To the best of my knowledge, that's correct.

Q. And you're not a separately by the way a computer security person. You don't have a computer background; correct?

A. That's correct. 03:58:30

Q. As it relates to passwords, you said that during the election, during any given election you have one password; is that right?

03:58:37

A. No, that's not correct.

Q. I thought you said you changed the password for each election.

03:58:46

A. We have multifactor lot occasion so a security fob and then 26(a) separate passwords.

Q. What does it take to get into where the EMS server is?

A. So you would have to first get through a physical security gate outside of the Elections Department with badge access. If once you got through that you would have to then GED badge access into the building itselfment then to get into the tabulation center which is even more restrict the accession you would also then have to have badge access as well.

03:58:59

03:59:18

During an election we have on site security guards that are monitoring all of our cameras. There's 24/7 streaming cameras in those rooms as well as well as our lobby.

Q. How do you get into the EMS room. Through a restricted badge access so you have to be authorized and actually have it right here.

03:59:36

Q. And that badge would get you through all of those doors.

A. If you had access.

Q. If you had the authority.

A. Yes.

03:59:48

Q. All right. And have you ever done any bench testing of the components in Maricopa County? 03:59:49

A. So we have done -- we've hired cybersecurity experts to come in and look at our tabulation equipment.

Q. When did you last do that. When did you last do that? 04:00:03

A. So we did that through 2021. We also have --

Q. Did you make any changes?

A. We always are making changes.

Q. I'm just asking whether based on the berm testing did you.

A. We always make changes based on recommendations from those reports. 04:00:16

Q. Did you make any in that occasion when you did the bench testing?

A. Yes. We've made changes since those reports were issued.

Q. Have you paid changes to the tabulators? 04:00:27

A. Not the tabulation software itself but -- and I described some of those earlier so we got those additional security port blockers.

Q. I'm wondering if you made changes to the tabulators based on bench testing. 04:00:42

A. We have not made any changes.

Q. What about to the EMS system based on bench testing?

A. We have not made any changes.

MR. PARKER: Nothing further, Your Honor.

THE COURT: All right. Thank you, counsel. 04:00:51

Please be seated. May this witness be excused?

04:00:53

MR. LARUE: Yes, he may, Your Honor.

MR. GAONA: Yes, Your Honor.

MR. PARKER: Yes, Your Honor.

THE COURT: All right. Thank you.

04:01:00

You may step down, sir. Thank you.

(Witness excused.)

THE COURT: All right. Counsel, I have a number of questions for you. They may come in patches to one side or the other. some of them I'll be asking both sides

04:01:15

First of all, does any attorney who will be answering the questions need a minute to gather or hit the restroom before we begin? I would imagine this is probably going to take us 45 minutes or so.

MR. PARKER: I would like to, Your Honor.

04:01:39

THE COURT: All right. Why don't we do that? We'll take five minutes. We'll start up just a few minutes after 4:05.

MR. PARKER: Thank you.

(Recess at 4:01; resumed at 4:09.)

04:01:48

THE COURT: Be seated, everyone, please.

All right. Housekeeping, before I forget, Mr. Parker, I'm sort of balancing between wanting to give you time for a fulsome response four the motion to strike but not stretching things out too long if it's going to affect the

04:09:29

disposition of all of the motions. And so I am going to ask you if giving you a week from today is sufficient for you to respond?

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MR. PARKER: Fully.

THE COURT: All right. And so then we'll call it the what you think.

04:09:41

MR. PARKER: Thank you, Your Honor. I also wanted to update the Court.

THE COURT: Go ahead.

MR. PARKER: I have checked in to the YouTube video exhibit S, which was spitted to the Court when we came in yesterday. We understood that a USB would be appropriatement we did that. I had intended to send it over to counsel. That was done today, not yesterday and it should have been done yesterday. And I represent that to as an officer to the Court.

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04:10:15

THE COURT: All right. Understood. Thank you.

Counsel, I have a number of questions for you, some of them are for me to hear from all sides. Some may be more directed to one side or another and in no particular order I think now.

04:10:37

Mr. Parker, what makes this a case where, for purposes of conferring standing, which of course is one of the first questions I need to get to -- get through to determine jurisdiction. What makes this a case where potential for an injury is sufficient for the Court to find an injury in fact

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according to the standard I need to apply in evaluating the existence of standing.

04:11:01

MR. PARKER: Your Honor, an allegation of future injury may suffice if there is a real Rick that harm will occur and that is the Susan Banthony case. But I think the key cases to look at when looking at standing are the *Curling* case which dealt way the same issue and much of the same type of testimony. The demotist part *v. rep kin party case of 2016* which I think this court is aware of prior to the allegations of intimidation ever occurring, the claim was made that they could occur.

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04:11:51

And because they could occur, standing was provided. Anyoned addition, *Carson v. Simon* which is the Eighth Circuit case I think is quite on point and in instructive. I would add to that Your Honor, both procedural injury allows for standing here. You don't have to get to that fact but I think we have procedural injury in a case like this under lieu hasn't.

04:12:12

And perhaps more most importantly. The ma seen analysis *v. Hobbs case* which was just decided this year by the Ninth Circuit regarding competitive standing and the impact that this can have on candidates, both plaintiffs are candidates. So I would cite the ma seen analysis case which follows the line of *Owen and Drake*.

04:12:33

THE COURT: As long as we've touched on *Curling* and you anticipated the next part of this question, how much of

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does that case help the plaintiffs here? Because in that case the Court rejected the plaintiffs there request to replaces entire statewide voting stem during an election year and also I guess I would like you to address this as well. An expert in that case noted that using hand marked paper ballots and reserving electronic ballot parking devices to your people who need or request them, the special needs voters, would greatly mitigate the risks identified by the plaintiffs in that case. Remarkably the plaintiffs here as well. Arizona's practice appears already to be in line with that stated approach. The targeted counties here already operate systems that generate a paper ballot for each voter to include those relatively few special needs voters. I believe the testimony was 453 in Maricopa County in that election.

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So what more would the injunctive relief that your clients request here accomplish?

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MR. PARKER: Your Honor, first I comment regarding the ballot marking devices and the fact that -- and I believe the evidence reflects -- that there are many vulnerabilities that come through those ballot marking devices. The vac that Arizona only uses them in very limited instances doesn't mean that those devices aren't connected to the central system, the central voting system.

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And so you can enter through that means and the weaknesses and vulnerabilities there and apply that malicious

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code throughout the system. That is a comment on the ballot marking devices.

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In terms of can you recall and the comparison, the reason the the Court -- and if you take a look at the October 2020 decision, it was three weeks before the election and the judge was faced with this decision of what to do regarding pulling everything back. And if you read the decisions that are 150 pages nearly, it is a line and verse discussion of the expert testimony in that case and her ultimate conclusion was it is not a question of if there's going to be a broad scale hack; it's when. But she didn't have the ability, because of the limited time, to do I think what she wanted to do, and that is to make changes to the system. Whether they be paper ballot system or changes to the electronic plus paper or whatever change she wanted.

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And so the case continued and more evidence and discovery was revealed in order to allow her time to put it in place where it could work with an election. We sit here 110 days from the November election and we posit as the plaintiffs here and I think credibly so, that it can be done. Despite the testimony that we just heard which is quite self interested on the part of Maricopa County. They don't want to do it for sure but can it be done? Yes, I think I illustrated the fact that they already have 225 locations counting plots. You put five tables in each location and give them 10,000 ballots to count

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in each location, you can count 2 million ballots. And it isn't impossible to get 15 or 20 people in those spaces to count those ballots.

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And if it's set up beginning now, it can, in fact, be done and it can be done with nowadays video streaming to watch all of the activity as has been talk about and the potential for catastrophic intrusion and broad-based issues will go away because of that.

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THE COURT: Mr. LaRue or Mr. Liddy I would like to hear your response with regard to the question on standing generally and how this case lines up with the specific case law.

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MR. LARUE: Your Honor, the way we divided our plan for oral argument, the state was going to cover standing so if it's already I would like to defer to the secretary of state.

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THE COURT: That's fine.

MS. YOST: Thank you, Your Honor. With respect to standing, plaintiffs alleged harm here is exactly the type of speculative and hypothetical injury that just isn't sufficient to establish standing. And I point the Court to the *Clapper V. Amnesty International* case where the plaintiffs alleged a long chain of attenuated hypotheticals to get to their alleged harm and that's exactly what the plaintiffs are alleging here. That is not a concrete injury in fact sufficient to confer standing.

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I also just want to note while it's clear from the

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pleading that this is a hypothetical long chain of contingencies, it's also clear from the evidence today, it's even more clear, the only expert witness here today with expertise on election security and voting system security as well as Mr. Jarrett's testimony made clear that there are so many procedures in place in the entire election system that make it entirely impossible that there's an impending hacker that going to hack our election in 2022 and and get through all of those procedural safeguards and affect plaintiffs' votes or enough votes to change the election.

THE COURT: Ms. Yost, I think that your response addressed the first part of my question dealing with with what the Court posed as a potential for injury and I understand that but I'm interested also in hearing the defendants' response to the specific question as to does the *Curling* case help or hurt you.

MS. YOST: The *Curling* case helps, Your Honor. In that case. Well, first just factually in *Curling* the specific device being used was used statewide for every voter. The electronic ballot marking device. It didn't have an auditable paper trail which was incredibly important to the Court throughout the decision. Arizona is quite different. Everyone votes on a paper ballot and for those few hen dread voter that is vote on the ballot mashing device, it's required by law to print out and auditable paper trail that then can be audited

after the election.

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And when the Court found that the plaintiffs had standing in the *Curling* case, there was specific evidence of allegedly hackers that hacked into the specific system used in Georgia alerted the state to that hack and then no changes were made then is why the court found standing in that case.

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THE COURT: All right. Thank you. I'm going oh move on to another question.

Back to you, Mr. Parker. On the very first page of your memorandum in support of injunctive relief, you state that because of electronic ballot counting and tabulation -- and here's the quote that I'm interested in -- Arizona voters no longer know whether their vote has been accurately tabulated or manipulated, end quote.

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But my question is, when did voters ever know whether their vote had been accurately tabulated or manipulated? And I'm not being cute here. I was trying to think of an example to sort of get this question started. The best one that I could come up with is as follows: Most people see on any given election night coverage on television of the vote count from Dixville Notch, New Hampshire, which has if I recall from the last election something like five voters participating. And so that community, in addition to having somebody really good for PR for the community, also has the luxury of counting the votes and immediately recording them by hash marks on a chalkboard in

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realtime as they are open and counted. But that can only happen in a tiny community. Almost no other communities operate on that small scale that allows for such immediate and verifiable feedback.

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And and arguably even those voters don't know, quote/unquote, know exactly what happened but they are the closest thing we have.

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So for any other community with more than a literal handful of voters even under a fully manual counting and tabulation system how does an individual voter who can't her or his ballot through the process physically know that their vote has been accurately tabulated or manipulated. They can't, can they?

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MR. PARKER: Your Honor, I'm sorry on my first set of answers I did not stand which I know is an important rule in this court. Unless the -- Your Honor allows me to sit.

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THE COURT: I am fine if you want to address the Court from your seat as long as the microphone picks everything up for anybody listening and the my court reporter either way is fine today.

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MR. PARKER: Thank you. Your Honor, there's one thing we do know. When you fill out your paper ballot and you walk over to the tabulates, you don't know what's happening in the black box and you never will know. Their systems with paper ballots where a hand count occurs where the voter and

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only the voter by maintaining their secrecy, their confidentiality, knows about their vote. They could be given a number, for example. Only they would have that number and that could be one approach.

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There are other approaches butts what we do know, even if you simply have a hand count when is watched, people will have more confidence in the integrity of the election than relying on machines that that have a black box system that nobody understands versus a system that people do understand and it's really -- it really comes down to whether or not that Constitutional right is being violated as to whether there needs to be a requirement for a change. And when you have wide open vulnerability which is what the allegations in the complaint state which is what what our evidence has stated both in declaration and documentary form, had is when the change needs to be made.

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But going directly to your question, the system that we currently have certainly doesn't allow for anyone to understand how their vote was tabulated and if it was done correctly you.

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THE COURT: Earlier in the day, the Court made an observation from the bench that it could accept that hacking of a computer, unauthorized access of a computer is possible in just about any situation as long as the would be unauthorized access sore has access, enough time and enough resource and

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tall length. I'm not sure that grounds for any side to celebrate that the Court says that because the Court also accepts that any manual human packet system can be, quote/unquote, hacked can you corollary similar situations.

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In other words, what any system comes down to is having procedures in place that minimize as much as possible the dangers which everybody is addressing here, and then having adherence to those procedures.

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My point on that is you've told me that people don't have faith in a black box system because there's a computer involved. I understand. I'm still at a loss as to why people would have any more faith in any black box system that involves only human factors, things that go on outside.

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MR. PARKER: May I respond.

THE COURT: Yes. I am interested in your response.

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MR. PARKER: Sure. You know, I think Mr. Logan put it well when he compared errors by people versus errors by computer and the errors by computer, number one, can oftentimes be manipulated in a large and undetectable way through well-written malicious code that is implanted in the system through a number of different ways and that undetectable ability piece is scary and dangerous and no one can deny it.

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For this to occur equivalently involving paper ballots, human beings, working throughout the process, there might be errors that are made but you would need a large and

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extremely large cabal of people to come together to coordinate a conspiratorial attack on the election system to do what a single person with very -- even limited resources could do in the machine environment.

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THE COURT: I'm going to come back to you on this issue because I think I have some other questions that attempt to get to the many same point from a different direction but I would like to hear. Who is going to answer for the defendants on this. I still think that this is arguably within the realm of standing but if it's somebody wants to take it on the merits or likelihood of success on the merits and that is somebody different, it's up to you.

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MS. YOST: Sure, Your Honor.

THE COURT: Ms. Yost.

MS. YOST: Sure. I can answer. So this question about these issues that plaintiffs are raising is really a policy question. It's up to the state legislators under the Hectors clause to weigh those risks of and the burdens of different types of methods of counting votes and that is what our legislature has done. That is what Arizona has done for decades. And there's simply to Constitutional right for votes to be counted the way that plaintiffs prefer.

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And I point the Court to the *Weber* case from the Ninth Circuit on that point.

THE COURT: Staying on this issue for a moment, there

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was another quote in your motion, Mr. Parker, that's -- that again gets to the same point but I think from a different angle. You say the only way too revert these violations is to retrain from using vulnerable Electronic Voting Systems to administer future elections including the 2022 election and I understand that is really the heart of the plaintiffs argument but is this the only way to prevent the violations?

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Aren't, 's I suggested before, the violations prevented by having adequate procedures in place to avoid known Rick and then strictly adhere to those procedures regardless of the mode electronic, human, whatever. What is it especially in light of the evidence that the Court read and heard about back-end safeguards. I mean, we have to the yet talked about hash value comparisons and the fact that if somebody is going to plug in malicious code, at some point it's detectable especially if it's of the variety that is posited that disappears. The hash value on that file is going to be different afterwards.

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I'm getting into the weeds on that specific but I am challenging you again on the notion that simply because the elimination of electronic processes is considered, it's the only way to do this and keep people's faith in the vote.

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MR. PARKER: A couple of things, Your Honor. The procedure -- first as it relates to hash marks and detectability, the sophistication of pal ware and malicious

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code has reached the level where CISA is in the record was unaware of malicious code in their system for ten months and they are charged with being the experts on the subject and so to think had that couldn't happen in Arizona's voting system I think just belies the record.

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And I'm not saying the Court is saying that but I think that is the strength of the argument.

In terms of whether there are other ways to save the use of machines, if the Court is considering rejecting the idea that the mayor relationship between voting and machines is a bad marriage, which is what our argument is at the end of the day, voting and machines don't go together, and we shouldn't be trying to pound them together to make them work because things are only going to get worse. And it's driving a wedge that we shouldn't have and that is what Judge Totenberg is really grappling with down in Georgia and you may be in this case as well for however long it continues.

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But the -- whether there are sufficient procedures that could be implemented and required judicially required in order to meet a standard which currently is now nowhere near being met because our contention and we believe supported by the evidence and we can walk through all of that, is that we have a system that's completely wide open.

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Could there be procedures that are identified by this Court for review and approval that would allow at least for the

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next election for the process to go forward. You know, the Court could issue a rule that they want to hear -- we could say by Monday what procedures need to be in place. Plaintiff, submit your papers in order to make sure that we have a safe guard election. That is certainly an alternative for the Court.

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One competent on the standing issue. I kind of brushed over competitive standing. I think as I said the *Curling* days case, the addendum thetic party case in the 2016 and the Carson case are very clear and they are on point to this case, *Clapper* is not on point to this case about this conjectural might happen chain of contingencies, every sort of injunction case has some sort of contingent cities.

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But the competitive standing line of cases really hits this on its head and it establishes standing in the very situation that we have here.

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THE COURT: Okay. Thank you issues I'm going to switch over to the 11th Amendment issue for a moment. Why doesn't the 11th Amendment bar your client's claims where the substance of those claims are grounded in state law. What specifically do you do with the several cases that are cited in the briefing materials, Sand M, brants, decab County schools and Judge Humetewa's decision in *Bowyer* here in this district all of which barred what were presented as federal Constitutional claims where the substance of them was the

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violation of a state statute.

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MR. PARKER: We are not alleging violation of a state statute. We have not identified a single state statute that has been violated. Now the fact that there are state statutes that have been violated that might be for another day or another case but it's not in this case. This case is not about that. It's about the federal Constitutional right that our plaintiffs -- that our clients have as voters and as candidates in its upcoming election and we are only citing and focused on and the complaint is clear on this point, the one claim that used to be in the indictment is no longer related to that and that is why there is some references to state law but simply because of that does not create claims that are sounding in state law which all of the cases that the defendants have cited are those kind of cases. That is not this case. We have a procedural due process claim. We have a fundamental right to vote claim under *Reynolds*. We've an equal protection claim and those are not state law claims and we are not alleging this violates state statute, therefore, it's a federal Constitutional violation.

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THE COURT: Is it your position then that secretary of state and the counties here are in full compliance with the state laws and it is that compliance that creates the Constitutional violation.

MR. PARKER: It is not that non-compliance that

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creates the Constitutional violation. We do not agree or speak to whether they are in compliance or non-compliance and we are not stating that if the State of Arizona promulgated statutes which are in violation of the U.S. constitution we're bringing a claim against those statutes in the state. We are not doing that. That would be an 11th Amendment bar and we have never raised that issue in this case and it is not in the complaint and the attempt to assert that it is is a rewriting of our lawsuit.

THE COURT: All right. Defendants, who is going to respond on this one?

MS. YOST: I'll respond, Your Honor. So I'll point the Court to paragraphs 156 through 164 of the plaintiffs' complaint. They list out several of the Arizona State statutes that govern the security and certification of election equipment in Arizona. And then they add the conclusory allegation that the defendants are violating those state law statutes. So it's simply not accurate the that they haven't alleged that.

It's important that plaintiffs do not challenge the constitutionality of those statutes so their claims necessarily rest on a finding that Arizona's election officials are violating state law.

And the Sand Mbrands case versus Georgia makes clear that when the substance of the claim is alleging that

defendants are violating state law, it's not enough to overcome immunity by just adding a conclusory allegation that that violation also violates the United States Constitution. 04:39:22

THE COURT: All right. Thank you, Ms. Yost.

Just a few more. I'll start with plaintiffs, Mr. Parker, and then I'll move over some questions to start with the defendants. 04:39:44

Mr. Parker, why did plaintiffs not seek to enjoin the use of electronic tabulation equipment in the primary election.

MR. PARKER: The one coming up in August? 04:40:04

THE COURT: Correct.

MR. PARKER: Well, I don't think we've excluded that. We have focused on November. It does create a practical issue that November does not create as we have argued in terms of you the timing. It puts this case, as we sit today, much more in line with the *Curling* case and so we are not focused on that. But we are not excluded it either. 04:40:30

One comment, Your Honor, if I might. I want to note that the paragraphs cited by defendants to the Court regarding citation to state law, paragraphs cited when Count 5 was still a part of this case. Count 5 being a state statutory violation count. And we removed that after discussions with the defendants as a part of a meet and confer. But that was that claim, the fact that there are remnants does not create a 11th Amendment bar. 04:41:08 04:41:37

THE COURT: I'm not sure the import of my last question got through. My question is essentially, isn't there under your theory the same irreparable harm of manipulation in the primary election as you argue there would be in the general election?

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MR. PARKER: Yes, absolutely.

THE COURT: And so all of the materials and information that has been submitted in sort of your complaint and your motion have been in existence for much longer than the institution of this action and they reflect that you and your declarants, your witnesses now, have considered this a problem for some time. So my question is, why did you wait?

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MR. PARKER: Your Honor, the electronic voting machine industry has evolved over time. New changes and new vulnerabilities have occurred and evolved over time.

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And in terms of the issue of standing or laches, the law is quite clear that each new election is a new injury and in fact, we could not have brought this claim, Your Honor, until Maricopa and Pima identified what machinery they were going to use.

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What if they said we're going to do a hand count in our County. The ripeness of the claim doesn't even begin until we know what they are going to use and we didn't know that, as you can see by Exhibit A of my declaration, until February of 2022. We filed our complaint within two months of learning

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that and we filed our preliminary injunction within just another few weeks of that.

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And so I don't think that this is a waiting determination and the fact that the plaintiffs have voted before and have voted by electronic voting machine, you know, they are not computer scientists, eligibility, but even if they were, until they knew what it was they were going to be facing as candidates, they really couldn't have filed this case.

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THE COURT: I talked to you about typing on a similar note. Scope is my next question. Isn't there a similar risk ofism urged your theory in sum some or all of the other 13 counties in Arizona? And the reason I'm asking that question is why those two counties.

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MR. PARKER: Well, the largest counties and in particular in a large stretch, Maricopa, it covers Dominion, Pima covers ES&S. The other counties also use ES&S so we identified one County that uses ES&S and the largest I believe and the County that uses Dominion and that is how we identified the two defendants, because we believe a ruling in this regard will cover the state.

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THE COURT: There have been a deny discussion today about the June 24 CISA advisory. It was also briefed extensively by all parties. This, again, relating to the discovery of ImageCast X or ImageCast 10, depending on the nomenclature, the ballot management software pertaining

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specifically to the possibility that through direct physical access to the system hardware, malicious actors could gain unauthorized access, enhance their privileges to administrator or other override status and add malware.

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The advisory says two things, both of which have been discussed today. One, that CISA has no evidence this has actually happened anywhere and, two, that after being made aware of these vulnerabilities, Dominion eliminated them in all subsequent software versions and as patches for existing versions.

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So as long as the state and local election administrators using ImageCast X are applying the patches or are using the post-discovery versions of the software, these vulnerabilities, as identified, do not exist.

I believe the testimony is unchallenged that the version that was found, the bugs were found, the SRAUL they are vulnerabilities in 5.5. The County uses 5.5-B. Is this issue put to bed from the perspective of plaintiffs.

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MR. PARKER: No, it is not, Your Honor, and here's why. Two things. Number one, the evidence related to this finding is -- it's not dispositive but it's another piece of evidence that relates to the lack of -P standard certification by the EAC and this idea of relying on, well, I was certified by the EAC so this is good to go. No, this was a system that was certified by the EAC and it had these SRUL Mr. Abilities

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when it was certified which is an indicator of what has occurred.

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Now, that's a 58 issue from what you're asking about but I raise it because it does relate to the CISA advisory.

In terms of the specifics of what you're asking about, we look at 5.5-A and 5.5-B to see whether or not there was a meaningful configuration difference for purposes of security and Exhibit R of our papers puts the two configurations of these Democracy Suite versions side by side and with that it indicates that these BMDs are still in there. They are still being used by Arizona. We do not have knowledge that Arizona is using a different BMD than they used to use but they are using it in a way that no longer is being used as Georgia was using it which was expansive civil. Arizona doesn't do that.

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But the problem with the BMDs is it is another port let by which malicious code can enter and we don't believe that problem has been resolved. We don't believe even that the expert who found the problem, identified it, and was and was really sounding the alarm regarding it has said that, oh, yeah, all of the problems are resolved.

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In fact, those issues are currently being grappled with by Judge Totenberg in Georgia. They are not over.

THE COURT: Not my question, sir. Nine vulnerabilities listed in the advisory and the advisory says they have all been rectified by subsequent versions. Maricopa

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County's running a subsequent version. Those vulnerabilities do our do not exist in the current version.

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MR. PARKER: Well, those nine may not exist in the current versions but it continues to be a portal for pal ware.

THE COURT: I understand the argument that you've made several times on that point, sir. Please focus on the question I am asking you.

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Who will respond for defendants on this?

MS. YOST: I'll go ahead and then if the County has anything to add, please do. I just wanted to briefly note that counsel's testimony is not evidence. What we do have evidence of is what Your Honor pointed to in the report that subsequent versions do not have the problem; that we have Mr. Jarrett's testimony that Maricopa County uses a newer version. We have Mr. Jarrett's testimony as well that Maricopa County follows all of the guidelines that are in the CISA report for remedying any of those issues in any event.

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THE COURT: And Ms. Craiger, did you have anything to add?

MS. CRAIGER: No. Thank you, Your Honor.

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THE COURT: All right. Thank you.

My next several questions are going to be for defendants' counsel.

Understanding that I have listened to the testimony of all of your witnesses today and may have several pieces of

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this already, I would like to hear your concise response to the plaintiffs' contention made through Mr. Cotton's declaration and then through his testimony that Dominion's Democracy Suite systems in Arizona have never received an anti-virus definition update since their initial install in August of 2019.

MS. CRAIGER: Thank you, Your Honor.

THE WITNESS: As was addressed by our expert or Mr. Jarrett, our witness, the system in Maricopa County is air-gapped and the -- when the software is provided and is certified by the EAC, that software can not be changed or updated. The air gap system is the system that ensures that there isn't malicious malware; that there isn't you had intrudes into the system and that is how that protection occurs in Maricopa County and the safeguards are there.

THE COURT: Right. So I understood the final witness's testimony to be that part of the issue is that the air gapping, if successful, minimizes the number of times that executable can change and I also understood his testimony that election administrators can not willy-nilly or on their own schedule go in and install software or updates or otherwise, that needs to be done to comport with Arizona statute which I believe embraces the standard set by the EAC. Am I correct or incorrect on the last point.

MS. CRAIGER: That is correct, Your Honor.

THE COURT: All right. So the follow-up question

then, if it hasn't been updated since August of 2021 and we're almost two years out, what is the cycle for addressing vulnerabilities that are discovered or otherwise changes that need to happen to the code. 04:53:37

MS. CRAIGER: Well, that would require recertification as Mr. Jarrett explained. And I do believe that the CISA report, the processes that we talked about are the ones that identified the issues that come to light and if issues come to light if there is malicious malware found, if there are -- we would they wouldn't be in our case because it's an air gap stem but if those issues came to light, then there is a process under state agent and under the EAC that allows for that recertification to take place. 04:53:55 04:54:14

I am not aware fully anyone else at the table is that there's a standard timeline allowed for those recertification processes. 04:54:28

THE COURT: All right. My next question is this -- and thank you, moving.

Mr. Cotton paid the statement that the passwords in the Dominion Democracy Suite system were never changed after the initial installation. I think that has been -- the Court's understanding has been refined somewhat through the testimony that there is one password or a password at one-level that has not been changed. 04:54:44

I haven't understood the last witness to indicate 04:54:57

that in order to access the system, there were -- I don't want to call it three factor because that's not quite right. These are in serial. A physical access fob, coupled by two passwords at different levels to be administered one of which may not have been exchanged or was not changed. Another gets changed at every election cycle and then is close held between depending on how I understood the testimony somewhere between three and 15 individuals, one or the other.

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If Mr. Cotton is correct there is at least one-level of password that is of no level of protection, why doesn't that represent some contribution to a significant known risk.

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MS. CRAIGER: Well, Your Honor, what I would say to that is that's why there is the multilevel process for them to utilize. There are limited people within the organization that have access to that and the logs and systems that Mr. Jarrett testified to about the log-in that occurred identify by IP number and various other loggings whether or not there's been individuals logged in to that system. And those logs and protects ensure beyond just the use of passwords that they are aware of what is occurring within the county's tabulation system.

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THE COURT: Thank you.

My next question again comes from Mr. Cotton's testimony and I am looking for response on this and that is

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the assertion that the hardware used in Arizona to run the Democracy Suite of programs contains wireless modems. I did the 802.11 standard that we all had in our deck tops five or six years ago, something along those lines which Mr. Cotton testified upon his inspection were not disabled and thus could defeat air gapping.

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I did not catch the answer if it was given by any of your witnesses today as to whether the defendants agree or disagree with that and if you disagree, why. What am I missing.

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MR. LARUE: Your Honor. We do disagree with that. Unfortunately -- is Mr. Jarrett still in the courtroom?

Okay, Your Honor, I don't know the answer. I know we've had a conversation about this when the examination was going on by Cyber Ninjas. I don't recall what the answer is but I do know that the County disagrees with it and if Your Honor would like, I would be happy to file a short statement or brief, whatever Your Honor likes, to address that by tomorrow.

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THE COURT: You may although as I think about it, that might be obviated by the fact that the response, the county's response to the submit report is attached in the materials and is, therefore, before me and so I pay be able to find it and may have read that and not retained it was the issue. Nonetheless, go ahead and file that by tomorrow if you can. I would like you to keep it to two pages, please.

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MR. LARUE: I will, Your Honor.

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THE COURT: Thank you, Mr. LaRue.

The next question along the same line is how do defendants respond to Mr. Cotton's assertion again both in his written materials and then developed by Mr. Parker on examination today that County officials who have the responsibility to administer the voting systems sh in effect delegated their interaction with these systems to Dominion employees? I may be rough with it's words here but the baseline on that is -- and I believe the testimony was -- that the County officials did not themselves have the access codes to perform that add innovation of the equipment or to verify what the vendors were doing on the equipment.

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MS. CRAIGER: Thank you, Your Honor. We disagree with that. The Maricopa County has the necessary ability to run the elections in Maricopa County, to have the votes tabulated and they are the access that they need to the machines.

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Maricopa County does not change the software in the machines. It's not allowed to. That is what the EAC certification requires. It's what statute statute requires. So having that additional administrative level is not necessary for Maricopa County to do the things that its statutorily is required to do to run elections in Arizona.

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THE COURT: Mr. Parker, was the import of that point

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to support the assertion that County election officials can't know for certain what the vendor employees have done.

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MR. PARKER: Well, I think the primary count Mr. Cotton was making was that information was not provided that was needed to do the audit and to look into the system and the potential vulnerabilities. And when he asked for that information, he was told that they -- the County did not have the ability to get that information because they either would not or wouldn't get a response, couldn't get a response from Dominion who held that information.

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And so I think the focus of it and whether or not the County has all of the ability to run an election is not I think the point. The point is that apparently they do not have the ability to get necessary information to audit and understand the system in the manner that they should as it's governmental entity in charge of the elections.

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MS. CRAIGER: Your Honor, I would like to speak to that if I may.

THE COURT: You pay.

MS. CRAIGER: First, with respect to the allegation about not providing that information, that not guilty was never subpoenaed by the Senate, Arizona State Senate for their process that they underwent at the Coliseum in Arizona so that information was not provided and it is Dominion's information and Dominion holds it and if they wanted it, that should have

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been issued as a subpoena to Dominion.

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But the implication that because the County doesn't have that administrative access, they don't know whether or not there's been software changes is untrue. The logic and accuracy process, the testing process that occurs in Maricopa County including the final audit that takes place, compares this logic and accuracy testing that occurred at the beginning of the process and the end and it shows that there have been no changes to the software. That is how Maricopa County, as the independent the the administering the election knows that there have been no changes.

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And that was confirmed today by Mr. Cotton's own testimony when he said there had been no changes to the software. That's how the process is designed to work.

MR. PARKER: If I may respond, Your Honor.

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THE COURT: You may. Saying that logic and accuracy testing is done before and then after the election and, therefore, since there are no changes, we've got a safe election is a misunderstanding of computer science and I'm no computer scientist but I know that our legal argument is sufficient malware, malicious code can be put in at any time in advance of the election without any sort of detection and having no operation and no activity whatsoever and the only time that it comes out for its malicious activity is a given hour during the election.

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So doing logic and accuracy testing before and after with sophisticated malware can be undetected when it is running and it can be undetected when the post logic and accuracy test is run. That is how sophisticated it is and that's what our experts have testified to in this case. They completely disagree with Congressman Shadegg's response as well as with Maricopa County's and they have -- and I know the Court has probably read or will read their response to 20 to the respondents by Maricopa and Shadegg.

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One other comment as it relates to CISA and I failure to answer your question before which was not intentional certainly. I may have walked around it but I believe the answer about CISA is we are not sure that CISA has actually tested the updated versions. We believe they have not tested the updated versions.

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But of course we can read their June 4 statement as you have.

THE COURT: All right. Thank you.

I am moving back you, Mr. Parker, for this question. And it's tied to Mr. Logan's factual assertion. I first read it in his declarations, paragraph 61, 63. It was then echoed in the testimony today.

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He says in Maricopa County the electronic election equipment had election data purged and files deleted after the 2020 election without any ability to attribute the activity to

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a specific individual.

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I thought I heard testimony from defendant's witnesses today that that did not happen or at least if there were deletions caused by overrides, overwrites, excuse me, of logs or other things that there were backups paid and you can correct me if I'm wrong about that on the defense side. But where is -- I guess my question is having heard that testimony or read it or both, do you still stand by the assertion in Mr. Logan's declaration on that point.

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MR. PARKER: Flare. I believe so, Your Honor. Because these logs exist at the time of the election. They are to be maintained and what actually occurred was quite a bit of activity to overwrite them. The question was asked by somebody after the testimony of our witnesses whether or not there was any deletion and they said no, there wasn't any deletion but they may be parsing words in terms of overwriting is not a deletion. But they were overwritten and no longer available. This log activity which the Court knows is very important activity.

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In terms of whether it not a mirror image or it was satisfied, et cetera, I will have to check as to whether we have any counter to that or any evidence that what was saved was actually was needed to be saved or not or whether we have no position on that and I just don't know that as I sit here.

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THE COURT: Thank you, Mr. Parker.

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United States District Court

Counsel, anyone.

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MS. CRAIGER: Thank you, Your Honor. I would say that there was not testimony today on significant today being overwritten then that was consequential to the analysis that they did. But the bigger piece of this is that there wasn't -- there was no deletion of files at Maricopa County. Maricopa County has provided this information repeatedly. Files were -- they take the files from the election to make room on the server during every election they are archived. Those archived files are maintained and they are kept in the treasurer's vault per Arizona statute.

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The Arizona Senate did not request those files as part of their subpoena so they did not receive them. As Mr. Liddy Dee points out they requested the machines and that's what we provided to them. Maricopa County provided to them to conduct whatever process they did at the Coliseum.

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THE COURT: All right. Thank you.

One last question for defendants. In preparation for this hearing today, the Court has reviewed a host of cases holding that plaintiffs in their capacity as voters, do not have standing to bring claims based on vote dilution or under the equal protection clause. That is a ball 'versus dues cease here in that is court. Donald just a moment trump for president versus book very toe that would be practice. King versus witness it measure so that would be Michigan and Moore

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v. circumstance coat today to name a few but there are others.

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The fatality in all of those cases was that the voters, again, as voters, the many courts have held, were stating impermissibly generalized harms or grievances or not particularized in they were complaints that all sump plaintiffs shared with all voters.

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But where, as here, plaintiffs also bring their suit in their capacity as candidates, doesn't change the analysis? Do candidates have a particularized injury that would confer standing different than that of a voter?

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MS. YOST: Your Honor, a candidate's standing is different than a voters but they still have the same problem of not assert ago particularized injure had the results of their election in this primary, their primary candidates so we don't know yet if they will be candidates in the general election.

05:10:02

THE COURT: Let me just ask you if Ms. Yost you mean to say that this is not a particularized injury our it's not a concrete injury.

MS. YOST: Well, both, Your Honor. But it's certainly not a concrete injury based on this hypothetical long chain of contingencies that I mentioned earlier and we've cited several cases in our brief with similar arguments concluding from candidates arguing that vulnerabilities in election equipment is, you know, somehow creates this harm about the accuracy of the election and that is too speculative and

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conjectural to confer standing.

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THE COURT: All right. Thank you.

Mr. Parker, would you like to be heard in response on that point?

MR. PARKER: Yes. Thank you, Your Honor.

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First while the cases that you identify regarding voters generally exists, you're right that the candidate difference in this case really makes this legal issue quite inquiry. The Carson case that I identified before is one case that speaks directly to it. In the Eighth Circuit trump versus Wisconsin elections commission speaks to it directly in the Seventh Circuit.

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When you have a situation -- I think the ma seen analysis case also speaks to the candidate standing and that's the Ninth Circuit case. So when you have a situation with potential malicious process where votes are not counted. They are altered or could be or they are substantially Rick or there's real Rick that the Court finds in that case, candidates certainly do have standing.

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Anytime in fact that the plague field in an election is tilted in any way, standing is -- exists for the candidates.

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I had one comment, Your Honor, if I might regarding your questions on the antivirus and the password issues but only if the Court wishes to hear a response.

THE COURT: You may respond.

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United States District Court

MR. PARKER: As it relates to the antivirus issue, I think there's no deputy in this case that they didn't do anything for two years or so. And they claim that the election voting stem in the United States is set up where you're not supposed to do anything. You're not supposed to protect against antivirus or you can't get an EAC certificate for identification or at a minimum memorandum, you've got to go through a new EAC certification which takes a lot of time and energy, et cetera. So instead, you just don't put these antivirus definitions on.

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And they say but it's okay because we have an air gap system which is why the -- again, it's just a lack of understanding regarding computer systems and the fact that having an air gap stem is not a protection. It's some level of protection. It's better than nothing but to claim that it's a safeguard that could never happen, it just ignores history. It's happened many times with air gap systems and at the highest levels of the most hardened secure defenses in cybersecurity it's happened.

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And so these antivirus patches or definitions are important?

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As far as the passwords, I think again when you drill down and our experts have done that, as it results to the responses to their claims of vulnerabilities that have been issued by Maricopa County against initially the State Senate

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but now against the Cyber Ninjas and Ben Cotton, if you look at the response, it's not about the passwords related to the IPCs. It's about the passwords related to the EMS, the brains of this operation and they claim, it doesn't matter if we change those passwords or that if a bunch of people have those passwords because nobody can get in because you've got to have a badge. Badge protection is known to be ineffective and if they are relying on badge protection where somebody holds the door open for someone else or somebody gives their badge to someone else, it's not the kind of protection that you would want to have for certainly a weapons system and we don't in the United States but the vote is our most precious so we would argue it's not the right stem there either.

So their answer on the passwords is simply insufficient.

MS. YOST: Your Honor, if it already if I address just very briefly the response regarding ma seen analysis and Carson as candidate cases for purposes of standing.

THE COURT: I'm going to give each party five minutes to wrap up and so I'm going oh ask you to hold that. Well, that's direct response to a question that was asked. You can go ahead now.

MS. YOST: Sure. Thank you, Your Honor. I'll just note that the rob with the candidates standing 96 is it's speculative and hypothetical nature and in both ma seen

analysis and in Carson, the allegation of harm was definitive, not speculative so in the analysis, the candidates were -- it was definitive that they would be listed second on the ballot lists and they allege that being listed second would give a windfall vote to voters who just happen to pick the top choice. So it was definitive that they be listed second and the harm they allege was based on that.

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In Carson, the allegation was that votes received after election day are unlawful under federal and state law and it was definitive that votes would be counted in that election received after election day.

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So they are quite different from the hypothetical harm here.

THE COURT: All right. Thank you. Counsel, give me just a moment.

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All right. Counsel, the the risk of making a long day a little bit longer and so that everyone is on equal footing I'm going to give each part five minutes to sum up if you would like and I'll hold to you that five.

Mr. Parker, do you wish?

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MR. PARKER: Certainly, Your Honor.

One moment, please.

Your Honor, thank you and -- thank you very much for your clear attention to this matter and time today.

The Arizona system, as I said earlier, attempts to

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require the pair rich of voting with computerized machines and in fact, that is in vogue now across this country and the central issue is whether this most valued and cherished of rights should be allowed to counted, tabulated by electronic machines that have vulnerabilities.

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And those who work with this all the time know what those vulnerabilities are and are very concerned about them and how they can be employed undetected.

We haven't talked a lot about the supply chain issue and the components. We did a little bit but that is a significant issue as well. There are many components that are used in these processes and the evidence is legiant about how foreign actors are infiltrating our intrastructure, it's critical infrastructure like voting and that evidence you see in our papers and our documents.

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We believe we have strong support for our preliminary injunction here and the only reason that the Court may have not to is it's troubled by the fact that we're 110 days away from the November election. We would say that it can be done. Oftentimes when the Government is asked, for example, to cut its budget bitten percent, it comes back with a parade of horrors if they are required to do it but in the end, they are able to do it.

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And that is -- I gave an example of how it could be done right here in Arizona.

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If the Court believes that it can't be done for this upcoming election but that we should find a better way and the Constitutional rights of Arizona voters and candidates in particular are being violated if we don't, there may be a way of requiring the plaintiffs to submit a policy and procedure regimen that should be followed for the Court to then issue.

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As it relates to the motion to dismiss, our complaint is line and verse very well I think pled in terms of the allegations that establish this is not speculative. Is it speculative if you leave a pile of \$20 pills on a park bench and come back a week later that they are going to be there or be gone. It's almost that equivalent and it is -- you know, what is more speculative, that -- you heard the many. Hacking nowadays and malicious code is to be presumed when you are talking about critical infrastructure because those are the places that the 3458 malicious actor is going to attack so it should be presumed here. It is not this speculative chain of contingencies. We have articulated a number of very specific openings and potential intrusions into this system that could have catastrophic impact.

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The fact that we have not had an enormous malicious attack is not if, it's when, and that's what the Court wrote about in the *Curling* case. And the same question applies here.

So in terms of standing, I think when you take the candidates' standing in it deals with the particularized nature

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and it takes the allegations the are in our amended complaint,
the -- there's no question that there's standing. I think I
explained the 11th Amendment as well as the timeliness issues
and we certainly have set forth a cognizable claim.

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So willed request the motion to dismiss be denied and
that the preliminary injunction in fact be issued so during the
pendency of this case, we have hand counts and we are
articulated one version of how that can work in paragraph 153
of our complaint.

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Thank you.

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THE COURT: Thank you, sir.

Mr. Gaona or Ms. Yost, who will speak for the
secretary?

MS. YOST: We really have nothing further to add,
Your Honor. We'll stand on our papers. I'll just note that
plaintiffs are seeking extraordinary and unprecedented relief
and they do so at the 11th hour and there are many reasons to
dismiss this case outright but at a minimum to deny their
request for a preliminary injunctive relief toll disrupt
long-standing status quo in Arizona.

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Thanks.

THE COURT: All right. Ms. Yost, thank you.

And then for the county and supervisors, who will I
hear from?

All right. Thank you, Ms. Craiger.

05:25:24

United States District Court

MS. CRAIGER: No, Your Honor. I'll try not to take much time after this long day but I will say and agree with the secretary of states office. The relief here is incrediblement they are asking this court to supplant the judgment of the duly elected legislature of Arizona who filled its Constitutional mandate to determine how ballots are counted in the state and stead replace it with the method that's preferred by these plaintiffs. This is the article one section four power that has been given to the states and they have exercised it.

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And what they do here today is request this relief with actually zero, absolutely zero evidence to support it. It is a long line of maybes, possibilities, of pure speculation and in federal court it's not sufficient to plead mere speculation to get relief.

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This complete absence of factual allegations to support their claims warrants its dismissal.

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And what we heard today only further supported that they have no evidence to support this. We each heard in the closing arguments the fact that we've never had a malicious attack. Every witness on the plaintiffs' side testified that there's no evidence of hacking, of manipulation, and that there's no evidence that any vote has ever been changed or imrouply counted in Maricopa County.

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And for these reasons, their claim fails.

And then I would just like to add finally that

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United States District Court

Arizona has paper back-up for its plots and this is a critically important fact. The *Curling* case, that case began because of the lack of paper back-up so if an incident should occur and what the plaintiffs also are failing to talk about is the numerous measures that are taken. The redundancies that occur. We heard it from actual experts today, Ryan Macias. We heard from it Scott Jarrett who have experience in elections, who understand how this works, that all of those are in place to protect those.

But as a final safeguard in Arizona, we use paper ballots. Those paper ballots are preserved and they are available if in a situation something much this nature should occur. So that they can be retabulated or they can be counted in a hand count if something like that should happen. In fact, Arizona statute 16 six 72 provides for that exact process. They can bring an election contest. The ballots are preserved and the Court can determine whether something of that nature has happened.

So for all of these reasons, it is certainly Maricopa County's opinion that this injunctive relief would be catastrophic to the county. Scott Jarrett testified that with very few months and the resources that the county has they could not implement a hand count of the nature that they are talking about here. But it's the county's position that the complete absence of any evidence and pure speculation to

support their claims is incircuit in and this case should be dismissed.

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THE COURT: All right. Ms. Craiger, thank you.

And thank you to all counsel. I take the matter under advisement.

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I look forward to your deliverable tomorrow, Mr. LaRue, and yours next week, Mr. Parker. I've given you a week. If you can get it done sooner than that, it certainly won't hurt the court in potentially accelerating things but I won't mandatorily up the deadline on you.

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MR. PARKER: We will get it done sooner, Your Honor.

THE COURT: All right. Thank you.

We're adjourned.

(Proceedings concluded at 5:29.)