IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

MICHELLE PREVITE, Appellee/Requester v. ERIE COUNTY BOARD OF ELECTIONS, Appellant/Respondent.	CIVIL DIVISION A.D. No.: 2022-__12720-22_____ **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** Filed on Behalf of Appellee: **Michelle Previte** 210 West 37th Street Erie, PA 16508 michelleprevite@gmail.com Counsel of Record for Appellee: ***Pro se***

COMMON PLEAS COURT
ERIE, PA
2023 MAR 31 PM 1:20
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IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

MICHELLE PREVITE,	:	CIVIL
Appellee/Requester	:	A.D. No.: 2022 - 12720-22
v.	:	
ERIE COUNTY BOARD OF ELECTIONS,	:	
Appellant/Respondent.	:	

COMMON PLEAS COURT
ERIE, PA
2023 MAR 31 PM 1:20
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NOTARY

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appellee Michelle Previte, acting *pro se*, hereby files this Proposed Findings of Fact and Conclusions of Law opposing the appeal filed by appellant Erie County Board of Elections ("Agency"), relative to the Office of Open Records ("OOR") decision dated October 20, 2022.

INTRODUCTION

The OOR's decision with regard to the absentee mail-in and no-excuse mail-in ballots should be affirmed, as these records are in the custody of the Erie County Board of Elections in the medium requested, and the plain language of the Pennsylvania Election Code ("Election Code") establishes that they are public records.

FACTUAL BACKGROUND

1. On August 1, 2022, Michelle Previte ("Requester") submitted a request ("Request") to the Agency pursuant to the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101 *et seq.*,

a. [A]n electronic copy of the images of all mail-in ballots (including absentee ballots) from the November 2020 election.

b. [A]n electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.

c. [A]n electronic copy of the images of all polling place ballots from the November 2020 election.

2. On August 2, 2022, the Agency invoked its right to a thirty-day extension during which to respond to the Request. 65 P.S. § 67.902(b). On September 2, 2022, the Agency denied the Request, arguing that "[t]he Pennsylvania Election Code governs these requests[.]"
3. On September 9, 2022, the Requester appealed to the Office of Open Records ("OOR"), challenging the denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the Agency to notify any third parties of their ability to participate in this appeal. 65 P.S. § 67.1101(c).
4. On September 30, 2022, the Requester submitted a position statement arguing that she is entitled to the responsive records. The Requester asserted that Stroehmann v. Lycoming Cnty., OOR Dkt. AP 2022-0885, 2022 PA O.O.R.D. LEXIS 1292, applies to this matter, asserting that in the Final Determination, the OOR "granted access to the requestor mail-in ballot images in accordance with 25 P.S. § 3150.17."
5. On October 4, 2022, the Agency submitted a position statement reiterating its argument that the Election Code governs the Request.

6. On October 20, 2022, the OOR issued its Final Determination in which the Requester's appeal was granted in part and denied in part, and the Agency was required to make records responsive to Items (a) and (b) of the Request available for access in accordance with the Election Code within thirty days. The OOR agreed with the position statement of the Agency with regard to Item (c) and agreed with the position statement of the Requester with regard to Items (a) and (b), stating, "we need not examine the public nature of the mail-in ballots and their declaration envelopes, as the plain language in the Election Code establishes that '[a]ll official ... ballots, ... and envelopes on which the executed declarations appear ... are hereby designated and declared to be public records.'" 25 P.S. § 3150.17
7. On December 8, 2022, Requestor withdrew her request for an electronic copy of the images of all outer envelopes (containing each voter's declaration) for the mail-in ballots (including absentee ballots) from the November 2020 election.

ARGUMENT

At issue here are two categories of items:

A. The images of non-military absentee/mail-in ballots.

B. The images of the absentee ballots from military voters.

Each category is addressed below in turn.

A. Non-military absentee/mail-in ballots.

PROPOSED FINDINGS OF FACT REGARDING ABSENTEE/MAIL-IN BALLOTS

1. Ms. Fernandez testified that Erie County switched to the Dominion Voting System in 2020 (Transcript pg. 16, lines 17-22). More precisely, Erie County currently uses Dominion Democracy Suite 5.5-A. (See the Pennsylvania Department of State website https://www.dos.pa.gov/VotingElections/OtherServicesEvents/Pages/Voting-Systems.aspx.)

2. In January of 2019, the Pennsylvania Department of State published the 118-page *Report Concerning the Examination Results of the Dominion Democracy Suite 5.5-A with ImageCast® Ballot Marking Device (ICX_BMD), ImageCast Precinct Optical Scanner (ICP), ImageCast Central Station (ICC), and Democracy Suite EMS (EMS)* ("Report") which was signed and sealed by Then-Acting Secretary of the Commonwealth Kathy Boockvar. (See Appendix A for the first 5 pages. For the full report, see https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/Dominion%20Democracy%20Suite%205.5-A/Dominion%20Democracy%20Suite%20Final%20Report%20scanned%20with%20signature%20020119.pdf).

3. Page 2 of the Report states:

> The voting system presented for certification in Pennsylvania included the Democracy Suite Election Management System (EMS) **election management software** used in conjunction with the following components:
> 1) ImageCast® X (ICX) Ballot Marking Device (BMD), a ballot marking device with Commercial Off The Shelf (COTS) printer, HP LaserJet Pro Printer M402dn/HP LaserJet Pro Printer M402dne, for printing marked ballots;
> 2) ImageCast Precinct Scanner (ICP), **a precinct optical scan ballot tabulator that scans, validates and tabulates hand-marked paper ballots and ballots produced on the BMD**; and
> 3) ImageCast Central Station (ICC), **a ballot scanning and tabulating system** that can be configured with high speed COTS scanners Canon Image Formula

DR-G1130 /Canon Image Formula DR-M160- II **to tabulate ballots in central office.** (emphasis added)

4. Since "contents of a ballot boxes or voting machines" are not subject to disclosure under the Election Code, it is important to establish what a ballot box or voting machine is. Ms. Fernandez testified that "a **voting machine has the scanner attached** to it so when … you scan your ballot, … it falls down into the larger part of the machine. After the election – **that's a voting machine**. Right? So after the election we remove the ballots from the **voting machine** and we put them in a box which is sealed and kept in a secure location." (Transcript pg. 17, line 22- pg. 18, line 4). In this statement, Ms. Fernandez was referring to the ImageCast Precinct Scanner since the ImageCast Central Station does not have a "larger part" into which ballots fall. It operates more like the scanner on an office copier.
5. On the other hand, the quote from page 2 of the Report cited above in Statement of Fact #3 calls the Election Management System (EMS) "software." Page 5 of the Report explains the role of the Election Management System (EMS) software: "The EMS set of applications are responsible for **all pre-voting and post-voting groups of activities** in **the process of defining and managing elections**." (emphasis added)
6. To contend that the ballot image files are "contents of the ballot boxes or voting machines" because they are housed in the EMS would then require one to draw the nonsensical conclusion that all files created in pre- and post-voting activities, such as election night results, are "contents of the ballot boxes or voting machines."
7. Ms. Fernandez confirmed in her testimony that as a Dominion machine (i.e., the ImageCast Precinct Scanner or the ImageCast Central Station) scans a ballot and tabulates the votes cast, it takes an image of both the front and back of the ballot

(Transcript pg. 17, lines 6-10). These images are then uploaded to the Dominion Voting System (Transcript pg. 18, lines 5-8, and Transcript pg. 26, line 12- pg 27, line 2). More precisely, the images are uploaded to the Election Management System (EMS) described in the Report.

8. Ms. Fernandez also testified repeatedly that when she produced the paper copies of one representative image of each type of ballot (i.e., an in-person ballot, a no-excuse mail-in ballot, and an absentee mail-in ballot) (Exhibits 1-3, respectively), she opened a digital **file** in the Dominion Voting **System**. (Transcript pg. 19, lines 15-17, Transcript pg. 21, lines 12-15, and Transcript pg. 22, lines13-15).
9. Note that Ms. Fernandez did not say that the image files were stored in the voting **machines**, but rather they are "stored centrally" in the voting **system** (Transcript pg. 26, lines 17-19). She specifically stated that "a voting machine has the scanner attached to it so when … you scan your ballot, … it falls down into the larger part of the machine." (Transcript pg. 17, lines 22-25). She did not access any of the voting machines to print the ballot image files.
10. Although Mr. Stranahan contended in his opening remarks that the ballot images "are not ballots. These are votes." (Transcript pg. 8, line 12) and Ms. Fernandez concurred (Transcript pg. 20, lines 8-9, and Transcript pg. 23, line 25- pg. 24, line 2), Ms. Fernandez also repeatedly testified that the images are "files" that are stored in the voting "system" (Transcript pg. 19, lines 15-17, Transcript pg. 21, lines 12-15, and Transcript pg. 22, lines13-15).
11. Ms. Fernandez explained that the first two pages of each file consisted of images of the front and back of the ballot and that the Dominion software automatically included a third

page, known as an "audit mark" page, which is essentially a summary page that lists the voter's choices as well as other information, such as the tabulator used to scan the ballot and the poll ID number. (Transcript pg. 19, lines 21- pg.20, line 4, Transcript pg. 21, lines 16-21, and Transcript pg. 22, lines 16-23)

12. Ms. Fernandez stated that her method of obtaining the images could not separate this "audit mark" page from the pages containing the images of the front and back of the ballot. (Transcript pg.23, lines 21-24)
13. However, Ms. Fernandez confessed that she had never performed an export of the ballot images. In particular, she had never performed an export of audit images as described in Dominion's *Democracy Suite EMS Results Tally & Reporting User Guide* ("User Guide"). (Transcript pg. 32, lines 13-15)
14. Ms. Fernandez testified that this User Guide is used by election officials in their duties to run elections. (Transcript pg. 28, lines 19-23.)
15. Ms. Fernandez also testified that, although she has read parts of this User Guide (Transcript pg.32, lines 18-22) in conjunction with her duties as Supervisor of Elections, she had not read Chapter 14 Section 3 *Exporting Audit Images* of the User Guide. (Transcript pg. 29, lines 17-22)
16. The Agency did not show that it cannot export just the ballot images (without the "audit marks"). Prior to the *De Novo* hearing, the Agency had access to Requestor's Brief in Opposition, which pointed out that Chapter 14 Section 3 of the User Guide detailed how to perform an export of the ballot images. Yet the Agency did not contend that such an export would include the "audit marks," but only that Ms. Fernandez's method of obtaining the images includes the "audit marks."

17. However, whether it is possible to export the ballot images without the "audit marks" is irrelevant as the proposed conclusions of law describe below.

PROPOSED CONCLUSIONS OF LAW REGARDING MAIL-IN/ABSENTEE BALLOTS

1. Under the RTKL, the term "Record" is **broadly** defined as follows:

   Information, regardless of physical form or characteristics that documents a transaction or activity of an agency and that is **created, received** or retained pursuant to law or **in connection with** a transaction, **business or activity of the agency**. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, **information stored or maintained electronically and a data-processed or image-processed document.** 65 P.S. Section 67.102 (emphasis added).

2. The Election Code provides as follows:

   The records of each county board of elections, general and duplicate returns, **tally papers**, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, **reports and other documents and records in its custody**, except the contents of ballot boxes and voting machines and records of assisted voters, shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county… 25 P.S. § 2648 (emphasis added).

3. The Agency maintains that the Election Code prohibits the disclosure of the absentee mail-in ballot images and the no-excuse mail-in ballot images because they constitute the "contents of ballot boxes and voting machines." However, the statutory language of Act 77 of 2019 clearly states, "**All official mail-in ballots**, **files**, applications for ballots and envelopes on which the executed declarations appear, and **all information** and lists are designated and declared to be public records ..." 25 P.S. § 3150.17 (emphasis added).
4. Therefore, since the rules of statutory construction do not allow for an inconsistent reading of Pennsylvania statutes, the "contents of the ballot boxes and voting machines" cannot refer to "official mail-in ballots" or "files."

5. Since **all** mail-in ballots and **all** files have been clearly and unequivocally designated to be public records by Pennsylvania's legislature, then it makes no sense that anything other than the contents of ballot boxes and voting machines – the ballots themselves that are contained within a ballot box or voting machine **during an election** – would be excluded.
6. Although Ms. Fernandez characterized the ballot images as "votes" and Mr. Stranahan concluded that "[t]hese votes are quintessentially the contents of a ballot box or a voting machine not subject to disclosure under the state election code" (Transcript pg. 8, lines 12-17), he gave no legal justification why they are "quintessentially the contents of a ballot box or a voting machine." This is especially important, given the fact that Ms. Fernandez repeatedly testified that the images are "**files**" that are stored on the Dominion "**System**." (Transcript pg. 19, lines 15-17, Transcript pg. 21, lines 12-15, and Transcript pg. 22, lines13-15)
7. Additionally, the "audit marks" that may be included with the ballot images also fall under what the Election Code categorizes as "board of election records" and "reports", which are "open to public inspection" (25 P.S. § 2648), and "files" and "all information", which are "declared to be public records" (25 P.S. § 3150.17).
8. A stance that supposes that the images are not to be disclosed merely because they may include another public record (i.e., the "audit marks") flies in the face of reason.
9. In his opening remarks, Mr. Stranahan stated, "there's no appellate case law that's going to give Your Honor any guidance on this…" (Transcript pg 6, lines 15-16). While this is true, it is worth pointing out there are, in addition to this case, three other cases pending in the Courts of Common Pleas where the issue of ballot images is begin litigated. In all

three cases, the Office of Open Records granted access to mail-in ballot images (**1.** Weaver v. Allegheny Cnty, OOR Dkt. AP 2022-1052, **2.** Van Bibber v. Allegheny Cnty, OOR Dkt AP 2022-1062, and **3.** Stroehmann v. Lycoming Cnty., OOR Dkt. AP 2022-0885). Allegheny County is fighting the disclosure of mail-in ballot images in both of its cases, and Stroehmann is arguing for the release of in-person ballot images. (Lycoming County did not contest the OOR determination that the mail-in ballot images must be disclosed, and those images have already been supplied to Stroehmann.)

10. In Bowling v. Office of Open Records, 75 A.3d 453 (Pa. 2013), the Pennsylvania Supreme Court held:

> We presume that the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable, and that the General Assembly intends the entire statute to be effective and certain. Id. at 466.

11. Since all mail-in ballots are open records, as 25 P.S. § 3150.17 clearly states, then it would create an absurd result to determine that pictures of them are not open records.
12. Additionally, since Exhibits 1-3 illustrate the fact that the only differences between the ballots of absentee mail-in, no-excuse mail-in, and in-person voters are the headings at the top of the ballots indicating whether a ballot is an absentee mail-in, a no-excuse mail-in, or in-person type, then treating ballot images for absentee mail-in voting differently than ballot images for no-excuse mail-in voting would also create an absurd result.
13. Moreover, the rules of statutory construction require consistency in the application and results that favor the public interest. 1 Pa.C.S.A. Section 1922 (1)(2) & (5) states:

> In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

(1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.
(2) That the General Assembly intends the entire statute to be effective and certain.
* * * * * * * * * * *
(5) That the General Assembly intends to favor the public interest as against a private interest.

14. Therefore, when ascertaining the intention of the General Assembly, one must use the crystal clear language of the law (25 P.S. § 3150.17), which unequivocally designates and declares, "**All official mail-in ballots, files,** ..., and **all information** ... to be public records", to interpret the ambiguous "contents of the ballot boxes and voting machines" exception language found in 25 P.S. § 2648.

15. Finally, should the Court determine that it is impossible to construe 25 P.S. § 3150.17 and 25 P.S. § 2648 so as to give effect to both, without violating the language of either, then the Later-in-Time Rule would favor 25 P.S. § 3150.17, which was passed in 2019 (Act 77 of 2019).

16. The Agency has not met the burden of proof required in 65 P.S. § 67.708(a)(1), which provides:

    The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be **on the Commonwealth agency or local agency receiving a request** by a preponderance of the evidence. (emphasis added).

    Because there is a presumption that a record in the possession of an agency is a public record subject to disclosure, the agency has the burden of proving by a preponderance of the evidence that it is exempt or protected by privilege. West Chester University v. Schackner, 124 A.2d 382 (Pa.Commw. 2015).

B. The images of the absentee ballots from military voters.

We now turn our attention to a subset of the absentee mail-in ballots – those cast by military voters.

PROPOSED FINDINGS OF FACT REGARDING ABSENTEE BALLOTS FROM MILITARY VOTERS

1. Ms. Fernandez testified that ballots from members of the military arrive to the Agency in a format that is not compatible with the Dominion tabulators (Transcript pg. 34, lines 9-14). Therefore, these ballots must be transcribed (Transcript pg. 14, lines 9-14).
2. She also testified that in the most recent election, the Agency transcribed the votes from the military ballots onto tabulator-compatible ballots, which were then scanned by the Dominion tabulators creating an image of each ballot at the time it was scanned (Transcript pg. 34, line 24- pg. 35, line 5).
3. Unbeknownst to the Requestor, this process was not followed for the 2020 General Election. So images of the ballots were not created at the time of tabulation (Transcript pg. 39, lines 18-20).
4. However, Ms. Slomski testified that when the Requester made a Right-to-Know request for the Designated Agent Forms from the 2022 General Election, she scanned the paper forms using the office copier to provide an electronic copy of their images. (Transcript pg. 52, line 5 – pg. 53, line 2)
5. Therefore, following the same method, Ms. Slomski can scan the military ballots to provide an electronic copy of their images.

PROPOSED CONCLUSIONS OF LAW REGARDING ABSENTEE BALLOTS FROM MILITARY VOTERS

1. Respondent's *Motion for Hearing* appeals to 65 P.S. § 67.708 (b) (2) to argue that images of the ballots from members of the military are exempt from public records because they are a record "maintained by the Agency in connection with the military."
2. However, 65 P.S. § 67.708 (b) (2) does not say that *every* record maintained by the Agency in connection with the military is exempt from public records. Rather, it says that the following record is exempt from access:

> A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that, **if disclosed, would be *reasonably likely* to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.**
>
> 65 P.S. § 67.708 (b) (2) (emphasis added)

3. Respondent gave no evidence that disclosing images of ballots cast by members of the military jeopardizes public safety or preparedness or public protection activity. Furthermore, respondent gave no evidence that these images are designated as classified by any authority.
4. Respondent's *Motion for Hearing* also appeals to 25 P.S. § 3150.17 to argue that images of military ballots constitute "information concerning military electors and shall not be made public."
5. However, 25 P.S. § 3150.17 (b) explicitly states the elector information that the Agency must maintain:

> **(b)Record.**--For each election, the county board shall maintain a record of the following information, if applicable, for each elector who makes application for a mail-in ballot:
>
> **(1)** The elector's name and voter registration address.

> **(2)** The date on which the elector's application is received by the county board.
>
> **(3)** The date on which the elector's application is approved or rejected by the county board.
>
> **(4)** The date on which the county board mails or delivers the mail-in ballot to the elector.
>
> **(5)** The date on which the elector's completed mail-in ballot is received by the county board.
>
> 25 P.S. § 3150.17 (b)

It is the above elector information that is exempt from access in the case of members of the military and not a secret ballot, which contains no information whatsoever about any specific elector.

6. Hence, the ballot images requested are not, as the Agency claimed, information concerning military electors, nor are they records maintained by the Agency in connection with the military that, if disclosed, could jeopardize the public.
7. Finally, the Election Code provides that "**All official mail-in ballots**, **files**, applications for ballots and envelopes on which the executed declarations appear, and **all information** and lists are designated and declared to be public records ..." (25 P.S. § 3150.17), and therefore they "may be inspected and **copied** by any qualified elector of the county" (25 P.S. § 2648) (emphasis added). Accordingly, the Agency must either provide a scanned copy or allow the Requestor to make a scanned copy of the military ballots.

CONCLUSION

Although the Agency asserts that the items sought are exempt from disclosure, Provisions of Act 77, clearly designate all mail-in ballot and all files as "public records." Therefore, the

OOR's decision regarding the absentee mail-in ballot images and the no-excuse mail-in ballot images should be affirmed since the plain language of the Pennsylvania Election Code establishes that they are public records. Furthermore, since the RTKL's purpose is to promote access and encourage transparency, the subset of absentee mail-in ballots cast by military voters in the 2020 General Election should be scanned so that their images can be provided as well.

WHEREFORE, the Requestor respectfully requests a determination requiring full disclosure of images of ALL absentee/mail-in ballots.

Respectfully Submitted,

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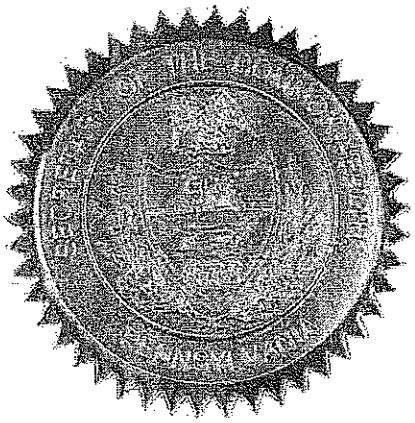
Dated: March 31, 2023

Appendix A

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF STATE

REPORT CONCERNING THE EXAMINATION RESULTS OF DOMINION VOTING SYSTEMS DEMOCRACY SUITE 5.5A WITH IMAGECAST® X BALLOT MARKING DEVICE (ICX-BMD), IMAGECAST PRECINCT OPTICAL SCANNER (ICP), IMAGECAST CENTRAL STATION (ICC), AND DEMOCRACY SUITE EMS (EMS)



Issued By:

Kathy Boockvar

Kathy Boockvar
Acting Secretary of the Commonwealth
January 17, 2019

EXAMINATION RESULTS OF DOMINION VOTING SYSTEMS DEMOCRACY SUITE 5.5A WITH IMAGECAST® X BALLOT MARKING DEVICE (ICX-BMD), IMAGECAST PRECINCT OPTICAL SCANNER (ICP), IMAGECAST CENTRAL STATION (ICC), AND DEMOCRACY SUITE EMS (EMS)

I. Introduction

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

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

The Secretary appointed SLI Global Solutions (SLI) and the Center for Civic Design (CCD) as professional consultants to conduct the examination of Democracy Suite 5.5. The examination process included a public demonstration and functional examination (functional examination), accessibility examination and security testing. The functional and accessibility examinations were performed in Room G24A/B of the Commonwealth Capitol

Complex - Finance Building, 613 North Street, Harrisburg, PA 17120. Mike Santos, Senior Test Manager, and Kyle Johnson, Senior Test Engineer (Functional Examiner), of SLI Global Solutions, conducted the functional examination of the Democracy Suite 5.5 pursuant to Section 1105-A(a) of the Election Code, 25 P.S. § 3031.5(a). Whitney Quesenbery, Denis Anson and Michael Weisman (Accessibility Examiner), representing CCD, performed an accessibility examination of the Democracy Suite 5.5 system. The examinations commenced on October 15, 2018, and lasted approximately four days. Jonathan Marks, Commissioner of the Bureau of Commissions, Elections and Legislation; Kathryn Boockvar, Senior Advisor to the Governor on Election Modernization; Jessica Myers, Deputy Director, Office of Policy; Kathleen Kotula, Executive Deputy Chief Counsel, Office of Chief Counsel; and Sindhu Ramachandran, Voting Systems Analyst, represented the Secretary of the Commonwealth. Jessica Bowers, Director of Certification, and Matt Coffey, Systems Specialist, represented Dominion. Additional staff members from the Department also attended the examination. The functional examination was open to the public and was videotaped by Department staff. Security testing of the Democracy Suite 5.5 system was performed at SLI facilities located at 4720 Independence Street, Wheat Ridge, Colorado, prior to the functional examination. Mike Santos, Senior Test Manager, and Jesse Peterson, Security Specialist, at SLI Global Solutions, served as the Security Examiner for the Democracy Suite 5.5 security testing. The Functional Examiner and Accessibility Examiner concluded that the Democracy Suite 5.5 did not comply with Sections 1107-A(10) and (15), 25 P.S. §§ 3031.7(10) & (15), of the Pennsylvania Election Code because the ICX BMD did not allow the voter to remove all candidate selections in a contest after voting straight party and the screen referenced the process of marking and printing the ballot as "casting" the ballot. Additionally, the Security Examiner noted that the system hardening measures documented in the Technical Data Package (TDP) required additional modifications for a secure implementation.

Thereafter, Dominion incorporated corrections for the issues identified during the Democracy Suite 5.5 examination, and re-submitted the new release, Democracy Suite 5.5A, to both the U.S. Election Assistance Commission (EAC) for federal approval and the

Department for state certification. The system components remained the same and the only change in the new release was the software enhancements to remediate the identified anomalies. The Functional Examiner performed a follow-up examination of Democracy Suite 5.5A on December 5-6, 2018, at SLI Global Solutions located at in Wheat Ridge, Colorado. Department staff observed the examination via web conference. The examination was videotaped by SLI and the video is on file at the Department. The Security Examiner validated that the documentation has been updated to reflect accurate system hardening steps for a secure implementation. Since the software changes made to the Democracy Suite 5.5A system were specifically to remediate the identified anomalies in Democracy Suite 5.5, it was determined that the results of the accessibility examination and security testing conducted as part of the Democracy Suite 5.5 examination may be utilized for Democracy Suite 5.5A certification. The Department discussed the software modifications with the Accessibility Examiner, since both the straight party usability issue and usage of the word "cast" were also part of the Accessibility test findings.

II. The Democracy Suite 5.5A Voting System

Democracy Suite 5.5A components considered for use in Pennsylvania[1] provide a paper-based voting system with end-to-end election support, from defining an election to generating final reports. The system is comprised of both precinct and central count tabulators, and BMDs as the ADA component. The system components include: the Election Management System (EMS), the ImageCast Central (ICC) - utilizing two Commercial Off the Shelf (COTS) scanners, the ImageCast Precinct (ICP) optical scanner and the ImageCast X (ICX) (Prime and Classic) ballot marking devices.

The following is a description of the Democracy Suite 5.5A components summarized from Section 2.0 (System Overview) of the Test Report for Examination of Democracy Suite 5.5A, prepared by the Functional Examiner and documentation submitted by

[1] The EAC certified system includes a DRE option for the ICX device which is not considered for certification in Pennsylvania.

Dominion as part of the Technical Data Package (TDP).

Election Management System (EMS)

The Dominion Democracy Suite 5.5A EMS supports elections on the ICX Prime, ICX Classic, ICP and ICC systems. The EMS set of applications are responsible for all pre-voting and post-voting groups of activities in the process of defining and managing elections. EMS software platform consists of end-user (client) and back-end (server) applications. The EMS platform consists of the following major components.

EMS Election Event Designer (EED) - Supports pre-voting activities including election definition together with ballot styling capabilities.

EMS Audio Studio (AS) - End-user helper application used to record audio files for a given election project utilized during the pre-voting phase of the election cycle.

EMS Application Server – Server-side application responsible for executing long running processes, such as rendering ballots, generating audio files and election files, etc.

EMS Results Tally and Reporting (RTR) - Integrates election results acquisition, validation, tabulation, reporting, and publishing capabilities and represents a main post-voting phase end-user application.

EMS File System Service (FSS) - Stand-alone service that runs on client machines, enabling access to low level operating system API for partitioning CF cards, reading raw partition on ICP CF card, etc.

EMS Data Center Manager (DCM) - End-user application used to export election data from election project and import election data into election project.

EMS Election Data Translator (EDT) - End-user application used to export election data from election project and import election data into election project.

EMS Adjudication (ADJ) and EMS Adjudication Service - Server and client components responsible for adjudication, including reporting and generation of adjudicated

VERIFICATION

I, Michelle Previte, hereby verify that the facts set forth in the foregoing *Proposed Findings of Fact and Conclusions of Law* are true and correct to the best of my knowledge and belief. This verification is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: March 31, 2023

Michelle Previte

CERTIFICATE OF SERVICE

I, MICHELLE PREVITE, hereby certify that a true and correct copy of the foregoing **PROPOSED FINDS OF FACT AND CONCLUSIONS OF LAW** was served this 31st day of March, 2023, upon the following, service as indicated:

VIA REGULAR U.S. MAIL and EMAIL

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VIA EMAIL

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Administrative Officer
Office of Open Records
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BY: Michelle Previte
Michelle Previte
Pro se