

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S. Tejon St. Colorado Springs CO 80903	
Petitioners: TIMOTHY J. KIRKWOOD and PAUL T. PRENTICE v. Respondents: HOLLY WILLIAMS, CARRIE GEITNER, STAN VANDERWERF, LONGINOS GONZALEZ, JR. and CAMI BREMER in their official capacities as members of Respondent BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY; and CHUCK BROERMAN, in his official capacity as County Clerk and Recorder	COURT USE ONLY
Petitioners' Attorney: John Case, Atty reg. # 2431 John Case, P.C. 6901 S. Pierce St. #340 Littleton CO 80128 Phone: (303) 667-7407 FAX: (303) 648-4786 E-mail: brief@johncaselaw.com	Case No: 2022CV031462 Div: 21
SUBPOENA TO TESTIFY AND PRODUCE DOCUMENTS	

TO: Jena Griswold, 1700 Broadway, Suite 550 Denver CO 80290 in her official capacity as Colorado Secretary of State, or her designated representative(s) who have knowledge of the matters and documents listed below.

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at trial in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

DATE: October 17, 2022
TIME: 8:30 a.m.
LOCATION: 270 S. Tejon St., Division 21, Colorado Springs CO 80903

TOPICS ABOUT WHICH WITNESS WILL TESTIFY

1. On or about June 1, 2021, agents of the Secretary of State (hereafter “Secretary”) and employees of Dominion Voting Systems, installed a software upgrade of the El Paso County voting system called a “trusted build.”
2. Whether the Secretary backed up, copied, or imaged the hard drives of any El Paso County voting system components to preserve their contents before the trusted build upgrade was performed.
3. The software installed on the El Paso County voting system components was Dominion Voting System Democracy Suite 5.13-CO (hereafter “DVS 5.13”).
4. The software installed on the El Paso County voting system components on June 1, 2021, was identical to DVS 5.13 installed on the Mesa County voting system components in May of 2021.
5. The software installed on the El Paso County voting system components on June 1, 2022, was identical to DVS 5.13 installed on the Elbert County voting system components on August 28, 2021.
6. Images of the Mesa County election management server (hereafter “EMS”) that were posted on the internet on or about August 1, 2021 were authentic copies of the Mesa County EMS.
7. Performance of the 2021 trusted build reformatted the hard drive of the El Paso County voting system EMS.
8. The trusted build effectively deleted all information that was present on the El Paso County EMS hard drive before the trusted build.
9. As delivered, the June 1, 2021, trusted build that installed DVS 5.13 EMS software also installed Windows Server 2016 operating system (hereafter “Operating System”) that is configured for a maximum log file size of 20 megabytes.
10. Both the DVS Democracy Suite versions 5.11-CO and 5.13-CO contain this same 20 MB configuration maximum log file size limit.
11. The Operating System installed on the EMS hard drive records log file content that shows external connections to the EMS Server.
12. The Operating System installed on the EMS hard drive records log file content that shows detailed software executions.
13. The Operating System installed on the EMS hard drive records log file content that shows alterations and deletions of files.

14. The Operating System installed on the EMS hard drive overwrites older log file content with more recent log file content.
15. DVS 5.13 contains an “EMS logger” program.
16. The EMS logger program omits information about external connections to the EMS Server, detailed software executions, and alterations and deletions of files.

DOCUMENTS THAT MUST BE PRODUCED

You are hereby commanded to produce at 8:30 a.m. October 19, 2022, in Division 21 of the above Court, originals and two copies of the following documents in your custody, possession, or control. Please produce each numbered document set in a tabbed 3-ring binder with numbered dividers separating each numbered request.

1. All documents related to the trusted build of the El Paso County voting system on or about June 1, 2021.
2. All documents related to any back up, copying, or imaging of the hard drives of any El Paso County voting system components to preserve their contents before the trusted build upgrade was performed.
3. Documents showing that the software installed on the El Paso County voting system components was Dominion Voting System Democracy Suite 5.13-CO (hereafter “DVS 5.13”).
4. Documents showing that the software installed on the El Paso County voting system components on June 1, 2021, was identical to DVS 5.13 installed on the Mesa County voting system components in May of 2021.
5. Documents showing that the software installed on the El Paso County voting system components on June 1, 2022, was identical to DVS 5.13 installed on the Elbert County voting system components on August 28, 2021.
6. Documents showing that the images of the Mesa County election management server (hereafter “EMS”) that were posted on the internet on or about August 1, 2021 were authentic copies of the Mesa County EMS.
7. Documents showing that installation of the 2021 trusted build reformatted the hard drive of the El Paso County voting system EMS.
8. Documents showing that the trusted build effectively deleted all information that was present on the EMS hard drive before the trusted build.

9. Documents showing that as delivered, DVS 5.13 EMS software includes Windows Server 2016 operating system (hereafter “Operating System”) that is configured for a maximum log file size of 20 megabytes.
10. Documents showing that both the DVS Democracy Suite versions 5.11-CO and 5.13-CO contain this same 20 MB configuration maximum log file size limit.
11. Documents showing that the Operating System installed on the EMS hard drive records log file content that shows external connections to the EMS Server.
12. Documents showing that the Operating System installed on the EMS hard drive records log file content that shows detailed software executions.
13. Documents showing that the Operating System installed on the EMS hard drive records log file content that shows alterations and deletions of files.
14. Documents showing that the Operating System installed on the EMS hard drive overwrites older log files with more recent log files.
15. Documents showing that DVS 5.13 contains an “EMS logger” program.
16. Documents showing that the EMS logger program omits information about external connections to the EMS Server, detailed software executions, and alterations and deletions of files.
17. All documents related to the Secretary’s investigation of the Election Complaint of Timothy Kirkwood filed September 27, 2022.

The following provisions of C.R.C.P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (f), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Respectfully submitted October 3, 2022, 2022

JOHN CASE, P.C.
Counsel for Petitioners

s/John Case
John Case, #2431

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

(2) Command to Produce Records or Tangible Things.

(A) Attendance Not Required. A person commanded to produce records or tangible things need not attend in person at the place of production unless also commanded to attend for a deposition, hearing, or trial.

(B) For Production of Privileged Records.

(i) If a subpoena commands production of records from a person who provides services subject to one of the privileges established by *C.R.S. § 13-90-107.*, or from the records custodian for that person, which records pertain to services performed by or at the direction of that person ("privileged records"), such a subpoena must be accompanied by an authorization signed by the privilege holder or holders or by a court order authorizing production of such records.

(ii) Prior to the entry of an order for a subpoena to obtain the privileged records, the court shall consider the rights of the privilege holder or holders in such privileged records, including an appropriate means of notice to the privilege holder or holders or whether any objection to production may be resolved by redaction.

(iii) If a subpoena for privileged records does not include a signed authorization or court order permitting the privileged records to be produced by means of subpoena, the subpoenaed person shall not appear to testify and shall not disclose any of the privileged records to the party who issued the subpoena.

(C) Objections. Any party or the person subpoenaed to produce records or tangible things may submit to the party issuing the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials. The objection must be submitted before the earlier of the time specified for compliance or 14 days after the subpoena is served. If objection is made, the party issuing the subpoena shall promptly serve a copy of the objection on all other parties. If an objection is made, the party issuing the subpoena is not entitled to inspect, copy, test or sample the

materials except pursuant to an order of the court from which the subpoena was issued. If an objection is made, at any time on notice to the subpoenaed person and the other parties, the party issuing the subpoena may move the issuing court for an order compelling production.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On motion made promptly and in any event at or before the time specified in the subpoena for compliance, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to attend a deposition in any county other than where the person resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion made promptly and in any event at or before the time specified in the subpoena for compliance, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific matters in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45 (c)(3)(B), the court may, instead of quashing or modifying a subpoena, order attendance or production under specified conditions if the issuing party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to Subpoena.

(1) Producing Records or Tangible Things.

(A) Unless agreed in writing by all parties, the privilege holder or holders and the person subpoenaed, production shall not be made until at least 14 days after service of the subpoena, except that, in the case of an expedited hearing pursuant to these rules or any statute, in the absence of such agreement, production shall be made only at the place, date and time for compliance set forth in the subpoena; and

(B) If not objected to, a person responding to a subpoena to produce records or tangible things must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand and must permit inspection, copying, testing, or sampling of the materials.

(2) Claiming Privilege or Protection.

(A) Information Withheld. Unless the subpoena is subject to subsection (c)(2)(B) of this Rule relating to production of privileged records, a person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) make the claim expressly; and

(ii) describe the nature of the withheld records or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) [Effective Until March 1, 2022.] Subpoena for Deposition; Place of Examination.

(1) [Effective Until March 1, 2022.] Residents of This State. A resident of this state may be required by subpoena to attend an examination upon deposition only in the county wherein the witness resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

(2) [Effective Until March 1, 2022.] Nonresidents of This State. A nonresident of this state may be required by subpoena to attend only within forty miles from the place of service of the subpoena in the state of Colorado or in the county wherein the nonresident resides or is employed or transacts business in person or at such other convenient place as is fixed by an order of court.

(e) [Effective March 1, 2022.] Subpoena for Deposition.

(1) [Effective March 1, 2022.] Residents of This State. A resident of this state may be required by subpoena to attend an examination upon deposition only in the county wherein the witness resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court.

(2) [Effective March 1, 2022.] Nonresidents of This State. A nonresident of this state may be required by subpoena to attend only within forty miles from the place of service of the subpoena in the state of Colorado or in the county wherein the nonresident resides or is employed or transacts business in person or at such other convenient place as is fixed by an order of court.

(3) [Effective March 1, 2022.] Subpoena for deposition of an organization. A subpoena commanding a public or private corporation, partnership, association, governmental agency, or other entity to attend and testify at a deposition is subject to the requirements of Rule 30(b)(6). Responses to such subpoenas are also subject to Rule 30(b)(6).

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45 (e).

CERTIFICATE OF SERVICE

The undersigned certifies that on October 4, 2022 he filed and served the foregoing document via ICCES to the following:

Clerk of the District Court of El Paso County
270 S. Tejon St.
Colorado Springs CO 80903

Nathan Whitney
First Assistant County Attorney
Steven Klaffky
Chief Deputy County Attorney
Steven Martyn, #47429
Assistant County Attorney
200 S. Cascade Ave.
Colorado Springs, CO 80903

s/John Case _____
John Case