

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

<p>SOUTH DAKOTA CANVASSING GROUP, Plaintiff,</p> <p>vs.</p> <p>MINNEHAHA COUNTY, DAVISON COUNTY, LINCOLN COUNTY, AND PENNINGTON COUNTY, SOUTH DAKOTA, Defendant(s).</p>	<p>49CIV. 23-003402</p> <p>PLAINTIFF’S REPLY BRIEF and CERTIFICATE OF SERVICE</p>
---	--

COMES NOW South Dakota Canvassing Group, hereinafter SDCG, by and through their attorney of record, Steven G. Haugaard, of Haugaard Law Office, P.C., and submits this Reply Brief in support of their Appeal of the decision issued from the South Dakota Office of Hearing Examiners which denied the Plaintiff’s request for disclosure of public records.

I refer the Court to our original Brief as to the Facts, Issues on Appeal, and initial Argument.

PREFACE

Appellees begin their Brief with broad inaccurate statements. First, they assert that SDCG is asking this Court to “abrogate” South Dakota law and use its judicial power to “compel” the counties to “create and disclose confidential voter information”. Quite to the contrary, SDCG is asking that South Dakota law be applied, and available public information be disclosed as required by law.

Next, Appellees claim that SDCL 1-27-1.1 and SDCL 1-27-1.5 “preclude” the disclosure of the Voter Data and Machine Data. (An important point of clarification is that the request was for Cast Vote Records (CVRs) and audit logs, not personally identifiable “voter data” or proprietary “machine data”.) It’s as though they are asking the Court to entirely ignore the clear statements of

the Secretary of State as well as the clear statements of the officials from ES&S. (This is all NEW information.) Those have been previously submitted to demonstrate that the requested information exists, is public information, and is not proprietary. (See attached Exhibit A) It should also be noted that all four of the counties in this lawsuit have already paid for and possess the necessary software to produce these documents.

As further confirmation of those facts, a publicly noticed meeting was held in Sioux Falls on January 11, 2024 as “Hands On” training conducted by ES&S at which they again affirmed that the information is not proprietary, that it is meant to be a public record by NIST Standards, it is always 100% available, and that the County owns the data.

This is where the Administrative Law Judge should be fully satisfied that the matter is no longer unclear and deserves a full hearing. The Secretary of State has given clear direction to the Auditors, and ES&S has clearly stated that, the voter data and the machine data IS OWNED BY THE COUNTIES AND IS PUBLIC INFORMATION.

In the previous cases which are claimed to constitute a basis for res judicata, the OHE / ALJ did not have the same information as has been presented in this case, nor did that Hearing Officer have the benefit of the clear statements of the Secretary of State. Further, there has NOT YET been a full hearing on this matter. The previous cases where other entities requested similar information did not contain the same ‘factual information’. In addition to that, those cases were doomed because the necessary briefing opportunities were not followed and any further action on those cases would have resulted in Supreme Court appeals that would have still been ongoing. Res judicata does not apply to cases with dissimilar facts or to cases where the issues have not been fully and fairly presented.

STANDARD OF REVIEW

Defendant Counties correctly reference the “clearly erroneous” standard: Now, the facts are uncontroverted by the Secretary of State. The Defendant Counties are now apparently arguing that the law requires every specific public item be referenced in the statutes if it is subject to disclosure. The law was originally drafted to ensure that the public has broad access to public records, regardless of their form. The exceptions become memorialized in statute.

The proposed Bill was intended to put the issue to rest even though it didn’t pass this year, but it was nevertheless the clearly stated position of the Secretary of State and remains so. Thus, questions of law being reviewed de novo, the Court now has the benefit of clear statements by the Secretary of State as well as the management of ES&S.

Would Defendant Counties have us to believe that once an Administrative Law Judge makes a decision about such a matter of public importance that it is no longer to be questioned, even with new facts?

Defendant Counties make their argument as to the Standard of Review as referenced in *Kuhle v. Lecy Chiropractic*, 2006 SD 16, but they really open the door to exactly what we are stating, this is “clearly erroneous in light of the entire evidence in the record”. We cite the more recent case of *Steven Billman, Claimant and Appellant, v. Clarke Machine, Inc., Employer and Appellee, and Sentury Insurance A Mutual Company*, 2021 SD 18, which addresses the Standard of Review at [¶22.]

“Our standard of review is governed by SDCL 1-26-37, which states, “The Supreme Court shall give the same deference to the findings of fact, conclusions of law, and final judgment of the circuit court as it does to other appeals from the circuit court.” When either this Court or the circuit court reviews the underlying findings of the agency, here the Department of Labor, “[t]he Department’s factual findings and credibility determinations are reviewed under the clearly erroneous standard.” *Wise v. Brooks Constr. Servs.*, 2006 S.D. 80, ¶ 16, 721 N.W.2d 461, 466.

These findings will only be reversed “if we are definitely and firmly convinced a mistake has been made.” Id. “Questions of law are reviewed de novo. Mixed questions of law and fact are also fully reviewable.” *Kuhle v. Lecy Chiropractic*, 2006 S.D. 16, ¶ 16, 711 N.W.2d 244, 247 (citations omitted). The #29296 -10- burden is ultimately on the claimant to prove all facts essential to compensation. Id. [¶23.] This Court undertakes the same review of the administrative tribunal’s action as the circuit court. *Anderson v. S.D. Ret. Sys.*, 2019 S.D. 11, ¶ 10, 924 N.W.2d 146, 149. “The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt may reverse or modify the decision if **substantial rights of the appellant have been prejudiced because the administrative findings . . . or decisions are . . . [c]learly erroneous in light of the entire evidence in the record[.]**” SDCL 1-26-36 (emphasis added).

ARGUMENT

This is no longer a case in regard to “res judicata” or “issue preclusion”. (Please see SDCG’s initial Brief as to that issue. These are new facts in a new case.) This is now a case concerning the **public’s right to access public information**. Appellees continue to claim that either the information doesn’t exist, or if it does, then it is an “internal agency record” under SDCL 1-27-1.5(24) and / or “closed or confidential records” under SDCL 1-27-1.5(27). The Secretary of State oversees elections and says otherwise, even as recently as yesterday in a Senate Committee.

Defendant Counties assert that until the Legislature adds the magic words in regard to “cast vote records” that they are exempt. That’s simply not true. SDCL 1-27-1 is clear in stating that “*Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in § 1-27-1.1, are hereby fully empowered and authorized to examine such public record, . . .*”; and SDCL 1-27-1.1 states that “*Unless any other statute, ordinance, or rule expressly provides that particular information or records may not be made public, public records include all records and documents, regardless of physical form, . . .*” (Emphasis supplied)

The Defendant’s remaining assertions have been debunked by the Secretary of State and

ES&S, and the Defendant Counties are well aware of that.

Attached hereto are documents that were also part of the original submissions. We include these to draw specific attention to them. SDCG realizes that the documents submitted to the ALJ was a significant amount of information, but the ALJ had a duty to thoroughly review it. In addition to that are the more recent disclosures by the Secretary of State and ES&S. As stated above, these clearly answer the questions before the OHE/ALJ and this Court.

As we can now see, SDCG's requests were lumped into general denials by the Counties instead of carefully understanding what was available and then providing the available information.

SPECIFIC RESPONSES

The following are specific responses to claims made in the Defendants' Brief:

Page 1 – Confidential Voter Information = SDCG has never requested “confidential voter information” which the counties strangely refer to as “Voter Data”. SDCG requested Cast Vote Records, which are the audit trail of each ballot counted by the tabulating machines. South Dakota uses Election Systems and Software (ES&S) tabulators to count our votes. ES&S has confirmed in public twice now that Cast Vote Records do not identify a voter. Once in the ES&S Task Force Meeting in Omaha, Nebraska on June 16, 2023, of which SDCG has submitted a transcript; and a second time, ES&S executives stated the same on January 11, 2024 in the Auditor Training provided to the Minnehaha County Auditor and staff, which was open to the public.

In those meetings it was stated that there is no personally identifying voter information produced by the cast vote record (CVR), the machines always make CVRs, that it is not proprietary, that it is meant to be a public record by NIST Standards, it is always 100% available, and that the County owns the data.

The Legislature has enacted public records laws which clearly state:

SDCL 1-27-1. Public records open to inspection and copying. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in § 1-27-1.1, are hereby fully empowered and authorized to examine such public records.

SDCL 1-27-1.1. Public records defined. Unless any other statute, ordinance, or rule expressly provides that particular information or records may not be made public, public records include all records and

documents, regardless of physical form, of or belonging to this state, any county, municipality, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form remains a public record when maintained in any other form. For the purposes of §§ 1-27-1 to 1-27-1.15, inclusive, a tax-supported district includes any business improvement district created pursuant to chapter 9-55.

The South Dakota Legislature does not need to enact a separate law listing cast vote records or audit logs as public records, because the State of South Dakota adopted the EAC certification into law, which requires these documents, and the NIST and the EAC state that they are public documents intended to increase public trust by providing transparency.

Page 3 – ALJ / OHE and the Counties claim the records “do not exist”. Cast Vote Records do exist, and the machines cannot be certified without this function. The United States Election Assistance Commission adopted the Voluntary Voting Systems Guidelines 1.0 in 2005, which makes cast vote records and audit logs a necessary requirement of the machines, for auditing functions and transparency. All electronic tabulating machines must produce CVR’s and audit logs in order to be certified. The National Institutes of Science and Technology developed the standards of these records for consistency, regardless of the brand or vendor the machine. The NIST publications list the intended audience as the “general public”. The State of South Dakota requires EAC Certification as part of South Dakota certification of the machines. These certification requirements of CVR’s and Audit Logs then become law in South Dakota. (See SDCL 12-17B-2)

Attached excerpts from publicly available Federal documentation contained in the previously submitted affidavit of Rick Weible.

12-17B-2. Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications. *Any automatic tabulating or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet. No ballot marking device may save or tabulate votes marked on any system. Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.*

Page 4 – “not required by South Dakota to create or store”. As stated above – every single tabulating machine in the United States of America MUST produce CVR’s and Audit Logs as part of the EAC requirement. SD adopts these requirements as law (SDCL 12-17B-2), therefore all machines must produce these records. If South Dakota IS indeed using machines that have not created and captured CVR’s and audit logs, then all past elections have been out of compliance with the law, all machines are not actually certified, and every single county in South Dakota must then immediately discontinue use of the machines, as they would be in violation of SDCL 12-17B-2.

Page 5 – “exempt from disclosure under SDCL 1-27-1.5(8)” – See (Exhibit B) Lincoln County letter

which states “after consulting with ES&S” and then proceeds to claim CVR’s and Audit Logs are not public record based on SDCL 1-27-1.5 (8) which refers to information pertaining to the protection of public or private property based on (d) *Cyber security plans, computer or communications network schema, passwords or user identification names.*

None of the data in these reports contain computer schematics, cyber security plans, passwords or user identification names. These are simply data reports listing how the votes were tabulated and what transactions took place on the machine, which ES&S has confirmed in person, that these reports only contain publicly available, non-voter identifying and not proprietary information.

Page 5 – Voter Secrecy – again – ES&S has confirmed in person that these reports do not identify a voter, ever. EAC and NIST standards and requirements also confirm, no voter identifying information resides in these reports. If these machines are actually tracking how a voter voted, and the audit trail would compromise voter secrecy, these machines must be immediately discontinued for use as this would be an illegal function of the electronic tabulating machines.

Page 5 – SDCL 12-20-20 and 21 – refers to the sealing of the ballots. HOWEVER, these laws are in reference to precinct level ballots at the precinct being secured before being transported to the County Courthouse. These laws are being taken out of context here and do not refer to electronically tabulated election returns. The law that actually applies to this situation is listed below:

SDCL 12-20-31. Destruction of ballots and pollbooks--Period for which held--Pending recount or contest. *The officer in charge of an election may destroy voted ballots and pollbooks from a nonfederal election sixty days following the election at which such ballots were voted. However, they may not be destroyed if any recount or contest of such election is pending. The officer in charge of an election may destroy voted ballots, pollbooks and all other election material relating to a federal election twenty-two months after the election at which the ballots were voted. For the purpose of this section, a federal election is any election to nominate or elect persons to the United States Congress or other national elected position, including national issues or questions. If a ballot is used for a federal election and a state or local election, the ballots and all other election material shall be maintained for twenty-two months. All federal election material may be removed from the ballot box if it is maintained in such a manner as to guarantee the safety and integrity of such material.*

Page 8 – none of the evidence was ever heard or weighed by the ALJ / OHE. We now have over 500 pages of publicly available technical evidence that must be heard by the Court in the best interest of the people of South Dakota. Our elections apparatus has been deemed critical national infrastructure. The overwhelming fact that our county auditors did not know what CVR’s were, that their machines produced them, that they must be used as an auditing tool, and that they continue to claim they don’t exist is a national security issue.

Page 10 – Not ever weighed on the merits.

Page 15 -

Unfortunately, we can see that the Defendant Counties have not read the 500 plus pages that were submitted to the ALJ. On page 15, the Defendants argue that the materials submitted are of no value as they are not “new facts”. However, those submissions DO contain new information from ES&S which clarified the existence of the requested information as well as the fact that there

was no proprietary information requested. Contrary to the Defendants' assertion, the 500+ new pages with new facts presented DO change the legal issue AND the analysis of the legal issue. At a minimum, there should be an opportunity to have a full and fair hearing to answer any questions about the factual information submitted.

Defendants' Brief highlights only a few of the "purported new facts" provided to the ALJ by SDCG. The response to those points are as follows:

1- Please see the actual attached transcript of ES&S President of Security Chris Wlaschin's public statements.

2- Dodge County, Wisconsin posts their CVR's on their website for public consumption, as well as San Diego, County. <https://www.co.dodge.wi.gov/departments/departments-a-d/county-clerk/electioninformation/election-results/election-results-2022> <https://elections.countyofdane.com/Auditing> <https://selections.sfgov.org/june-7-2022-election-results-detailed-reports>

3- As submitted to the Court previously, attached is an Audit Log provided to SDCG from Fall River County. SDCG has also obtained encrypted CVR's and Audit logs from Hand and McCook Counties. There is no secret, proprietary information on these logs, but they do contain necessary ballot tabulating numbers that should be used to ensure each and every ballot was counted properly and that the totals reported by the machine reconcile with the batches. (Exhibit C)

4- Created by and mandated by the Federal Government since 2005.

5- Not sure where this came from – but all four counties in this suit possess and pay for the ES&S Election Management System which is intended to decrypt the election results into the reports being requested by SDCG. In a copy of the contracts that the counties sign for this software agreement previously provided to the Court, the counties agree that "Customer shall have completed a full software training session for each product selected. Customer shall have completed training at a proficiency level to successfully use the software products."

6- The user manual that the County Auditors have in their possession, do reference CVR's.

7- The EAC Election Management Guidelines refer to properly using these tools in auditing electronic tabulating systems. (Exhibit D)

8- The ES&S documents speak for themselves as do the Election Assistance Commission Standards that are referenced in and required by SDCL 12-17B-2. If the ALJ would have allowed a hearing on these matters, there would have been an opportunity to have these witnesses testify as to the facts about these election requirements and procedures.

9- **Pursuant to 52 USC S. 20701 – Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession**

relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Pub. L. 86-449, title III, §301, May 6, 1960, 74 Stat. 88.)

a. Pursuant to 52 USC S. 20702 - Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 20701 of this title to be retained and preserved shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

SDCL 12-20-31. Destruction of ballots and pollbooks--Period for which held--Pending recount or contest. *The officer in charge of an election may destroy voted ballots and pollbooks from a nonfederal election sixty days following the election at which such ballots were voted. However, they may not be destroyed if any recount or contest of such election is pending. The officer in charge of an election may destroy voted ballots, pollbooks and all other election material relating to a federal election twenty-two months after the election at which the ballots were voted. For the purpose of this section, a federal election is any election to nominate or elect persons to the United States Congress or other national elected position, including national issues or questions. If a ballot is used for a federal election and a state or local election, the ballots and all other election material shall be maintained for twenty-two months. All federal election material may be removed from the ballot box if it is maintained in such a manner as to guarantee the safety and integrity of such material.*

Page 20 – Defendants Counties assert that “...if the Court holds SDCL1-27-1.1 includes records that a county does not have in its possession, it would lead to absurd results.” There is no extraordinary burden upon the counties if such a request is presented. The information is electronically stored.

This Court and the State of South Dakota needs to consider the question, if these records have been Federally Required for any and all Elections of Federal Candidates, and the State of South Dakota has adopted these requirements into law, why do the County election officials and the State’s Attorneys not know about these records, how they are created, that they are indeed in their possession and must be as a requirement for actual operation of the machine, and continue to claim they do not exist? We have established more than enough proof that they do exist and must exist, and the sheer volume of evidence supporting these facts.

The public nature of this case, the fact that these tabulators are indeed part of critical national infrastructure, and the vast misconception and misinformation provided by the election offices about the audit trail of the electronically tabulated ballots of the citizens of South Dakota is a public emergency in an election year for the next President of the United States.

EAC Election Management Guidelines require election officials to know and understand Federal and State requirements of their voting systems. Additionally, election officials must be able to explain testing requirements and procedures to voters. As demonstrated by the correspondence from the counties to the citizens, and the subsequent denials of public records by the auditors and the ALJ / OHE, the election officials in South Dakota are seriously lacking in knowledge and

understanding of the Federal and State requirements of their voting systems. – Pages 14, 43, 56 and 59 of the EAC Election Management Guidelines.

[https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC Election Management Guidelines_508.pdf](https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf)

Page 21 – ES&S Vice President of Security Chris Wlaschin has stated publicly that the County owns the data and said this in person to the Secretary of State Monae Johnson, Deputy Secretary of State, Tom Diedrick, State Representative Tina Mulally, State Representative Sue Peterson, and Minnehaha County Auditor Leah Anderson.

Page 22 – The documentation previously filed herein clarifies that the voting records ARE confidential, and access to them does not facilitate any breach of that confidentiality. Further, Defendants seem to assert that there is no requirement to retain the voting machine data until there is a specific statute directing them to do so. That certainly does not fit with SDCL 1-27-1.

Page 23 – At this point in time the custodians of the public information have “acted unreasonably and in bad faith” in denying the public records request. Also, an in camera review would assure the Court and ALJ that there is no personally identifiable information contained in these requested records.

Page 24 – The ALJ’s analysis failed to address the specific evidence that was presented to her in this particular case. Any previous decision about a similar subject cannot remain the ‘law of the land’ when NEW information is presented.

ARGUMENT AND ANALYSIS

At the outset, IT IS IMPERATIVE that we keep the ‘main thing’ the ‘main thing’. That is to say **“the public has an absolute right to disclosure of public information.”**

Auditors all across the state apparently have been misled as to whether records of votes that have been cast are public or not. Now, the Secretary of State as well as the management of ES&S have clarified that the requested information is owned by the state (and therefore is public) and the means of access to that information is NOT proprietary.

So, the question is “Why are we still being denied the public information?” Defense counsel and the county attorneys seem to be relying on the past incorrect and factually different ALJ decisions. Is it to justify the expenditure of tax dollars to defend a false assumption up to this point? That is my speculation, but, again, the bottom line is whether the requested information is public,

and the answer is “Yes, it is.”

During this year’s Legislative Session, the Secretary of State proposed an amendment to SDCL 12-17B-13 in the form of Senate Bill (SB 48) which stated in pertinent part, “...**the cast vote record and the ballot images..., if any, are public records.**” That would have codified the fact that the information requested by the Plaintiff is “public information” and is available to anyone requesting it. That Bill failed, but that does not change the position of the Secretary of State as clearly explained in her statements to the County Auditors wherein she advised that the auditors should make this information available to the public either in person or with a link. (Please see the Secretary of State’s email attached to Plaintiff’s initial Brief.)

Further, SB 48 was not defeated due to any confusion about the public nature of the records, and in fact it was stated by a committee member that these are public records, but rather the Bill was not passed by the Committee due to the possible expense to the smaller counties to get the necessary software.

The Defendant Counties now argue that because the Legislature failed to pass the proposed Bill the information is not public information. That argument falls flat as SDCL 12-17B-13 already states “...These returns shall be open to the public.”, and not only has the Secretary of State advised all South Dakota auditors that they should disclose the information to the public, but ES&S contradicts the Defendants’ previous claims and has clarified the fact that the information does exist and is not proprietary. These are not “internal agency records”, they are public records.

The fact is that unless specifically named as exempt by statute, documents are public records. Neither of the exemptions cited in Appellees’ Brief apply in this case. It is not an internal agency record, nor is it confidential. There is no personally identifiable information in any of the documents requested.

At page 21 of Defendant Counties' Brief they misinterpret or misread SDCL 1-27-1.5(24) as they state that these are "internal agency records" ... as long as they aren't "final statistical or factual tabulations...", but that is what they are, final statistical or factual tabulations, so they are not exempt, and they are public records.

At some point in time the Defendant Counties and their attorneys have an ethical and legal duty to disclose the information. That time is now.

Res Judicata:

I refer this Court to our initial Brief and again to the case of Bank of Hoven wherein Justice Sabers states in his dissent:

In Bank of Hoven v. Rausch, 449 NW 2d 263, SD: Supreme Court 1989, Justice Sabers writes in his dissent as to the subject of 'res judicata' that "The majority fails to mention and then ignores the fact that Rausch's counterclaim did not arise until after the trial and judgment in Rausch 1." "...It is basic that one cannot be forced to assert facts or claims which do not exist."

Again, this is where the Plaintiff now finds itself. Possessing "newly found" facts which entirely alter the issue under consideration.

CONCLUSION

The SDCG members are not "election deniers" and, in fact, are accounting professionals who have personally invested 1,000s of hours and 1,000s of dollars in asking for that which is held in the public trust and standing up for the best interests of the citizens of South Dakota. That should speak volumes.

Other jurisdictions have now recognized the validity of disclosing requested "public information" such as this and have awarded damages to those who have similarly struggled for the public's freedom of information. SDCG should likewise be reimbursed.

Given the known changes in the way in which the requested information has been

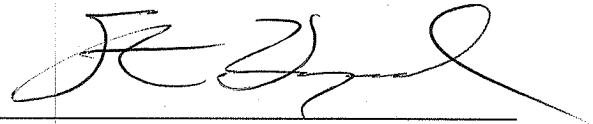
characterized by the Secretary of State and the manufacturers of the election equipment, there is no logical reason to continue to deny access to the information.

THEREFORE, it is also a logical reason to grant the Plaintiffs their costs, fees, and disbursements which have been caused by the denial of access. At this point the actions of denying access to these records is “unreasonable” and is an act of “bad faith”. The citizens deserve a full and fair application of the public records laws.

As part of Appellant's appeal, this Court, pursuant to SDCL Chapter 1-27 and SDCL Title 15, is justified in awarding costs, disbursements, and a civil penalty in this matter.

Dated this 15th day of February, 2024.

HAUGAARD LAW OFFICE, P.C.



Steven G. Haugaard
Attorney for South Dakota Canvassing Group
1601 East 69th Street, Suite 302
Sioux Falls, South Dakota 57108
(605) 334-1121
Steve@haugaardlaw.com

CERTIFICATE OF SERVICE

The undersigned, Steven G. Haugaard, Attorney for South Dakota Canvassing Group, hereby certifies that on January 15, 2024 a true and correct copy of the Plaintiff's Brief and Certificate of Service, was served by and through the Odyssey File & Serve electronic filing system and/or U.S. First Class Mail upon the Hearing Examiner, counsel of record and the agencies as listed below:

SD Office of Hearing Examiners
ATTN: Catherine Williamson
Administrative Hearing Officer
523 East Capitol Avenue
Pierre, S. D. 57501
SDOHE@state.sd.us

South Dakota Canvassing Group
26154 466th Ave.
Hartford, S. D.
sdcanvass@protonmail.com

Daniel Haggar
Minnehaha County State's Attorney
415 N. Dakota Avenue
Sioux Falls, S.D. 57104
dhaggar@minnehahacounty.org

Leah Anderson
Minnehaha County Auditor
415 N. Dakota Avenue
Sioux Falls, S. D. 57104

Thomas Wollman
Joseph Meader
Drew DeGroot
Lincoln County State's Attorney
104 N. Main Street, Suite 200
Canton, S. D. 57013
twollman@lincolncountysd.org
jmeader@lincolncountysd.org
ddegroot@lincolncountysd.org

Lisa Hanson Marso
Kristin Derenge
Boyce Law Firm, LLP
PO Box 5015
Sioux Falls, S. D. 57117-5015
lkmanson@boycelaw.com
kderenge@boycelaw.com

Sheri Lund, Lincoln County Auditor
104 N. Main Street, Suite 110
Canton, S. D. 57013

Laura Roetzel
Pennington County State's Attorney
130 Kansas City Street, #300
Rapid City, S. D. 57701
lroetzel@penningtoncounty.org

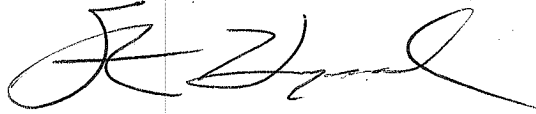
Cindy Mohler
Pennington County Auditor
130 Kansas City Street, #230
P.O. Box 6160
Rapid City, S. D. 57701

James Miskimins
Davison County State's Attorney
1015 S Miller Avenue
Mitchell, S. D. 57301
jmiskimins@danisoncounty.org

Susan Kiepke
Davison County Auditor
200 E. 4th Avenue
Mitchell, S. D. 57301

Dated this 15th day of February, 2024.

HAUGAARD LAW OFFICE, P.C.

A handwritten signature in black ink, appearing to read 'S. Haugaard', written over a horizontal line.

Steven G. Haugaard
Attorney for South Dakota Canvassing Group
1601 East 69th Street, Suite 302
Sioux Falls, South Dakota 57108
(605) 334-1121
Steve@haugaardlaw.com

ES&S TASK FORCE MEETING
June 16, 2023

1 MS. ANDERSON: It was in January.

2 MR. WLASCHIN: January. I'm sorry. It's running together.
3 Our machines, our tabulators do produce cast vote records.

4 MS. ANDERSON: Okay.

5 MR. WLASCHIN: The extraction of those and publication of
6 those or the reports on those require an EMS laptop--

7 MS. ANDERSON: Yeah.

8 MR. WLASCHIN: --to retrieve them. Not all the counties in
9 South Dakota have an EMS laptop. I understand we provided
10 information on how to--pricing information on how to go from a
11 unique laptop in each county or to a more centralized one for
12 the states. We provided that information. Cast vote records
13 are treated differently depending on what state you're in. If
14 the state considers them to be part of the election record, then
15 the state can produce those using these laptops to extract the
16 cast vote record. And it's up to the state whether or not you
17 want to publish it. There's nothing-- I'm going to (inaudible)
18 over to the lawyer. There's nothing in the cast vote record
19 that I am aware of that is proprietary. Nothing that we would

EXHIBIT

A

ES&S TASK FORCE MEETING

June 16, 2023

1 want to protect. What it is-- Imagine if you could visualize a
2 spreadsheet that shows every ballot that was counted--

3 MS. ANDERSON: I've actually seen them.

4 MR. WLASCHIN: It's not linked to a voter in any way.

5 MS. ANDERSON: Right.

6 MR. WLASCHIN: No exposure of voter privacy or anything
7 like that.

8 MS. ANDERSON: Okay.

9 MR. WLASCHIN: It is a spreadsheet of the tally that the
10 machine created when it counted those ballots.

11 MS. ANDERSON: Okay.

12 MR. WLASCHIN: Some states release those and publish them.
13 Others don't because they don't consider them part of the
14 election records.

15 MS. ANDERSON: Yes. There's counties in Wisconsin and
16 California that do publish those, so I've been able to see
17 those.

18 MR. WLASCHIN: May I go on to--



**LINCOLN
COUNTY**

AUDITOR'S OFFICE
104 N. MAIN STREET, SUITE 110
CANTON, SD 57013

March 15, 2022

Jessica Pollema
415 Quartzite Ave
Tea SD 57064

RE: Public Records Request-DS850 Event Logs

Jessica Pollema.

After consulting with ES&S as well as legal counsel, we have discovered that the requested records (DS850 Event Logs) are exempt from disclosure under SDCL 1-27-1.5(8)&(3) as well as 1-27-1.6.

Thank you.

Shaun Feilmeier
Deputy Auditor & Clerk to the Board

P 605.764.2581 F 605.764.3154
AUDITOR@LINCOLNCOUNTYSD.ORG
LINCOLNCOUNTYSD.ORG

EXHIBIT

B

The following is an example of a Dominion Voting Systems csv format Cast Vote Record file. In the actual file, additional candidates and races would continue to the right and additional ballots would be listed below, in their sequential order as they were tabulated.

2020-Mesa CS.11.9.1							Presidential Electors (Vote For=2) Joseph R. Biden / Kamala D. Harris	Presidential Electors (Vote For=1) Donald J. Trump / Michael R. Pence	Presidential Electors (Vote For=1) Don Blankenship / William Mohr
CurNumber	TabulatorNum	BatchId	RecordId	ImprintedId	CountingGroup	PrecinctPortion	BallotType		
1	10	4001	82	10-4001-82	Mail	3075539052 - GJ (3075539052 - 5)	5	1	0
2	10	4001	82	10-4001-82	Mail	3075439020 (3075439020)	9	1	0
3	10	4001	81	10-4001-81	Mail	3075439015 (3075439015)	9	1	0
4	10	4001	75	10-4001-75	Mail	3075439017 (3075439017)	9	1	0
5	10	4001	74	10-4001-74	Mail	3075439015 (3075439015)	9	1	0
6	10	4001	47	10-4001-47	Mail	3075539055 (3075539055)	5	1	0
7	10	4001	46	10-4001-46	Mail	3075539033 - GJRFH2 (3075539033 - 4)	4	1	0
8	10	4001	35	10-4001-35	Mail	3075539039 - 5 (3075539039 - 5)	3	0	1
9	10	4001	34	10-4001-34	Mail	3075539045 (3075539045)	5	0	1
10	10	4001	23	10-4001-23	Mail	3075399047 (3075399047)	5	1	0
11	10	4002	10	10-4001-10	Mail	3075439015 (3075439015)	9	1	0
12	10	4001	2	10-4001-2	Mail	3075439020 (3075439020)	9	1	0
13	10	4001	92	10-4001-92	Mail	3075439017 (3075439017)	9	1	0
14	10	4001	45	10-4001-45	Mail	3075439014 - CRWC (3075439014 - 9)	9	0	1

It should be noted that none of these fields, nor any other found in a Cast Vote Record, in any way identifies the identity of a ballot's voter. Out of an overabundance of caution, some counties redact extremely small precincts (with 5 or 10 voters) from the Cast Vote Record in the fear that if all voters voted the same way, the secrecy of their vote might be compromised.

No records supplied in any Cast Vote Record of any type disclose the identity of the voter.

CAST VOTE RECORDS – ACQUISITION

The need for Cast Vote Records for the 2020 Election was spread through numerous channels. Many citizens requested these documents using their state's Freedom of Information Act (FOIA) guidelines, and then sent them to me for processing. All Cast Vote Records included in this analysis were obtained through these valid public records requests.

Public records requests for Cast Vote Records were made to nearly all counties in all states.

- **27** states, Alaska, Arizona, Arkansas, California, Colorado, Delaware, The District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, West Virginia, and Wisconsin had at least one responsive county.
- **23** states, Alabama, Connecticut, Hawaii, Indiana, Kansas, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, Virginia, Washington, and Wyoming had no responsive counties. In most of these cases, investigation found that the state's election apparatus prevented the counties from complying with the public's request for election data.
- Given the findings in this report, state and county resistance to providing their Cast Vote Records is inexcusable.

CAST VOTE RECORDS – DATA NORMALIZATION

I developed software to convert the many combinations of Cast Vote Record types into a common database format for analysis. Specific analysis, which contains additional information from what is contained within this report, can be accessed on my website². The raw Cast Vote Record files used for analysis can also be found on my site³.

ANALYSIS METHODOLOGY – RANDOMNESS ASSUMPTION

The unnatural yet similar voting patterns were identified by examining the mail-in (absentee) ballots. Because of the pandemic, many states and counties expanded mail-in voting to unprecedented levels. From what can be determined by the data analysis presented here, these types of votes were used as a critical attack vector on the election.

To fairly judge a county's Cast Vote Record mail-in results, I first test the results to see if they meet the randomness assumption. The assumption is that mail-in ballot results contained in the Cast Vote Records are randomized by the processing of the ballots themselves. As mail-in ballots are randomly requested, randomly sent out, randomly filled out, randomly returned or delivered by the voter, and not presorted by the county upon receipt, they become naturally shuffled and mixed. While many county clerks

² <https://VoteDatabase.com>

³ <https://VoteDatabase.com/cvr>



20:09:42 Tue Jun 07 2022 Output Trays: Empty
 20:09:42 Tue Jun 07 2022 Pick delay: 0 ms
 20:09:42 Tue Jun 07 2022 Initial ballot number: 92
 20:10:37 Tue Jun 07 2022 Error: Pick Error
 20:10:37 Tue Jun 07 2022 Successfully moved 47 ballots to temp storage
 20:10:37 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 46
 20:10:43 Tue Jun 07 2022 Selected: Scan More
 20:10:48 Tue Jun 07 2022 Selected: Clear Transport
 20:10:56 Tue Jun 07 2022 Cleared: Pick Error
 20:11:06 Tue Jun 07 2022 Selected: Preview Report
 20:11:06 Tue Jun 07 2022 Not Processed Batch/Bin Report generated
 20:11:12 Tue Jun 07 2022 Selected: Start Scanning
 20:11:16 Tue Jun 07 2022 Output Trays: Not Empty
 20:11:16 Tue Jun 07 2022 Pick delay: 0 ms
 20:11:16 Tue Jun 07 2022 Initial ballot number: 140
 20:11:36 Tue Jun 07 2022 Successfully moved 16 ballots to temp storage
 20:11:36 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 16
 20:11:55 Tue Jun 07 2022 Selected: Start Scanning
 20:11:55 Tue Jun 07 2022 Output Trays: Not Empty
 20:11:55 Tue Jun 07 2022 Pick delay: 0 ms
 20:11:55 Tue Jun 07 2022 Initial ballot number: 156
 20:12:39 Tue Jun 07 2022 Successfully moved 30 ballots to temp storage
 20:12:39 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 30
 20:12:52 Tue Jun 07 2022 Selected: Start Scanning
 20:12:52 Tue Jun 07 2022 Output Trays: Not Empty
 20:12:52 Tue Jun 07 2022 Pick delay: 0 ms
 20:12:52 Tue Jun 07 2022 Initial ballot number: 206
 20:13:27 Tue Jun 07 2022 Successfully moved 37 ballots to temp storage
 20:13:27 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 37
 20:13:30 Tue Jun 07 2022 Selected: Start Scanning
 20:13:30 Tue Jun 07 2022 Output Trays: Not Empty
 20:13:30 Tue Jun 07 2022 Pick delay: 0 ms
 20:13:30 Tue Jun 07 2022 Initial ballot number: 245
 20:14:02 Tue Jun 07 2022 Successfully moved 32 ballots to temp storage
 20:14:02 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 32
 20:14:06 Tue Jun 07 2022 Selected: Start Scanning
 20:14:06 Tue Jun 07 2022 Output Trays: Not Empty
 20:14:06 Tue Jun 07 2022 Pick delay: 0 ms
 20:14:06 Tue Jun 07 2022 Initial ballot number: 275
 20:14:47 Tue Jun 07 2022 Successfully moved 45 ballots to temp storage
 20:14:47 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 44
 20:14:57 Tue Jun 07 2022 Selected: Start Scanning
 20:14:57 Tue Jun 07 2022 Output Trays: Not Empty
 20:14:57 Tue Jun 07 2022 Pick delay: 0 ms
 20:14:57 Tue Jun 07 2022 Initial ballot number: 320
 20:15:40 Tue Jun 07 2022 Successfully moved 49 ballots to temp storage
 20:15:40 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 49
 20:15:46 Tue Jun 07 2022 Selected: Start Scanning
 20:15:46 Tue Jun 07 2022 Output Trays: Not Empty
 20:15:46 Tue Jun 07 2022 Pick delay: 0 ms
 20:15:47 Tue Jun 07 2022 Initial ballot number: 369
 20:15:49 Tue Jun 07 2022 Successfully moved 33 ballots to temp storage
 20:15:49 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 33
 20:16:47 Tue Jun 07 2022 Selected: Clear Run Outstack
 20:16:47 Tue Jun 07 2022 Number of Not Processed ballots cleared (top bins): 2
 20:16:47 Tue Jun 07 2022 Selected: Toggle Bin Sorting
 20:16:48 Tue Jun 07 2022 Selected: Start Scanning
 20:16:48 Tue Jun 07 2022 Output Trays: Empty
 20:16:48 Tue Jun 07 2022 Pick delay: 0 ms
 20:16:48 Tue Jun 07 2022 Initial ballot number: 402
 20:17:01 Tue Jun 07 2022 Successfully moved 2 ballots to temp storage
 20:17:01 Tue Jun 07 2022 Number of counted ballots (bottom + middle bins) moved: 0
 20:17:01 Tue Jun 07 2022 Selected: Preview Report
 20:17:16 Tue Jun 07 2022 Not Processed Batch/Bin Report generated
 20:17:16 Tue Jun 07 2022 Selected: Clear Transport

**ES&S SOFTWARE LICENSE, MAINTENANCE AND SUPPORT DESCRIPTION AND FEES
SOFTWARE**

Initial Term: Expiration of the Warranty Period through the third anniversary thereof

Listed below is the Software and Fees for which Software License, Maintenance and Support will be provided:

Qty	Description	Coverage Period	Software License, Maintenance and Support Fee In Total
1	ElectionWare Software – Reporting Only	Year 1	\$8,125.00
1	ElectionWare Software – Reporting Only	Year 2	\$8,125.00
1	ElectionWare Software – Reporting Only	Year 3	\$8,125.00
Total Software License, Maintenance and Support Fees for the Initial Term			\$24,375.00

Software License, Maintenance and Support Services Provided by ES&S under the Agreement

1. Telephone Support.
2. Issue Resolution.
3. Technical Bulletins will be available through Customer's ES&S Web-based portal.

Note: Except for those Software License, Maintenance and Support services specifically set forth herein, ES&S is under no obligation and shall not provide other Software License, Maintenance and Support services to the Customer unless previously agreed upon by the parties.

Software License, Maintenance and Support and Hardware Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed a full software training session for each product selected.
 - o Customer shall have completed training at a proficiency level to successfully use the software products.
2. Customer shall have reviewed a complete set of User Manuals.
3. Customer shall be responsible for the installation and integration of any third-party hardware or software application or system purchased by the Customer, unless otherwise agreed upon, in writing, by the parties.
4. Customer shall be responsible for data extraction from Customer voter registration system.
5. Customer shall be responsible for implementation of any security protocols physical, network or otherwise which are necessary for the proper operation of the ES&S Software.
6. Customer shall be responsible for the acceptance of the Software, unless otherwise agreed upon, in writing, by the parties.

ELECTION MANAGEMENT GUIDELINES

Election Databases

Election officials manage employees, recruit thousands of poll workers, and coordinate all activities required to facilitate elections and voting. Creating efficiencies in the management process can result in an improvement of services for voters. Election databases help election officials manage all workflows in the elections office. In managing workflows, inexpensive solutions can maximize staff effectiveness.

Election databases can contain information on voters, polling places, candidates, poll workers, provisional ballots, absentee ballots, early voting, and more. The voter registration database may provide modules that house this data, or election officials may maintain separate databases for each type of information. Typically, these databases are designed to do the following:

1. Allow elections office staff to contribute to and share stored data
2. Control the information each elections office staff member can view or edit
3. Aid in easy storage and retrieval of data
4. Reduce duplicate input
5. Improve the ease of report writing
6. Improve communication among office staff

Databases can be built in-house, purchased off the shelf, or contracted out to a vendor depending on the staff and monetary resources available in the elections office. Whether a jurisdiction decides to contract out for an election database or builds one in-house, elections officials evaluate the system's security to protect personally identifying information (PII) and protect the system from cybersecurity and physical exploitations.

Voting Systems

The Help America Vote Act (HAVA) defines voting systems as the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware,

and documentation required to program, control, and support the equipment) used—

- to define ballots
- to cast and count votes
- to report or display election results
- to maintain and produce any audit trail information

Voting systems are more than voting machines. A system is a collection of unified components that consist of subsystems, such as scanners, election management systems, and other equipment necessary to tabulate vote results and produce vote tally reports. Voting systems also interface with other systems in elections offices. A voting system is the core technology that drives and integrates the election system.

Most states require federal certification or state certification of voting systems. The EAC is responsible for testing and certifying voting systems at the federal level, and HAVA mandates that EAC accredit voting system test laboratories and certify voting equipment. State participation in EAC's certification program is voluntary.

The EAC publishes Voluntary Voting System Guidelines for testing and certifying voting. A complete copy of the current guidelines, a list of certified voting systems, and additional information about the EAC's testing and certification program are available at www.eac.gov.

State-level tests generally are designed to ensure that the voting system complies with state laws and regulations. Generally, the state elections office provides local jurisdictions with a list of voting systems that are certified for use in the state.

In addition to federal and state certification requirements, jurisdictions conduct acceptance testing on newly acquired voting systems and components. However, election officials should note that acceptance testing is only one of the types of testing that they can conduct on their voting machines. An acceptance test is performed on an individual unit of a voting system to verify that the unit is physically, electronically, mechanically, and functionally correct. Correct means that the unit is identical to the system certified for use in the jurisdiction, including the software and firmware.

for access in the event the manufacturer goes out of business. In addition, the VSTL also produces installers to load the system on the various voting system components.

A copy of the trusted installers is required to reinstall the system. If the state elections office does not have the software, it can request the voting system manufacturer authorize the test lab that performed the certification tests to send the disk to the state office or directly to the local elections office. State elections office staff should be able to assist local elections officials in reinstalling the software.

The installers load the election management system on the central election computer and other system components. If the firmware for the voting stations or ballot scanners needs to be reinstalled, election officials should ask the voting system manufacturer to provide guidance on what is necessary from the state elections office or the test lab to complete the installation as specialized equipment may be required.

Networking

Never connect a voting system component to any network that is not under the elections office's direct control. Election officials should seal all unused connections on the system, precluding unapproved network, modem, USB, parallel, or other port connectivity.

Wireless networking capabilities (Wi-Fi) should be disabled to the greatest extent possible such as removing drivers, disabling Wi-Fi networking, and ensuring only system administrators have access to enable any Wi-Fi functionality.

The possibility of fraudulently altering voting system software is based on the assumption that hackers have access to the system. Election officials can mitigate this type of attack by never connecting the voting system to a network that is not under the officials' complete control. Such networks include the internet and any local network, unless it is wholly contained within the elections office, controlled by a trusted organization, and segregated from all other networks.

Modem Transmission of Unofficial Results

If modems are used to transmit polling place results to the central office, consider these results unofficial, and always verify them against the results on the media that is physically transported to the central office.

Jurisdictions may authorize the use of modems to transmit results on election night. Caution must be exercised if they are to be used. While compromising these communications or the devices connected to them is not trivial, sophisticated malicious actors such as nation-states have these capabilities and present a credible threat. These modems should not be connected or enabled until all other operations on the voting device have been completed, such as closing polls and printing results from each device. Delaying the connection can help ensure that election officials can compare the original results reports from each device with the transmitted results as part of an audit process. Election officials should always compute the official results from the media that poll workers physically transport from the polling place to the central office.

Audit Data

A voting system has several different audit logs. These logs record each event that occurs on the system from the time used to initially begin an election until the final vote tally and the devices are shut down. Audit logs on precinct-based voting equipment begin when the election media is inserted into the device until the election is closed and the equipment is shut down.

Election officials should review the audit log documentation or obtain a complete description of audit log codes or descriptions from the voting system manufacturer for the audit logs available on the voting system. Election officials should become familiar with the content of these logs and learn how to print them out. Familiarization will help officials recognize events that look anomalous or that they do not belong.

The Federal Election Commission (FEC) adopted the first formal set of voluntary federal standards for computer-based voting systems in January 1990, but there was no national program or organization to test and certify such systems to these standards. However, in 1994, the National Association of State Election Directors (NASED) stepped up to fill this void. NASED is an independent, nongovernmental organization of state election officials. This organization formed the country's first national program to test and qualify voting systems to the new federal standards. On a strictly voluntary basis, the organization worked for more than a decade to help ensure the reliability, consistency, and accuracy of voting systems fielded in the United States. In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA), which created the U.S. Election Assistance Commission (EAC) and assigned it the responsibility for setting voting system standards and providing for the testing and certification of voting systems. This mandate represented the first time the federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC developed the Voting System Testing and Certification Program (the Program).

HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories." The EAC has the sole authority to grant certification or withdraw certification at the Federal level, including the authority to grant, maintain, extend, suspend, and withdraw the right to retain or use any certificates, marks, or other indicators of certification. Since elections are decentralized throughout the country, the Program administers the only uniform federal requirements for voting systems. Therefore, voluntarily participating in the Program is a foundational tool for ensuring that federally certified voting systems are accessible, secure, and reliable across the United States.

Pursuant to the authority granted under HAVA, the EAC has developed and promulgated the EAC Voting System Testing and Certification Program Manual, which provides the procedural requirements of the Program.

Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for all participants.

The primary purpose of the EAC Testing and Certification Program Manual is to provide clear procedures to voting system manufacturers for the testing and certification of voting systems to specified federal standards consistent with the requirements of HAVA Section 231(a)(1). The program, however, also serves to do the following:

- Support state certification programs
- Support local election officials with acceptance testing, pre-election system verification, or logic an accuracy testing
- Increase quality control in voting system manufacturing
- Increase voter confidence in the use of voting systems

Voluntary Voting System Guidelines

Voluntary Voting System Guidelines (VVSG) are a set of requirements that voting systems, including voting devices and software, must meet to receive a certification from the EAC.

The VVSG covers pre-voting, voting, and post-voting operations consistent with the definition of a voting system in HAVA Section 301, which defines a voting system as "the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment), that is used to define ballots; to cast and count votes; to report or display election results; and to maintain and produce any audit trail information."²

The VVSG includes guidance regarding design, quality, security, transparency, interoperability (VVSG 2.0), accessibility, privacy, usability, auditability, secrecy, access control, physical security, data protection, system integration, detection, and monitoring of voting systems.

¹ 52 U.S.C. 20971(a)(1).

² 52 U.S.C. 21081(b).