

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

GERALDINE THOMPSON, et al.,

CASE NO. 2020 CA 001238

Plaintiffs,

v.

LAUREL LEE, et al.,

Defendants.

**COUNTY SUPERVISORS' JOINT RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY INJUNCTION¹**

Plaintiffs, a small collection of Florida voters and state representatives/candidates, along with the Florida Democratic Party, seek to upend the process by which all Florida County Supervisors of Elections conduct the processing and tabulation of votes in elections through this last-minute public action on the eve of the August 18, 2020, Primary Election, by requiring a cherry-picked selection of eight Supervisors of Elections,² primarily from the largest counties in Florida, to save and retain surplus digital copies of original paper ballots on certain digital ballot tabulation devices. Plaintiffs allege that they bring this cause of action to ensure their “right to a fair and accurate election,” but their belated filing of this case, and their strained reading of

¹ This response is not intended to waive County SOEs’ home venue privilege asserted in their August 3, 2020, Motion to Dismiss.

² The eight named Supervisors of Elections are Peter Antonacci, in his capacity as Broward County Supervisor of Elections; Bill Cowles, in his capacity as Orange County Supervisor of Elections; Tommy Doyle, in his capacity as Lee County Supervisor of Elections; Mike Hogan, in his capacity as Duval County Supervisor of Elections; Craig Latimer, in his capacity as Hillsborough County Supervisor of Elections; Wendy Sartory Link, in her capacity as Palm Beach County Supervisor of Elections; Julie Marcus, in her capacity as Pinellas County Supervisor of Elections; and Christina White, in her capacity as Miami-Dade County Supervisor of Elections (collectively, the “Supervisor Defendants”).

Florida's public records law, will have the opposite result. (Compl. at ¶ 100.) As demonstrated below, Plaintiffs' request to preserve duplicative information that serves no archival role in the official election process and is not permitted to be used pursuant to Florida Law in either the official recount or audit of the elections will harm the actual and official tally of the election. For large counties with long ballots and lengthy voter rolls, the increase in data collection, coupled with the relatively small capacity of the equipment to store such information, risks the loss of official election data and will cause delays in the reporting of election results.

Moreover, even if such relief were not independently harmful to the election, the timing of this relief presents its own impossible challenges. The Supervisor Defendants (along with the 59 additional Florida Supervisors of Elections that Plaintiffs did not name as defendants (despite the fact that many are acting in the same manner as the Supervisor Defendants on the matters at issue in this case) are each trying to run these elections smoothly, all in the midst of an unprecedented global pandemic. The Supervisor Defendants are conducting the August 18 Primary Election, while simultaneously preparing for the November 3 General Election. (Declaration of the Supervisor Defendants ¶ at 29, attached as Exhibit A) (the "Supervisors' Declaration").³

For purposes of the August 18 Primary Election and as of the date of this filing, hundreds of thousands of Vote-by-Mail ballots have been returned by Florida voters to the Supervisor Defendants, which is likely to be the most Vote-by-Mail ballots ever recorded, and those ballots are already being tabulated for the August election with tens of thousands more arriving every day. (*Id.* at ¶¶ 24-25.) All of the Supervisor Defendants have conducted logic and accuracy testing, pursuant to section 101.5612, Florida Statutes, for the thousands of ballot scanners and tabulators

³ Unless otherwise stated, the citations will be to the Declaration of Christina White, the Miami-Dade County Supervisor of Elections, to avoid lengthy string cites. The other supervisors, unless stated otherwise, are factually similar.

being utilized in the August 18, 2020, Primary Election. (*Id.* at ¶ 26.). All of the ballot scanners and tabulators at issue in this action have already been deployed to early voting sites in all of the Supervisor Defendants’ counties for early voting, and early voting has in fact already commenced or is about to commence in each of these counties. (*Id.* at ¶ 26.)

By the time of the hearing on Plaintiffs’ Motion, the Supervisor Defendants will have deployed thousands of ballot scanners and tabulators to the thousands of election day polling places in their respective counties. (*Id.* at ¶¶ 23-26.).

For purposes of the November 3 General Election, during the month of September, the Supervisor Defendants need to prepare the ballots for their respective counties, send ballots to overseas voters, commence sending domestic voters their Vote-by-Mail ballots, and program thousands of digital vote tabulation machines to be used in the General Election. *See* Florida Department of State Election Dates and Activities Calendar, rev. 07/2020 (available at <https://dos.myflorida.com/media/703309/final-elections-calendar-2019-2021-updated-20200722.pdf>).

Adding a monumental new issue—Plaintiffs’ demand that Supervisors save digital copies of original paper ballots, which as stated in this Response below is both technically and financially impossible at this time—would create chaos for both the August Primary Election and the November General Election. (Supervisors’ Declaration at ¶ 38.)

As such, Plaintiffs’ Motion for Temporary Injunction (“Motion”) demanding (a) a declaration that certain duplicative digital ballot copies of original paper ballots constitute “public records” within the meaning of Chapter 119, Florida Statutes; (b) a temporary injunction requiring the Secretary of State and Director of the Florida Division of Elections “to promulgate a rule, or otherwise issue instructions, to be in effect prior to the county Logic & Accuracy (L&A) tests for

the August 18, 2020 Primary Elections . . . requiring all Supervisors of Elections across the State of Florida to preserve digital ballot images that are automatically created by digital voting equipment for the 2020 primary and general elections, as well as other elections in the future, as required by law”; and (c) a temporary injunction requiring the Supervisor Defendants “to preserve all digital ballot images, and to make those images available upon the filing of records requests” must be denied. (*See Mot.at p. 29.*)

Plaintiffs have not and cannot satisfy the legal requirements for issuance of a temporary injunction. They have not shown that they are substantially likely to succeed on the merits of their claims; or that they will suffer irreparable injury if an injunction is not granted; or that the public interest will be served by granting the injunction they seek. They have also failed to properly join all of the Supervisors of Elections and have not diligently pursued this action so as to allow for the orderly process of the 2020 Primary and General Election.

STATEMENT OF THE FACTS

1. The Supervisor Defendants each utilize DS200 digital tabulation machines (“DS200 Machines”) manufactured by Electronic Systems and Software (“ES&S”) for the tabulation of Vote-by-Mail paper ballots, early voting paper ballots, and election day paper ballots. (Supervisors’ Declaration at ¶ 12.)

2. Collectively, the Supervisor Defendants own and will utilize thousands of DS200 Machines for purposes of the August Primary Election and November General Elections. (*Id.* at ¶¶ 23, 27.)

3. The DS200 Machines use external storage devices in the form of USB drives. (*Id.* at 13.)

4. The DS200 machines can be programmed in advance of an election to (a) save a complete digital image of each voted paper ballot, (b) only save a digital image of the portion of a ballot where the voter made a write-in selection, or (c) not save any digital images as unneeded duplicates of voted paper ballots. (*Id.* at 12; (Declaration of the Supervisor Employees at ¶ 6, attached as Exhibit B (“Supervisor Employees’ Declaration”))).⁴

5. All digital images are saved on to ES&S proprietary encrypted USB flash memory drives, which range in size from one to eight gigabytes (Supervisors’ Declaration at ¶ 13.)

6. Each DS200 Machine is “married” to a specific encrypted USB drive for each election at the time of programming and, once the machine has been programmed, no other USB drive can be used in that machine in that election without reprogramming the DS200 Machine. (Declaration of Luis Torres at ¶ 8, attached as Exhibit C (“Torres Declaration”)).

7. During the use of the DS200 Machines in an election, the attached USB drive stores both the tabulation of the votes from the original paper ballots scanned into the machine and any digital ballot image copies of the original paper ballots the machine has been programmed to store until the device reaches its memory capacity. (*Id.* at ¶ 9.)

8. Once a DS200 Machine’s USB drive is full, the machine can no longer be used in that election and must be replaced with a different machine and its “married” USB flash memory drive or the machine would need to be reprogrammed “on the fly” at a polling site to accept a new USB flash memory drive. (*Id.* at ¶ 10.)

9. The Florida Department of State has certified ES&S’s DS200 Machines and three sizes of their proprietary USB flash drives (1 GB, 4 GB, and 8 GB) for use by the Supervisor

⁴ Unless otherwise stated, the citations will be to the Declaration of Heather Hains to avoid lengthy string cites. The other supervisors, unless stated otherwise, are factually similar.

Defendants in elections. No larger capacity USB drive has been certified. (*Id.* at ¶ 14; Supervisor Employees Declaration at ¶ 13.)

10. Pursuant to Florida Statutes section 101.294(1), the Supervisor Defendants are prohibited from using digital vote tabulation equipment and corresponding memory devices that have not been certified by the Florida Secretary of State.

11. Each DS200 Machine costs approximately \$5,000. Each eight (8) gigabyte USB drive costs \$210.00. (Antonacci Affidavit at ¶ 30.)

12. If every DS200 Machine was programmed to save digital copies of the original paper ballots scanned into it, a 1-gigabyte flash drive would only store approximately 1,925 ballot pages, a 4-gigabyte flash drive would only store 7,700 ballot pages, and an 8-gigabyte flash drive would only store 15,395 ballot pages. (Torres Declaration at ¶ 13.)

13. At the conclusion of voting, each DS200 Machine must be “closed out,” after which the ballot tabulation results stored on the attached USB flash memory drive are transmitted wirelessly to the Supervisor Defendants’ computer servers. (*Id.* at 14.)

14. If the DS200 Machine is programmed to store digital copies of the original paper ballots in its “married” USB drive, such data is stored in an encrypted format, which can only be read on a machine utilizing ES&S proprietary software, which is not available to the public. (*Id.* at ¶¶ 8, 14-15.)

15. In order to be viewable by anyone not using the ES&S proprietary software, digital ballot image copies of the original paper ballots would need to be converted into a new format by the Supervisor Defendants’ staff. (*Id.* at ¶ 16.)

16. It is estimated that for each 1,500 digital ballot page copies of the original paper ballots stored on a USB drive in a flash memory drive, it would take an additional 15 minutes for

each DS200 Machine to “close out” and commence transmitting data of the ballot results to the applicable Supervisor Defendant. (*Id.* at ¶ 17.)

17. Given that some polling places contain multiple DS200 Machines, this could delay the reporting of election day results by hours. (Supervisors’ Declaration at ¶ 18.)

18. Based on the number of pages in their ballots, none of the Supervisor Defendants would be able to store all digital ballot image copies of the original paper ballots in the August Primary, the November General Election, or both (with one exception) on the existing machines as currently provisioned. (See Supervisors’ Declaration at ¶¶ 27, 32, 38.)⁵

19. If the Supervisor Defendants were directed to store digital copies of the original ballot images on the USB flash memory drives of each DS200 Machine they used, the Supervisor Defendants would be required to obtain funding from their respective counties and purchase hundreds of additional DS200 Machines and 8 gigabyte USB flash drives, at an aggregate cost of *millions of dollars*. (Supervisors’ Declaration at ¶ 33.) This is assuming these machines and USB drives would be available, of which there is no guarantee. (*Id.*)

20. Additionally, and despite there being no legal requirement that they do so, the many Supervisor Defendants also use state-certified digital scanning equipment from Clear Ballot Group, Inc., which takes a digital scan of every original paper ballot cast by voters in their respective counties and stores them in a format that is made available to the public upon request

⁵ The Broward County Supervisor of Elections is storing the digital images for the August 2020 Primary Election because Broward County has a one-page ballot (front and back) and it planned far in advance to maintain the images. Broward County *cannot* do this for the 2020 General Election because it is expected to have a substantially larger ballot.

and viewable in the format in which it is stored by members of the public. (*Id.* at 22; Supervisor Employee at ¶ 11.)⁶

21. The current process regarding the storage of original paper ballots and the scanning of original paper ballots into the Clear Ballot machines limits the handling of ballots to authorized Supervisor of Elections voting staff. (Antonacci Affidavit at ¶ 23.)

22. The original **paper** ballot completed by hand by the voter is the official ballot cast by the voter, is a public record, and each and every Supervisor Defendant retains same for the 22-month period prescribed by law. Each of these original paper ballots is made available for public inspection upon request. (*Id.* at ¶ 10.)

LEGAL STANDARD

A temporary injunction is an extraordinary remedy that should be granted sparingly, and only after the moving party has alleged and proven facts entitling it to relief. *State of Fla. Agency for Health Care Admin. v. Continental Car Sers., Inc.*, 650 So. 2d 173 (Fla. 2d DCA 1995). The moving party bears a heavy burden in seeking to obtain an injunction. *See Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So. 2d 608 (Fla. 5th DCA 2007). The purpose of a temporary injunction is to *preserve the status quo* until the litigation is resolved on the merits. *Manatee County v. 1187 Upper James of Florida, LLC*, 104 So. 3d 1118 (Fla. 2d DCA 2012).

The moving party must establish that: (1) irreparable injury will result if the injunction is not granted; (2) there is no adequate remedy at law; (3) he or she has a clear legal right to the requested relief; and (4) the public interest will be served by the temporary injunction. *Ware v. Polk Cnty.*, 918 So. 2d 977 (Fla. 2d DCA 2005); *DiChristopher v. Board of Cnty. Comm'rs*, 908

⁶ Pinellas County, Orange County, and Miami-Dade County do not use Clear Ballot, nor are they required to do so under Florida Law.

So. 2d 492 (Fla. 5th DCA 2005). The third element appears to be interchangeable with the frequently cited element of “substantial likelihood of success on the merits.” *See Dragomirecky v. Town of Ponce Inlet*, 882 So. 2d 495 (Fla. 5th DCA 2004) (substituting substantial likelihood for success on the merits for the element of a clear legal right to the requested relief).

Moreover, even if a moving party has demonstrated entitlement to a temporary injunction, “[n]o temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined.” Fla. R. Civ. Pro. Rule 1.610.

ARGUMENT

I. PLAINTIFFS DO NOT HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Public Records Act Does Not Support Injunctive Relief.

1. Temporary Digital Images Existing for the Sole Purpose of Allowing a Machine to Tabulate Votes Are Not Public Records.

Plaintiffs allege in the Verified Complaint that the process of voting for most Floridians involves “digital scanning” (not digital vote casting) election equipment as follows: (1) a voter fills out a paper ballot; (2) the voter’s paper ballot is then fed into a digital scanner; (3) the digital scanner captures a temporary digital copy of the ballot to determine the voter’s intent; (4) the scanner tabulates the votes and moves on to the next ballot; and (5) the election official retains the original paper ballot. (*See* Compl. ¶¶ 18-19, 64; *id.*, Ex. 16 at 1.) Plaintiffs contend that these temporary digital copies are public records that the Supervisor Defendants are required to retain. This is incorrect. Digital image copies of the original paper ballot cast by a voter that are automatically generated for the sole purpose of allowing a machine to tabulate a ballot before being

cleared are not public records under the definition set forth in Chapter 119 and the case law construing it.

A “public record” is defined by statute as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” § 119.011(12), Fla. Stat. The Florida Supreme Court, in the seminal case of *Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.*, clarified this definition by explaining that not every document or material is a “public record”:

To give content to the public records law which is consistent with the most common understanding of the term “record,” we hold that a public record, for purposes of section 119.011(1),⁷ is any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.

379 So. 2d 633, 640 (Fla. 1980). “In *Shevin*, this Court rejected the . . . conclusion that ‘section 119.011(1) applies to almost everything generated or received by a public agency.’” *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003). For something to be a public record it (1) “must have been prepared ‘in connection with official agency business’” **and** (2) be “‘intended to perpetuate, communicate, or formalize knowledge of some type.’” *Id.*

Under this definition, materials that constitute “mere precursors of governmental ‘records’ and are not, in themselves, intended as final evidence of the knowledge to be recorded,” are not public records under Chapter 119. *Shevin*, 379 So. 2d at 640. Consistent with this principle, the Florida Administrative Code provides that “intermediate files,” *i.e.*, “temporary electronic files

⁷ The definition of “public records” was previously set forth in section 119.011(1), Florida Statutes. The definition is substantively similar to what appears in the present version of section 119.011, Florida Statutes.

used to create, correct, reorganize, update, or derive output from master data files,” are not public records but are instead “precursors of public records, and are not, in themselves, public records which must be retained.” § 1B-24.001, Fla. Admin. Code. Similarly, things like notes, rough drafts, tapes, or notes taken by a secretary in dictation, facsimiles that are photocopied and then destroyed, and machine-readable computer files are not public records despite perhaps being generated “in connection with the transaction of official business” of the government agency. *Id.*; *Scott v. Butterworth*, 734 So. 2d 391, 393 (Fla. 1999) (personal notes); *Mr. Thomas E. Shipp, Jr.*, Att’y Gen Op. 91-9, 1991 WL 528140 (Jan. 16, 1991) (facsimiles); *Honorable George Firestone*, Fla. Att’y Gen. Op. 85-87, 1985 WL 190067 (Oct. 25, 1985) (computer files).

A physical ballot itself is a public record because it memorializes the act of voting, *Rogers v. Hood*, 906 So. 2d 1220, 1223 (Fla. 1st DCA 2005). The tabulated result of the ballots counted on a DS 200 Machine is also retained as a public record because it memorializes the vote tally. However, a digital image that exists for a fraction of a second solely due to the technological machinations of ballot tabulation equipment is simply a precursor to a public record (the tabulated results). It is not a public record in and of itself under Chapter 119. This is because the Supervisor Defendants do not intend for digital images, which are immediately cleared after serving their function, to “perpetuate, communicate, or formalize knowledge of some type.” *Shevin*, 379 So. 2d at 640. Instead, the Supervisor Defendants maintain the actual, physical ballot and the data files of the tabulated results from those physical ballots and not some digital facsimile as the “final evidence of the knowledge to be recorded.” *See id.* at 640. The physical paper ballot is required by Florida Law to conduct recounts and to audit the vote, and is, therefore, kept for twenty-two months in accordance with applicable law. The digital ballot image copies, however, do not currently serve any benefit to the Supervisor Defendants other than their near-instantaneous use as

part of the tabulation process of the original paper ballots cast by the voter, so they are immediately cleared once they have served that purpose.

No statute or rule mandates the Supervisor Defendants to create a public record; nor does any statute or rule designate digital ballot image copies of paper ballots as public records. Plaintiffs tacitly concede these points by seeking to compel the Secretary of State to adopt a rule requiring the supervisors of election across the state to maintain the digital ballot images. (Compl. ¶¶ 104, 114; Mot. at p. 29.) If supervisors of election were truly required already to preserve these images, then such a rule would be unnecessary.

Ultimately, Plaintiffs' argument is that digital ballot images *should* be public records because making them so would benefit the integrity of the election. (Compl. ¶ 4-8, 52-83; Mot. ¶¶ 5, 53, 85, 97). In support of this policy argument, Plaintiffs rely on various (irrelevant) witness opinions, which assert that digital images are “an absolute record” that “must be saved as long as the original paper ballots are retained.” (Mot. ¶¶ 37, 44.) But something is not a public record merely because someone *thinks* a document is important, valuable, or beneficial. *See, e.g., Scott v. Butterworth*, 734 So. 2d 391, 393 (Fla. 1999) (prisoner sentenced to death cannot obtain prosecutor's notes); *Bryan*, 692 So. 2d 878, 880-82 (1997). As noted above, what constitutes a public record “is a question of law,” and no law mandates the Supervisor Defendants to retain and create such a record even if Plaintiffs think it would make good policy sense to do so. *See Seigle v. Barry*, 422 So. 2d 63, 65-66 (Fla. 4th DCA 1982) (stating public entities are not required to create public records).

Whether Plaintiffs' view is wise or would be good public policy is a matter for the Legislature, not the courts. *See State v. Barquet*, 262 So. 2d 431, 433 (Fla. 1972); *City of Daytona Beach v. Palmer*, 469 So. 2d 121, 123 (Fla. 1985). In fact, during the most recent legislative

session, the Legislature enacted Laws of Florida 2020-109, which goes into effect in 2021. Under this new law, Supervisors may (but are not obligated to) use digital ballot images for purposes of a manual recount. *See* Laws of Fla. 2020-109, §5. Thus, the Legislature had the opportunity to require that digital ballot images be made, used, and preserved but opted not to do so. This Court cannot add provisions to the statute not placed there by the Legislature. *See Hayes v. State*, 750 So. 2d 1, 4 (Fla. 1999).

Currently, nothing in Florida law requires the Supervisor Defendants to create a public record by storing digital images for later review. Consequently, Plaintiffs have no likelihood of success on the merits of their claim and their injunction must be denied on this ground alone.

2. GS3 Election Records Item #113 Permits a Digital Ballot to Be Destroyed Because It Is a Duplicate Without Any Administrative Value.

Plaintiffs assert that the General Records Schedule GS3 for Election Records requires preservation of the digital ballots. (Mot. ¶¶ 69, 71, 81, 83.) This contention expresses a fundamental misunderstanding of the Public Records Act. GS3 is a *record retention schedule*—it applies *if and only if* the digital image is a public record; a record retention policy does not itself establish what is, or is not, a public record. *See* § 119.021(2)(a), Fla. Stat. (“The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process **for public records.**”) (emphasis added). Moreover, even if a temporary digital ballot image copy of the original paper ballot was a public record, it can be immediately deleted after it serves its administrative purpose because the digital image is a duplicate of the physical ballot.

Section 257.37, Florida Statutes, vests the Division of Library and Information Services of the Department of State (the “Division”) with authority to “[e]stablish and administer a records management program directed to the application of efficient and economical management methods

relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.” § 257.37(1)(a), Fla. Stat.; *see also* § 119.021(2)(a), Fla. Stat. (“The Division of Library and Information Services of the Department of State shall adopt rules to establish retention schedules and a disposal process for public records.”). The Division has promulgated General Records Schedule GS3 for Election Records Item #113, which provides:

BALLOT IMAGE FILES

Item #113

This record series contains records of the content of each ballot cast on an electronic voting system. To protect voter privacy, the stored files are randomly sorted so that the ballots cannot be matched to the voting system transaction logs. Electronic media such as memory card chips can be cleared for next election provided ballot image files are printed out and retained in accordance with retention schedule. The retention period is based on Title 42, U.S.C. 1974,⁸ Retention and preservation of records and papers by officers of elections.

RETENTION:

a) Record copy. 22 months after certification of election.

b) Duplicates. *Retain until obsolete, superseded, or administrative value is lost.*

General Records Schedule GS3 for Election Records, page 3 (February 2015), *available at* <https://dos.myflorida.com/media/693583/g303.pdf> (“GS3”) (emphasis added.)

The digital images created by the DS200 Machines are exact duplicates of the original voter-cast physical paper ballots. (Supervisors’ Declaration at ¶ 12; Supervisor Employee Declaration at ¶ 8.) Consequently, under GS3 item #113 they need only be retained “until obsolete, superseded, or administrative value is lost.” *See also* 1B-24.003, Fla. Admin. Code (“Agencies are not required to document the disposition of records with a retention of “Retain until obsolete, superseded or administrative value is lost . . .”). GS3 incorporates GS1- SL. GS3 page i, v. GS1-SL explains that the phrase “Retain until obsolete, superseded, or administrative value is lost” means:

With this retention, a record is eligible for disposition whenever it is no longer of any use or value *to the agency* or when it has been replaced by a more current

⁸ 42 U.S.C. § 1974 was subsequently recodified as 52 U.S.C. § 20701.

record. The retention could vary *from less than one day* to any length of time thereafter.

General Records Schedule GS1-SL for State and Local Government Agencies, page vi (August 2017), *available at* <https://www.flrules.org/Gateway/reference.asp?No=Ref-08488>. (emphasis added).

Digital tabulators like the DS200 Machines use digital ballot images for the single purpose of allowing the machine to read a physical ballot. (Supervisors' Declaration at ¶¶ 20-21.) These digital images serve no other administrative purpose and Plaintiffs have identified none. As such, once the digital images have served their purpose, they can be cleared because an identical original (the physical ballot) remains. GS3 at pg. 3.

Plaintiffs offer various reasons why they think these digital images are valuable. Plaintiffs assert that digital images establish a “chain of custody” (Compl. ¶ 4; Mot. ¶ 20), and that they assure the “accuracy of the vote count” (Compl. ¶ 5; Mot. ¶ 21). As explained in GS1-SL, however, the “administrative value” is “*to the agency*”—not any interested person or group (emphasis added). Plaintiffs have not identified how the digital images have any “administrative value” to the Supervisor Defendants. Nor can they, because these images are useful to the administrative process for only the fifth of a second that it takes to read the information on the physical ballot. (Supervisors' Declaration at ¶¶ 20-21.)

In addition, several Supervisor Defendants, though they are not required to, have also created a digitized duplicate electronic ballot for auditing purposes through the Clear Ballot system. (*Id.* at 22; Supervisor Employees' Declaration at ¶ 11.) The digitized duplicate (an exact copy of what the tabulator could store if programmed to do so) is available for inspection and review and is maintained as a public record. Thus, Plaintiffs are demanding the creation of digital copies of the same ballot. The public records laws do not require the Supervisor Defendants to

create numerous redundant duplicate ballots in multiple formats. In fact, GS3 specifically permits any duplicates to be destroyed.

Therefore, even if these temporary images are “public records,” GS3 permits them to be deleted because they are exact duplicates of the original physical paper ballot.

3. Federal Law Does Not Provide Justification for an Injunction

Plaintiffs also argue that each Supervisor Defendant is required to store a digital ballot image under 52 U.S.C. § 20701, which provides:

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 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.

While Plaintiffs’ Complaint attempts to dress up this federal claim in state law clothing (Compl. ¶ 98), Plaintiffs’ Motion removes all pretense (Mot. ¶¶ 16, 17, 20, 45, 69-73, 78, 80-81, 84.) As succinctly stated by Chief Judge Walker just last year, “[i]n a word, 52 U.S.C. § 20701 does not confer a private right of action on Plaintiffs.” *See Fox v. Lee*, Case No. 4:18cv529-MW/CAS, slip op. at 2 (N.D. Fla. April 2, 2019). Chief Judge Walker further explained that section 52 U.S.C. § 20701 is actionable *only* by the United States Attorney General. *See id.* at 2-3. Chief Judge Walker’s conclusion is consistent with Florida Law under which “a statutory violation does not give rise to a private cause of action absent a clear legislative intent to do so.” *See Wolicki-Gables v. Doctors Same Day Surgery Ctr. Ltd.*, 216 So. 3d 665, 673 (Fla. 2d DCA

2017) (violations of a federal regulatory statute do not give rise to a private right of action absent legislative intent).⁹

In any case, any claim that the Supervisor Defendants have violated federal law would fail on the merits. 52 U.S.C. § 20701 was originally enacted as Title III of the Civil Rights Act of 1960. *See* Civil Rights Act, Pub. L. 86-449, Title III, § 301, May 6, 1960, 74 Stat. 88. The purpose of Title III is to enable the United States Attorney General to determine whether *registration practices* conform to constitutional principles. *See Kennedy v. Lynd*, 306 F.2d 222, 226 (5th Cir. 1962). Thus, Title III of the Civil Rights Act of 1960 requires preservation of “all records and papers which come into his possession any application, registration, . . . or *other act requisite to voting in such election.*” (emphasis added). A digital copy of an original paper ballot is not an application or registration, nor is it an “*act requisite to voting.*” *Id.* Therefore, Title III of the Civil Rights Act of 1960 does not require the Supervisor Defendants to maintain all documents or computer files associated with counting ballots *after* someone has voted.

Therefore, Plaintiffs’ argument is inconsistent with both the purpose and plain language of Title III of the Civil Rights Act of 1960.

II. PLAINTIFFS WILL NOT SUFFER IRREPARABLE HARM IF INJUNCTIVE RELIEF IS NOT GRANTED.

Plaintiffs’ purported injury is not the Supervisor Defendants’ failure to preserve a verifiable public record of the election, but rather the Supervisor Defendants’ decision to not maintain an extraneous digital copy of a public record and then convert it to the alternative format that Plaintiffs prefer. Although Florida law affords Plaintiffs access to the original voted paper ballots at any

⁹ Florida law does not create a cause of action to enforce 52 U.S.C. § 20701 either. The record retention policy, GS3 item #113, *references* federal law, but does not affirmatively obligate public entities to preserve materials not otherwise subject to the Public Records Act.

reasonable time, Plaintiffs have invented an illusory harm stemming from the form of the record, not its absence. Simply put, Plaintiffs are not irreparably harmed by not having access to digital copies of the actual paper ballots that will be cast in this year's election.

Plaintiffs assert that injunctive relief is necessary to “prevent the destruction of these ballot images in the August 18 and November 3, 2020 elections” and that “the non-preservation of these ballot materials cannot be cured once destruction overwriting has begun.” (Mot. ¶¶ 7, 74, 89.) These claims are incorrect. As explained in section I above, the ballot image created on the DS200 Machine is simply a temporary copy of the original paper ballot, which is preserved and available for inspection as required by law.

Plaintiffs' contention that there will be no record of how voters in Florida voted unless temporary ballot images are preserved is without merit. The voted paper ballots, which are the only official record of the election and the original documents showing each vote, are available whether or not a particular ballot image is preserved. This case will not impact that. Indeed, Florida law provides a process for public inspection of ballots. Section 101.572, Florida Statutes specifically provides,

The official ballots and ballot cards received from election boards and removed from vote-by-mail ballot mailing envelopes shall be open for public inspection or examination while in the custody of the supervisor of elections or the county canvassing board at any reasonable time, under reasonable conditions; however, no persons other than the supervisor of elections or his or her employees or the county canvassing board shall handle any official ballot or ballot card. If the ballots are being examined prior to the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates whose names appear on such ballots or ballot cards by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

This process not only allows Plaintiffs or any interested party to review the ballots; it also provides for specific conditions designed to ensure the security of the ballots themselves.

Moreover, the accuracy and reliability of the election equipment are tested at the beginning of every election through the logic and accuracy test conducted pursuant to section 101.5612, Florida Statutes, and the post-election audit conducted pursuant to section 101.591, Florida Statutes. The fact that Plaintiffs are unable to conduct their own unauthorized, unsupervised, and unregulated audit of ballots because the Supervisor Defendants do not provide them with an opportunity to possess voted ballots in an alternative format cannot form the basis of any independent injury, let alone irreparable harm. In fact, to the extent some Supervisor Defendants utilize the Clear Ballot system for post-election audits, those digital ballot images, which have independent administrative value, are preserved. (Supervisors' Declaration at ¶ 23.)

Accordingly, Plaintiffs have failed to meet their burden of showing that they will suffer irreparable harm if an injunction is not issued.

III. PLAINTIFFS HAVE FAILED TO DEMONSTRATE AN INADEQUATE REMEDY AT LAW

Plaintiffs erroneously assert that they “have no adequate remedy at law because once the digital ballot images are destroyed and not preserved, they are forever lost, depriving plaintiffs of any remedy whatsoever.” (Mot. ¶ 27.) As explained *supra*, this is simply not true. The ballot images are merely a duplicate of the original voted paper ballots that are retained by the Supervisor Defendants in accordance with Florida law. Plaintiffs may easily inspect all voted paper ballots or copies of ballot cards, which are “open for public inspection or examination while in the custody of the supervisor of elections or the county canvassing board at any reasonable time, under reasonable conditions.” § 101.572, Fla. Stat. Should Plaintiffs be prohibited from inspecting these public records, they may seek recourse in the appropriate circuit court to compel compliance. Because Florida law provides an enforceable statutory right to review the official records of the

election, Plaintiffs possess an adequate remedy at law to permit the “confirmation, verification, and post-election audit of election results” they demand. (Mot. ¶ 91.)

IV. AN INJUNCTION WOULD BE A DISSERVICE TO THE PUBLIC INTEREST.

A. The Public Interest Would Not Be Served by a Drastic Change of the Status Quo in the Middle of an Election.

Not only would Plaintiffs’ requested injunctive relief not serve the public interest, granting an injunction at this stage in the 2020 election process would be a disservice to the public. Plaintiffs cannot contest the fact that as defined by law, a ballot is “the card, tape or other vehicle upon which the elector’s choices are recorded.” § 101.5603, Fla. Stat. It is the original paper ballot, not a digital copy of the ballot, that a voter casts. It is the original paper ballot, not a digital copy, that is counted both prior to and following the election. The original voted ballot itself is the best and only legal evidence of the voter’s intent.

Plaintiffs’ request for digital image copies of original ballots and their contention that those copies are the actual ballot themselves undercut and confuse the question of what constitutes a ballot under Florida law. Plaintiffs seek preservation of an electronic copy that cannot be counted, cannot be currently used to conduct recounts, serves no independent purpose to the process of elections, and is therefore legally irrelevant to the conduct of an election. Plaintiffs’ claim, therefore, has no legal consequence. It only leaves wafting in the air the notion that something is amiss in how elections are conducted in Florida—that something not required to be preserved, that has never been preserved, is somehow “hidden” or as Plaintiffs breathlessly put it, “forever lost.” (Mot. ¶ 26.) Thus the suggestion, wrongly implied in this lawsuit (and others that have selectively been filed in the midst of the conduct of the current election season), is that collusion is afoot and should doubt the integrity of the election process. Plaintiffs’ eleventh-hour, last-minute effort to upset the status quo that has existed for years is not in the public interest.

The purpose of a temporary injunction is to preserve the status quo. *Manatee County*, 104 So. 3d at 1121. Plaintiffs, however, seek to change the status quo for only eight of the sixty-seven Supervisors of Elections by requiring the preservation of electronic image copies of original paper ballots, for which there is no existing uniform process or system of preservation. Plaintiffs seek a court order to establish a new legal obligation, where no obligation exists, to create public records that merely duplicate existing original documents. Plaintiffs thus do not seek to preserve the status quo, but to change it and, thereby, to cast doubt upon our elections system at the worst possible time.

B. The Public Interest is Not Served by Failing to Provide Notice and Name All Interested Parties to an Injunction and May Create a Non-Uniform System of Voting in Florida.

Plaintiffs' election to only name eight Supervisors of Election, despite the fact that even they acknowledge that only "as many as 27 Counties, affirmatively preserve the digital ballot images created by voting equipment" (*see* Compl. ¶¶ 49, 50) means they have failed to name every party with significant legal rights that will be affected by the requested injunctive relief. Moreover, absent obtaining the mandamus relief sought in their Verified Complaint against the Secretary of State that a rule be promulgated directing that digital ballot image copies be saved statewide, by naming only the eight Supervisor Defendants, the granting of an injunction will, at best, merely create a non-uniform system of voting in Florida in which some Supervisors may be bound by a decision declaring digital ballot copies a public record (and act accordingly), while the non-party Supervisors of Election may continue to act as they deem appropriate.¹⁰ *Jacobson v. Fla. Sec'y of State*, 957 F.3d 1193, 1208 (11th Cir. 2020).

¹⁰ While the Supervisor Defendants believe the Secretary of State is the only proper defendant for the mandamus relief sought in the Verified Complaint, the Supervisor Defendants concur with the Secretary's position in her Motion to Dismiss that mandamus is improper in this case.

Notwithstanding the fact that as many as thirty-two other unnamed Supervisors of Elections are not alleged to already preserve the duplicate digital ballots in the manner Plaintiffs demand, Plaintiffs only seek “the preservation of digital ballot images that are automatically created during the process of scanning election ballots” against the eight Supervisor Defendants. (Compl. at ¶ 1.) Plaintiffs’ expressly concede that election officials throughout the State of Florida, and not simply the eight sued here, “are not preserving ballot images.” (Mot. ¶ 62).

In an attempt to avoid the ramifications of their random selection of Supervisors without the creation of a defendant class, or of pursuing a claim against one or more Supervisors in their respective counties as should have occurred, Plaintiffs also request an order compelling the Secretary of State and the Florida Division of Elections “to promulgate a rule, or otherwise issue instructions, to be in effect prior to the August 18, 2020 Primary Election, requiring *all* Supervisors of Elections across the State of Florida to preserve ballot images that are automatically created by digital voting equipment for the 2020 primary and general elections, as well as other elections in the future[.]” (*Id.* at ¶¶ 91, 106, 114, 115 (emphasis added)). But if the Court provides the relief sought, and the allegations of the Complaint are accepted as true, as many as thirty-two additional Supervisors will be impacted by such an injunctive order without having a chance to voice their position to this Court and inform the Court of the unique difficulties such an order may present for the management of the 2020 Primary and General Elections in their counties.

It is well settled that a court is without jurisdiction to issue an injunction that would interfere with the rights of those who are not parties to the action. *Two Islands Dev. Corp. v. Clarke*, 157 So. 3d 1081, 1083 (Fla. 3d DCA 2015) (“Stated otherwise, ‘[t]he general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a *complete decree* may be made

binding upon all parties.’’) (internal citations omitted); *MTGLQ Investors, L.P. v. Moore*, 293 So. 3d 610, 616 (Fla. 1st DCA 2020) (“It is axiomatic that a trial court may not issue an injunction that interferes with the rights of those who are not parties to the action.’’) (quoting *Trans Health Mgmt. Inc. v. Nuziata*, 159 So. 3d 850, 857 (Fla. 2d DCA 2014)); *Leighton v. First Universal Lending, LLC*, 925 So. 2d 462, 464-65 (Fla. 4th DCA 2006) (“Here, [the affected non-party] was neither named in the claim for injunctive relief nor served. An injunction cannot bind parties who are not before the court.’’). Thus, an injunction that will impact how all other counties in the state run their elections makes every other county indispensable parties. *See, e.g., Generation Inv., LLC v. Al-Jumaa, Inc.*, 53 So. 3d 372, 376 (Fla. 5th DCA 2011) (vacating injunction enforcing additional covenants and restrictions affecting tenants without such tenants being named to the underlying litigation); *see also Alger v. Peters*, 88 So. 2d 903, 905 (Fla. 1956) (“It is so fundamental to our concept of justice that a citation of supporting authorities is unnecessary to hold that the rights of an individual cannot be adjudicated in a judicial proceeding to which he has not been made a party and from which he has literally been excluded by the failure of the moving party to bring him properly into court...[u]nder our system a man's rights cannot be disposed of or otherwise determined by a judicial decree entered in absentia.’’).

By failing to either join the other unnamed Supervisors or provide those Supervisors with the notice afforded putative class members through the creation of a defense class, Plaintiffs place this Court in the position of either entering an injunction over parties whom the Court has no jurisdiction (based on the reasoning in *Jacobson*) or creating a non-uniform voting system in Florida contrary to the public interest whereby certain counties must create digital images and treat them as public records and other counties do not. Neither scenario is tenable, and, for this additional reason, the granting of a temporary injunction is against the public interest.

C. It Is Too Late to Seek Injunctive Relief for the August 18, 2020 Primary and November 3, 2020 General Elections.

In election cases, “there is no constitutional right to procrastinate.” *Dobson v. Dunlap*, 576 F. Supp. 2d 183 (D. Mass. 2008); *see also Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1991) (Laches, “in the context of elections...means that any claim against a state electoral procedure must be expressed expeditiously”). The law strongly disfavors litigants seeking to change election processes at the last second. *See e.g., Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (finding error in a lower courts alteration of election process at last second, because courts “should ordinarily not alter the election rules on the eve of an election.”). And courts will not intervene in elections unless plaintiffs have acted diligently to protect their rights in a timely fashion. *See Fishman v. Schaffer*, 429 U.S. 1325, 1330 (1976) (denying ballot access injunction in part on the ground that “applicants delayed unnecessarily in commencing [the] suit” until “[t]he Presidential and overseas ballots have already been printed; some have been distributed [, and t]he general absentee ballots are currently being printed.”). That required diligence is unmistakably lacking in this case.

Plaintiffs and their counsel knew, as early as nearly two years ago when they raised these very same claims in federal court, that Supervisors of Elections in Florida do not uniformly retain the temporary digital representations of voted paper ballots. *See Michael Fox, et al. v. Laurel Lee, et. al*, No. 4:18cv529-MW/CAS (N.D. Fla. April 2, 2019). Plaintiffs and their counsel knew, no later than April 2, 2019, that the only manner to seek the relief requested in this action would be through the state courts. *Id.* Perhaps hoping to gain a tactical advantage by forcing this Court to render a last-minute decision, Plaintiffs filed their Complaint on July 1, 2020, after many Supervisor Defendants had completed programming thousands of vote tabulation machines for use in the August Primary, and merely one month before the start of early voting, and then filed this

“Emergency” Motion mere days before the deadline for the Defendant Supervisors to conduct their publicly noticed testing of the vote tabulation equipment, just two weeks before early voting is set to begin, and with insufficient time for the court to afford any meaningful relief such.

Plaintiffs were on notice of their claim, and could, therefore, have sought relief, at any time *over the last year and a half* since the federal court dismissed the similar federal claims and directed the parties to seek relief in state court to the extent such relief was warranted. *See Id.* at 6. Plaintiffs’ lack of diligence does not create an emergency for either the Court or the Defendant Supervisors.

As described *supra*, the August 18, 2020, Primary Election is already well underway. As of the date of the hearing on this Motion, the vast majority of early voting for the Primary Election will be completed throughout Florida, the vast majority of Vote-by-Mail ballots will have been tabulated, and there will be insufficient time to provide any relief because such relief, at this late stage, would require the reprogramming and retesting of election day precinct equipment. (Supervisors’ Declaration at ¶ 26). Plaintiffs, although pushing for expedited consideration, *have conceded* the impossibility of reprogramming the tabulators following the L&A. (Mot ¶ 8.) Even if such relief were possible, simply attempting to accomplish this herculean task in the limited period of time before election day voting would interject significant risk into elections operations and divert needed attention and resources during the most logistically difficult period of any election. (Supervisors’ Declaration at ¶ 276.) *See Fla. Land Co. v. Orange Cnty.*, 418 So. 2d 370, 372 (Fla. 5th DCA 1982) (“[A]n injunction will not be granted where it is readily apparent that it will result in confusion and disorder and produce an injury to the public that outweighs the individual right of the complainant to have the relief sought.”). As such, any injunctive relief for the 2020 Primary Election is no longer available.

Relief for the November 3, 2020 General Election is similarly untimely. The State of Florida's election laws impose very tight timeframes for supervisors of elections to accomplish all their election-related responsibilities, particularly during a presidential election year. *See* Florida Department of State Election Dates and Activities Calendar, rev. 07/2020 (available at <https://dos.myflorida.com/media/703309/final-elections-calendar-2019-2021-updated-20200722.pdf>); (Supervisors' Declaration at ¶ 34.) Given the size of the larger counties whose Supervisors of Elections are named in this action, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes they experience. (Supervisors' Declaration at ¶¶ 35-38.) Those challenges become more problematic when last-minute changes are made to election preparations, let alone last-minute changes in the middle of a global pandemic. (*Id.*) The Supervisor Defendants have already procured and planned for the deployment of voting equipment at early voting and election day precincts for the 2020 General Election. (*Id.*) The Supervisor Defendants must now move on to the myriad of other equally important elections responsibilities that must be performed to run a smooth election. (*Id.* at ¶¶ 34-39.) Requiring the Supervisor Defendants to alter their election plans for the November 3, 2020 General Election is, at best, improper because of the substantial risk to the accuracy and reliability to the entire election, and, at worst, impossible depending on the availability of additional election equipment and obtaining supplemental staff necessary to comply with the requested relief. (*Id.* at ¶ 38.)

As such, even if Plaintiffs' claims were valid, it is too late to afford Plaintiffs injunctive relief without causing harm to the rest of the election. *See e.g., Smith v. Smathers*, 372 So. 2d 427 (Fla. 1979) (denying relief to insert candidate in ballot after printing because, in part, "[t]o have granted the relief would have caused unwarranted disruption of the election process"); *Brinkmann*

v. Francois, 184 So. 3d 504, 510 (Fla. 2016) (“[The Florida Supreme Court] champions a strong public policy against judicial interference in the democratic process of elections.”); *Fishman v. Schaffer*, 429 U.S. at 1330 (denying injunction on the ground that “[t]he Presidential and overseas ballots have already been printed; some have been distributed[, and t]he general absentee ballots are currently being printed.”); *see also Westermann v. Nelson*, 409 U.S. 1236, 1236-37 (1972) (denying injunction “not because the cause lacks merit but because orderly election processes would likely be disrupted by so late an action.”); *Williams v. Rhodes*, 393 U.S. 23, 34-35 (1968) (denying a political party’s ballot access request, despite the unconstitutionality of the relevant statute, because “relief cannot be granted without serious disruption of election process”); *Perry v. Judd*, No. 12-1067, 2012 WL 120076, at *5 (4th Cir. Jan. 17, 2012) (“Challenges that came immediately before or immediately after the preparation and printing of ballots would be particularly disruptive and costly for state governments....we are loath to reach a result that would only precipitate a more disorderly presidential nominating process.”) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (“[T]here must be a substantial regulation of elections if ... some sort of order, rather than chaos, is to accompany the democratic processes.”)).

For this additional reason, injunctive relief is not in the public interest and should be denied.

V. IN THE EVENT THE COURT GRANTS AN INJUNCTION, PLAINTIFFS MUST BE REQUIRED TO POST A BOND.

Plaintiffs must post a bond pursuant to Florida Rule of Civil Procedure 1.610(b):

No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditioned for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoined. Unless otherwise specified by the court, the bond shall be posted within 5 days of entry of the order setting the bond. When any injunction is issued on the pleading of a municipality or the state or any officer, agency, or political subdivision thereof, the court may require or dispense with a bond, with or without surety, and conditioned in the same manner, having due regard for the public interest. No bond

shall be required for issuance of a temporary injunction issued solely to prevent physical injury or abuse of a natural person.

“The purpose of an injunction bond is to provide sufficient funds to cover the adverse party's costs and damages if the injunction is wrongfully issued.” *Longshore Lakes Joint Venture v. Mundy*, 616 So. 2d 1047, 1047 (Fla. 2d DCA 1993). “An injunction is defective if it does not require the movant to post a bond. ‘The trial court cannot waive this requirement nor can it comply by setting a nominal amount.’” *Fla. High Sch. Activities Ass’n v. Mander ex rel Mander*, 932 So. 2d 314, 315-16 (Fla. 2d DCA 2006).

In the event Plaintiffs prevail on their Motion to enjoin Defendants, Defendants request the court set an evidentiary hearing to determine the appropriate amount of the bond. This bond should include, but not be limited to, Defendants’ massive expenses in having to purchase additional tabulators and USB drives, which is expected to be in the millions of dollars (assuming there are sufficient machines and USB drives available for Supervisor Defendants’ needs, which is unlikely).

CONCLUSION

Plaintiffs’ demand that the Supervisor Defendants retain, store, and produce voluminous duplicate digital copies of official election records that serve no administrative, archival, or official purpose is unsupported by Florida law. Rather than assisting in the smooth and accurate administration of the election, granting such relief, particularly in the middle of the most challenging presidential election season in recent memory, would only risk delay in the reporting of voting results could call into question the accuracy of the entire election. Because Florida law does not require the requested relief and good election administration demands its rejection, the Supervisor Defendants ask the Court to deny Plaintiffs’ Motion for Temporary Injunction for the reasons stated.

Dated: August 7, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2020, that a true and correct copy of the foregoing was filed, and that service was performed via an email generated by the Florida Courts E-Filing Portal to all parties identified on the CM/ECF and transmitted in accordance with CM/ECF requirements.

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#524255v2

EXHIBIT A-1

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al.,

Plaintiffs,

v.

LAUREL LEE et al.,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

AFFIDAVIT OF PETER ANTONACCI

1. I am Peter Antonacci, Supervisor of Elections for Broward, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I have been the Supervisor of Elections for Broward County for approximately 20 months

4. I am familiar with the administration of elections in Broward County, including, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and Vote-by-Mail for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

5. As the Broward County Supervisor of Elections, I am responsible for the conduct of federal, state, and local elections in Broward County.

6. As the Broward County Supervisor of Elections, I am responsible for ensuring timely, accurate and reliable elections in Broward County.

7. I am a member of Florida Supervisors of Elections Association, Inc. (FSE), a professional membership organization representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Florida Division of Elections and the Florida Legislature.

Retention and Inspection of Paper Ballots

8. It is my responsibility to maintain the paper ballots cast during any local, state, or federal election. These cast paper ballots are the official paper record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official vote for these elections.

9. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Department of State. This includes all paper ballots removed from vote-by-mail envelopes and all official ballots and ballot cards received from voting location for all in-person voting places.

10. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state and local elections is one (1) year after the certification of the election.

11. The cast paper ballots and ballot cards are available for public inspection or examination while in my custody at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these ballots and ballot cards prior to the end of the election contest period, Florida law requires that my office notify all other candidates who appear on the ballot of such request and allow all parties to be present for any examination.

12. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of recount and audits under Florida law.

Digital Representations of Ballots

13. For purposes of tabulating ballots, Broward County utilizes the DS200 and DS850 ballot scanners/tabulators manufactured by Election Systems and Software. ("ES&S"). The DS200 units are used to scan and tabulate ballots at early voting and election day locations, and the DS850 units are used to scan and tabulate vote-by-mail ballots. The DS200 and DS850 units can be programmed to (a) save a complete digital image of each voted paper ballot, (b) only save a digital

image of the portion of a ballot where the voter made a write-in selection, or (c) not save any digital images as unneeded duplicates of voted paper ballots.

14. Whenever digital images are saved, they may only be saved onto storage media tested and certified by the Florida Secretary of State for such purposes. The largest storage media approved by the Florida Secretary of State for use with the DS200 units, which are used to scan and tabulate ballots at early voting and election day locations, is an 8GB USB thumb/flash drive. Whether a thumb/flash drive can store all digital images that its corresponding DS200 unit has been programmed to capture before reaching its capacity limit depends on the number of ballot pages for the election and the contents of those ballots. The number of voters utilizing an individual DS200.

15. In addition, Broward County only has enough 8GB USB thumb/flash drives for its early voting equipment. Broward County currently utilizes 4GB USB thumb/flash drives for all DS200 units used on Election Day.

16. In addition to size limitations, my information technology staff inform that, when there is a greater amount of data retained on the digital storage media used by the scanners, there are concerns regarding delays.

17. Broward County will be using approximately 150 DS200 units during early voting. More than 100,000 voters are expected to take part in early voting in Broward County. If Broward County is required to save a complete image representation of each voted paper ballot, all of that data will have to be written to the thumb drive before Broward County can close that DS200 unit and upload the results into the Election Management System.

18. According to ES&S, this process will take exponentially longer if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. This creates additional concerns regarding the ability for our election equipment to write this much data timely and without fail. Importantly, Fla. Stat. § 102.141(4)(a) requires that each Supervisor of Elections upload early voting results into its Election Management System on the Monday before the election. Any activity that delays Broward County's ability to close out its early voting equipment creates an increased risk that Broward County will fail meeting deadline.

19. Moreover, ES&S has also advised that it could take up to an additional hour per DS200 unit to close polls on election day if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. Given that some polling places contain multiple DS200 units, this could delay the reporting of election day results by hours.

20. If Broward County were required to conduct a recount, the additional time that would be required to close election tabulation equipment could potentially cause delays in uploading the results into the Election Management System. Given the narrow time frames provided under state law to conduct a recount, this delay creates an increased risk that Broward County may not meet these deadlines.

21. With the exception of the digital images of the portion of a ballot where the voter made a write-in selection, the digital images created by the DS200 and DS850 units serve no other administrative purpose during the election. Therefore, complete digital images of voted paper ballots are redundant because the source of those images—the voted paper ballots—are retained in accordance with Florida law. This is no different than any other copy of a voted paper ballot created during the course of the election.

22. On the other hand, digital images of the portion of a ballot where the voter made a write-in selection serve a separate and unique purpose because Florida law allows a Supervisor of Elections to use those images to tabulate votes for write-in candidates. At present, Florida law does not permit digital images created by the DS200 and DS850 units to be used for any other purpose relating to the conduct of an election.

23. The digital images created by the DS200 and DS850 units are different than the digital images created by the Clear Ballot Audit System. Unlike the images from the DS200 and DS820 units, the images created by the Clear Ballot Audit System may be used under Florida law for an automated post-election audit and recounts. Broward County maintains all Clear Ballot Audit System digital images as required by the retention schedule and provides them upon request to the public.

The November 3, 2020 General Election

24. For the November 3, 2020 General Election, Broward County will have more than 1,225,000 registered voters. To serve those voters, the County will provide 22 early voting sites utilizing a total of 200 DS200 units and 577 election day precincts utilizing a total of 1800 DS200 units. Broward County will also utilize a total of 12 DS850 units for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office is prepared for a 75% voter turnout.

25. Based on ballot sizes in prior presidential elections and local election needs, the size of the ballot for the 2020 General Election could reach 4 two-sided pages.

26. Preparation and planning for the 2020 General Election began well before start of the Primary Election. Broward County completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with DS200 units and other essential equipment necessary to conduct the election. The programming and preparation of both the DS200 and DS850 units will begin immediately after the Primary Election. Broward County anticipates to code this election between August 21st and September 10th. After which, no changes can be made to the system.

27. For the 2020 General Election, Broward County will have no choice but to set its DS200 and DS850 units to only save a digital image of the portion of a ballot where the voter made a write-in selection. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law.

28. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Broward County with a ballot length that could reach 8 pages will risk reaching the digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts and create delays in the reporting of elections results.

Additional Costs of Creating and Maintaining Ballot Images

29. Since the state-mandated Logic & Accuracy Test of voting equipment used in the 2020 Primary Election was completed on July 29, 2020, any order issued on or after August 1st will simply be too late to allow for implementation for the August 18, 2020 Primary Election.

30. If Broward County were ordered to retain a complete digital image of each voted paper ballot, we anticipate needing 100 additional DS200 units and 100 additional thumb drives to properly account for the very real possibility of needing to replace equipment which has reached its storage capacity at early voting or election day precincts. Each DS200 Machine costs approximately \$5,000 and each 8GB flash drive costs \$210. There is no guarantee that such equipment will be available and, even if available, such last-minute equipment purchases and/or rentals could potentially cost more than \$500,000. At the present time, Broward County cannot bear those additional expenses. We have already expended considerable funds to adapt our processes and operations for the COVID-19 pandemic. For example, personal protective equipment for all staff and poll workers has been ordered. Hand sanitizer, disinfectant wipes, other supplies, and janitorial services for each polling place have been ordered. Costly equipment upgrades have been procured to ensure that the county can process an anticipated increase in voters during the General Election.

Administrative Challenges by Last-Minute Changes

31. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all of their election-related responsibilities, particularly during a presidential election year.

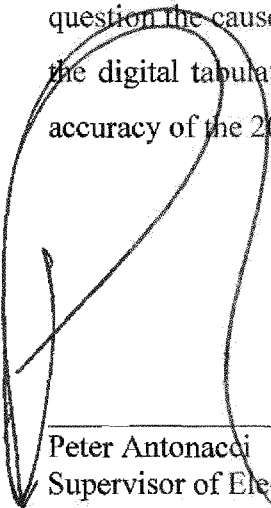
32. Given the size of Broward County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience.

33. However, those challenges become more problematic when last-minute changes are made to my department's election preparations. Put simply, Broward County has already planned and prepared for how it will operate its ballot tabulation equipment during the 2020 Primary and General Elections and has made procurement, staffing, and resource decisions based on that initial plan.

34. Any changes to tabulation equipment, even if it is to just store additional data on existing storage medium, will interject an additional unknown element into the election process. The ultimate effects of those changes cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Primary and General Elections.

35. Given the difficulty of conducting any election, generally, and the 2020 Primary and General Election, in particular, any change to the election plan at this late stage will endanger the accuracy and reliability of the entire election, and would create a considerable burden on Broward County's ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to question the accuracy of the election or question the cause and motive of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses an unacceptable civic risk a risk to the conduct and accuracy of the 2020 Primary and General Elections to implement any changes at this time.

Further the Affiant Sayeth Naught



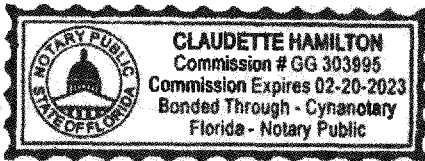
Peter Antonacci
Supervisor of Elections, Broward County

STATE OF FLORIDA)

) SS.

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 7 day of August, 2020, by Peter Antonacci, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.



NOTARY PUBLIC:

Signature: Claudette Hamilton

Print Name: CLAUDETTE HAMILTON

State of Florida at Large (Seal)

My commission expires: 2/20/2023

EXHIBIT A-2

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al.,

Plaintiffs,

v.

LAUREL LEE et al.,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF MIKE HOGAN

1. I am Mike Hogan, Supervisor of Elections for Duval County, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I have been the Supervisor of Elections for Duval County for approximately five years.

3. I am familiar with all aspects of election administration in Duval County, including voter outreach and education, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and paper for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

4. As the Duval County Supervisor of Elections, I am responsible for the conduct of federal, state and county elections in Duval County.

5. As the Duval County Supervisor of Elections, I am responsible for ensuring the accuracy and reliability of the 2020 Primary and General Election in Duval County.

6. I am also an active member of Florida Supervisors of Elections Association, Inc. (FSE), a professional membership organization representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Florida Division of Elections and the Florida Legislature.

Retention and Inspection of Paper Ballots

7. As the Supervisor of Election for Duval County, it is my responsibility to maintain the voted paper ballots cast during any local, state, or federal election. These voted paper ballots are the official record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official vote for these elections.

8. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. This includes all paper ballots removed from vote-by-mail envelopes and all official ballots and ballot cards received from election boards at early voting or at election day polling places.

9. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state and local elections is one (1) year after the certification of the election.

10. In accordance with Florida law, the voted paper ballots and ballot cards are available for public inspection or examination while in the custody of my office at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these ballots and ballot cards prior to the end of the election contest period, Florida law requires that my office notify all other candidates who appear on the ballot of such request and allow all parties to be present for the examination.

11. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of a recount under Florida law.

Digital Representations of Ballots

12. For purposes of tabulating ballots, Duval County utilizes the DS200 and DS850 ballot scanners/tabulators manufactured by Election Systems and Software. (“ES&S”). The DS200 units

are used to scan and tabulate ballots at early voting and election day locations, and the DS850 units are used to scan and tabulate vote-by-mail ballots. The DS200 and DS850 units can be programmed to (a) save a complete digital image of each voted paper ballot, (b) only save a digital image of the portion of a ballot where the voter made a write-in selection, or (c) not save any digital images as unneeded duplicates of voted paper ballots.

13. Whenever digital images are saved, they may only be saved onto storage media tested and approved by the Florida Secretary of State for such purposes. No other storage media may be used. The largest storage media approved by the Florida Secretary of State for use with the DS200 units, which are used to scan and tabulate ballots at early voting and election day locations, is an 8GB USB thumb/flash drive. Whether a thumb/flash drive can store all digital images that its corresponding DS200 unit has been programmed to capture before reaching its capacity limit depends on the number of ballot pages for the election and the contents of those ballots.

14. Duval County currently utilizes 4GB USB thumb/flash drives for all DS200 units used on Election Day.

15. In addition to size limitations, I have been informed by my information technology staff that, when there is a greater amount of data retained on the digital storage media used by the scanners, there are concerns regarding delays.

16. Duval County will be using hundreds of DS200 units during early voting. More than 80,000 voters are expected to take part in early voting in Duval County. If Duval County is required to save a complete image representation of each voted paper ballot, all of that data will have to be written to the thumb drive before Duval County can close that DS200 unit and upload the results into the Election Management System.

17. According to ES&S, this process will take exponentially longer if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. This creates additional concerns regarding the ability for our election equipment to write this much data timely and without fail. Importantly, Fla. Stat. § 102.141(4)(a) requires that each Supervisor of Elections upload early voting results into its Election Management System on the Monday before the election. Any activity that delays Duval County's ability to close out its early voting equipment creates an increased risk that Duval County may not meet this deadline.

18. Moreover, ES&S has also advised that it could take up to an additional hour per DS200 unit to close polls on election day if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. Given that some polling places contain multiple DS200 units, this could delay the reporting of election day results by hours.

19. If Duval County were required to conduct a recount, the additional time that would be required to close election tabulation equipment could potentially cause delays in uploading the results into the Election Management System. Given the narrow time frames provided under state law to conduct a recount, this delay creates an increased risk that Duval County may not meet these deadlines.

20. With the exception of the digital images of the portion of a ballot where the voter made a write-in selection, the digital images created by the DS200 and DS850 units serve no other administrative purpose during the election. Therefore, complete digital images of voted paper ballots are redundant because the source of those images—the voted paper ballots—are retained in accordance with Florida law. This is no different than any other copy of a voted paper ballot created during the course of the election.

21. On the other hand, digital images of the portion of a ballot where the voter made a write-in selection serve a separate and unique purpose because Florida law allows a Supervisor of Elections to use those images to tabulate votes for write-in candidates. At present, Florida law does not permit digital images created by the DS200 and DS850 units to be used for any other purpose relating to the conduct of an election.

22. The digital images created by the DS200 and DS850 units are different than the digital images created by the Clear Ballot Audit System. Duval County does not use the Clear Ballot Audit System.

The August 18, 2020 Primary Election

23. For the August 18, 2020 Primary Election, Duval County will have 640,000 registered voters. To serve those voters, the County will provide 18 early voting sites utilizing a total of 36 DS200 units and 199 election day precincts utilizing a total of 215 DS200 units. Duval County will also utilize a total of four DS850 units for the purpose of tabulating vote-by-mail ballots.

24. Preparation and planning for the 2020 Primary Election began months before the actual election. Duval County completed the procurement of thumb drives to properly stock all early voting sites and election day precincts with essential equipment for the estimated number of DS200 units that will be needed to conduct the election. The programming and preparation of the DS200 and DS850 units began well in advance of the start of early voting on August 3, 2020. Duval County completed its logic and accuracy test on July 24, 2020 and no material changes to the election equipment may be made without invalidating those tests required by State law.

The November 3, 2020 General Election

25. For the November 3, 2020 General Election, Duval County will have 640,000 registered voters. To serve those voters, the County will provide 19 early voting sites utilizing a total of 138 DS200 units and 199 election day precincts utilizing a total of 215 DS200 units. Duval County will also utilize a total of four DS850 units for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office prepares for approximately 645,000 voters to vote in the General Election.

26. Based on ballot sizes in prior presidential elections, the size of the ballot for the 2020 General Election could reach two 8 ½” x 17” pages.

27. Preparation and planning for the 2020 General Election began well before start of the Primary Election. Duval County completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with DS200 units and other essential equipment necessary to conduct the election. The programming and preparation of both the DS200 and DS850 units will begin immediately after the Primary Election. Duval County anticipates to code this election on August 18, 2020. After which, no changes can be made to the system.

28. For the 2020 General Election, Duval County will have no choice but to set its DS200 and DS850 units to only save a digital image of the portion of a ballot where the voter made a write-in selection. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law.

29. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Duval County with a ballot length that could reach two 8 ½” x. 17” pages would risk reaching the

digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts and create delays in the reporting of elections results.

Additional Costs of Creating and Maintaining Ballot Images

30. Since the state-mandated Logic & Accuracy Test of voting equipment used in the 2020 Primary Election was completed on July 24, 2020, any order issued on or after August 13, 2020 will simply be too late to allow for implementation for the August 18, 2020 Primary Election.

31. If Duval County were ordered to retain a complete digital image of each voted paper ballot, we anticipate needing 295 additional thumb drives to properly account for the very real possibility of needing to replace equipment which has reached its storage capacity at early voting or election day precincts. Purchasing 295 8GB flash drives would cost \$61,950.00. There is no guarantee that such equipment will be available. At the present time, Duval County cannot bear those additional expenses. We have already expended considerable funds to adapt our processes and operations for the COVID-19 pandemic. For example, personal protective equipment for all staff and poll workers has been ordered. Hand sanitizer, disinfectant wipes, and other supplies have been purchased. Costly equipment upgrades have been procured to ensure that the county can process an anticipated increase in voters during the General Election.

Administrative Challenges by Last-Minute Changes

32. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all of their election-related responsibilities, particularly during a presidential election year.

33. Given the size of Duval County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience.

34. However, those challenges become more problematic when last-minute changes are made to my department's election preparations. Put simply, Duval County has already planned and prepared for how it will operate its ballot tabulation equipment during the 2020 Primary and General Elections and has made procurement, staffing, and resource decisions based on that initial plan.

35. Any changes to tabulation equipment, even if it is to just store additional data on existing storage medium, will interject an additional unknown element into the election process. The ultimate effects of those changes cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Primary and General Elections.

36. Given the difficulty of conducting any election, generally, and the 2020 Primary and General Election, in particular, any change to the election plan at this late stage may harm the accuracy and reliability of the entire election, and would create a considerable burden on Duval County's ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to call into question the accuracy of the election or question the cause of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses too great a risk to the conduct and accuracy of the 2020 Primary and General Elections to implement any changes at this time.

On August 6, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mike Hogan
Mike Hogan
Supervisor of Elections, Duval County

EXHIBIT A-3

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al,,

Plaintiffs,

v.

LAUREL LEE et al,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF CRAIG LATIMER, SUPERVISOR OF ELECTIONS FOR HILLSBOROUGH COUNTY

1. I am Craig Latimer, Supervisor of Elections for Hillsborough County, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I have been the Supervisor of Elections for Hillsborough County for approximately 8 years and have worked at the Department of Elections since 2009. During my prior tenure with the Hillsborough County Sheriff's Office, I held the position of Major retiring after 35 years.

4. I am familiar with all aspects of election administration in Hillsborough County, including voter outreach and education, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and paper for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

5. As the Hillsborough County Supervisor of Elections, I am responsible for the conduct of federal, state and county elections in Hillsborough County.

6. As the Hillsborough County Supervisor of Elections, I am responsible for ensuring the accuracy and reliability of the 2020 Primary and General Election in Hillsborough County.

Declaration of Craig Latimer

Page 1 of 7

7. I am also an active member of Florida Supervisors of Elections, Inc. (FSE), a professional membership organization representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Florida Division of Elections and the Florida Legislature.

Retention and Inspection of Paper Ballots

8. As the Supervisor of Elections for Hillsborough County, it is my responsibility to maintain the voted paper ballots cast during any local, state, or federal election. These voted paper ballots are the official record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official record of the votes for these elections.

9. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. This includes all paper ballots removed from vote-by-mail envelopes and all official ballots and ballot cards received from election boards at early voting or at election day polling places.

10. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state and local elections is one (1) year after the certification of the election.

11. In accordance with Florida law, the voted paper ballots and ballot cards are available for public inspection or examination while in the custody of my office at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these ballots and ballot cards prior to the end of the election contest period, Florida law requires that my office notify all other candidates who appear on the ballot of such request and allow all parties to be present for the examination.

Declaration of Craig Latimer

12. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of a recount under Florida law.

Digital Representations of Ballots

13. The election equipment utilized by Hillsborough County can be programmed to save all digital representations of the voted paper ballot created by the elections equipment, save only those digital representations that include a write-in candidate selection by the voter, or discard those digital representations as unneeded duplicates of voted paper ballots.

14. When the digital representations are saved, they may only be saved onto storage media tested and approved by the Florida Secretary of State for such purposes. No other storage media may be used. The largest storage media approved by the Florida Secretary of State for the early voting and election day digital scanning equipment is an 8GB USB thumb/flash drive. The ability of the largest authorized digital storage medium to record digital representations of voted paper ballots will depend on the number of ballot pages for the election and the contents of those ballots.

15. In addition to size limitations, I have been informed by my information technology staff that, when there is a greater amount of data retained on the digital storage media used by the election day digital scanners, it will take longer to transmit the results for the precincts at the close of voting and may cause unusual delays in the reporting of results on election day.

16. With the exception of the digital representations of voted paper ballots that include a write-in candidate selection by the voter, the digital representations created by the elections equipment serve no other administrative purpose during the election after the tabulators use the digital representation for tabulation. Digital representations of voted paper ballots are both obsolete and superseded immediately upon creation by the voted paper ballots which are retained in accordance with Florida law. This is no different than any other copy of a voted paper ballot created during the course of the election.

17. The digital representations of voted paper ballots that include a write-in candidate selection by the voter serve a separate and unique purpose for the tabulation of the names of

the write-in candidates on the voted paper ballots and may be independently retained for that sole reason.

18. The digital representations created by the election tabulation equipment are different than the digital images created by the Clear Ballot Audit System which may be used under Florida law for an automated post-election audit. Hillsborough County maintains all Clear Ballot Audit System digital images and provides them upon request to the public.

The August 18, 2020 Primary Election

19. For the August 18, 2020 Primary Election , Hillsborough County will have nearly 900,000 registered voters. To serve those voters, the County will provide 24 early voting sites utilizing a total of 48 DS200 scanners and 239 election day precincts utilizing a total of 255 DS200 scanners. Hillsborough County will also utilize a total of 6 DS 850 scanners for the purpose of tabulating vote-by-mail ballots.

20. The size of the ballot for the 2020 Primary Election is between 1 and 1 pages.

21. The preparation and planning needed to prepare for the 2020 Primary Election began months before the actual election. The Hillsborough County Supervisor of Elections completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with sufficient ballot scanners and other essential equipment necessary to conduct the election. The programming and preparation of the ballot scanners began well in advance of the start of early voting on August 3, 2020. Hillsborough County completed its logic and accuracy test on July 24 and no material changes to the election equipment may be made without invalidating those tests required by State law.

22. For the 2020 Primary Election, Hillsborough County will set its tabulation equipment to only retain those digital representation of voted paper ballots that include a write-in candidate selection by the voter. The remaining temporary digital representations of voted paper ballots will not be retained as they do not serve any administrative purpose and are superseded and made obsolete by the physical voted paper ballot. Moreover, retaining all ballot images for the 2020 Primary Election in a county the size of Hillsborough County would risk reaching the digital

storage capacity of tabulation equipment at early voting locations and election day precincts and potentially create delays in the reporting of elections results.

The November 3, 2020 General Election

23. For the November 3, 2020 General Election, Hillsborough County will have approximately 900,000 registered voters. To serve those voters, the County will provide 24 early voting sites utilizing a total of 56 DS200 scanners and 239 election day precincts utilizing a total of 330 DS200 scanners. Hillsborough County will also utilize a total of 6 DS 850 scanners for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office prepares for approximately 700,000 to vote in the General Election.

24. The size of the ballot for the 2020 General Election is anticipated to be 2 pages.

25. The preparation and planning needed to prepare for the 2020 General Election began well before start of the Primary Election. The Hillsborough County Supervisor of Elections completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with sufficient ballot scanners and other essential equipment necessary to conduct the election. The programming and preparation of the ballot scanners will begin immediately after the Primary Election. Hillsborough County anticipates completing its logic and accuracy test for the 2020 General Election on September 30.

26. For the 2020 General Election, Hillsborough County will have no choice but to set its tabulation equipment to retain only those digital representation of voted paper ballots that include a write-in candidate selection by the voter. The remaining temporary digital representations of voted paper ballots will not be retained as they do not serve any administrative purpose and are superseded and made obsolete by the physical voted paper ballot. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Hillsborough County with a ballot length of 2 pages would probably reach the digital storage capacity of tabulation equipment at early voting locations and election day precincts and create delays in the reporting of elections results.

Additional Costs of Creating and Maintaining Ballot Images

27. Any order issued on or after August 13, 2020 will simply be too late to allow for implementation for the August 18, 2020 Primary Election. The vast majority of early voting will be completed and there will be insufficient time to reprogram, retest and prepare election equipment for deployment at election day precincts.

28. If Hillsborough County were ordered to retain all digital representations of voted paper ballots, we anticipate needing 110 additional DS200 digital scanners to properly account for the very real possibility of needing to replace equipment which has reached its storage capacity at early voting or election day precincts. There is no guarantee that such equipment will be available and, even if available, such last-minute equipment purchases and/or rentals could potentially cost more than \$665,000. At the present time, my office cannot bear those additional expenses. We have already expended considerable funds to adapt our processes and operations for the COVID-19 pandemic. For example, personal protective equipment for all staff and poll workers has been ordered. Hand sanitizer, disinfectant wipes, and other supplies have been purchased. Costly equipment upgrades have been procured to ensure that the county can process an anticipated increase in voters during the General Election.

Administrative Challenges by Last-Minute Changes

29. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all of their election-related responsibilities, particularly during a presidential election year.

30. Given the size of Hillsborough County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience.


31. However, those challenges become more problematic when last-minute changes are made to my department's election preparations. Put simply, the Hillsborough County Supervisor of Elections has already planned and prepared for how it will operate its ballot tabulation

equipment during the 2020 Primary and General Elections and have made procurement, staffing, and resource decisions based on that initial plan.

32. Any changes to tabulation equipment, even if it is to just store additional data on existing storage medium, will interject an additional unknown element into the election process, the ultimate effects of which cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Primary and General Elections.

50. Given the difficulty of conducting any election, generally, and the 2020 Primary and General Election, in particular, any change to the election plan at this late stage may harm the accuracy and reliability of the entire election, and would create a considerable burden on the Hillsborough County Supervisor of Elections' ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to call into question the accuracy of the election or question the cause of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses too great a risk to the conduct and accuracy of the 2020 Primary and General Elections to implement any changes at this time.

On July 16, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Craig Latimer
Supervisor of Elections, Hillsborough County

EXHIBIT A-4

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al.,

Plaintiffs,

v.

LAUREL LEE et al,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF TOMMY DOYLE, LEE COUNTY SUPERVISOR OF ELECTIONS

1. I am Tommy Doyle, Supervisor of Elections for Lee County, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge about the facts described in this Declaration.

2. I have been the Supervisor of Elections for Lee County for approximately four (4) years.

3. I am familiar with all aspects of election administration in Lee County, including voter outreach and education, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and paper for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

DECLARATION OF TOMMY DOYLE

4. As the Lee County Supervisor of Elections, I am responsible for the conduct of federal, state and county elections in Lee County.

5. As the Lee County Supervisor of Elections, I am responsible for ensuring the accuracy and reliability of the 2020 Primary and General Election in Lee County.

6. I am also an active member of Florida Supervisors of Elections Association, Inc. (FSE), a professional membership organization representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Florida Division of Elections and the Florida Legislature.

7. As the Supervisor of Election for Lee County, it is my responsibility to maintain the voted paper ballots cast during any local, state, or federal election. These voted paper ballots are the official record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official vote for these elections.

8. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. This includes all paper ballots removed from vote-by-mail envelopes and all official ballots and ballot cards received from election boards at early voting or at election day polling places.

9. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state and local elections is one (1) year after the certification of the election.

DECLARATION OF TOMMY DOYLE

10. In accordance with Florida law, the voted paper ballots and ballot cards are available for public inspection or examination while in the custody of my office at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these ballots and ballot cards prior to the end of the election contest period, Florida law requires that my office notify all other candidates who appear on the ballot of such request and allow all parties to be present for the examination.

11. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of a recount under Florida law.

Digital Representations of Ballots

12. For purposes of tabulating ballots, Lee County utilizes the DS200 and DS850 ballot scanners/tabulators manufactured by Election Systems and Software. ("ES&S"). The DS200 units are used to scan and tabulate ballots at early voting, in the vote by mail tabulation room, and at election day locations, and the DS850 units are used to scan and tabulate vote-by-mail ballots. The DS200 and DS850 units can be programmed to (a) save a complete digital image of each voted paper ballot, (b) only save a digital image of the portion of a ballot where the voter made a write-in selection, or (c) not save any digital images as unneeded duplicates of voted paper ballots.

13. Whenever digital images are saved, they may only be saved onto storage media tested and approved by the Florida Secretary of State for such purposes. The Florida Secretary of State has only approved three sizes of USB flash drives: 1GB, 4GB, and 8GB. These USB drives are proprietary to ES&S; no other storage media may be used, and the D200 units have no internal storage. The largest storage media approved by the Florida Secretary of State for use with the

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DS200 units, which are used to scan and tabulate ballots at early voting and election day locations, is an 8GB USB thumb/flash drive. Whether a thumb/flash drive can store all digital images that its corresponding DS200 unit has been programmed to capture before reaching its capacity limit depends on the number of ballot pages for the election and the contents of those ballots.

14. In addition, Lee County only has enough 8GB USB thumb/flash drives for its early voting and election day equipment. Lee County currently utilizes a mixture of 4GB and 8GB USB thumb/flash drives for all DS200 units used on Election Day.

15. In addition to size limitations, I have been informed by my information technology staff that, when there is a greater amount of data retained on the digital storage media used by the scanners, there are concerns regarding materially significant delays.

16. Lee County will be using four (4) DS850 units during early voting. More than ninety thousand (90,000) voters are expected to take part in early voting in Lee County. If Lee County is required to save a complete image representation of each voted vote by mail paper ballot, all of that data will have to be written to the thumb drive before Lee County can close that DS850 unit and upload the results into the Election Reporting System.

17. According to ES&S, this process will take exponentially longer if each tabulation unit is reprogrammed and must import digital ballot images into the Election Reporting System to save a complete digital representation of each voted paper ballot. This creates additional concerns regarding the ability for our election equipment to write this much data timely and without fail. Importantly, Fla. Stat. § 102.141(4)(a) requires that each Supervisor of Elections upload early voting results along with the bulk of the vote by mail data into its Election Reporting Manager on the Monday before the election. Any activity that delays Lee County's ability to close out its early voting equipment creates an increased risk that Lee County may not meet this deadline.

DECLARATION OF TOMMY DOYLE

18. When ballot image data from USB data sticks is imported into the Election Reporting Manager, decrypted, and a database built for purposes of review of the ballot images data results in significant delays.

19. If Lee County were required to conduct a recount, the additional time that would be required to import the digital into the Election Reporting Manager could potentially cause delays. Given the narrow time frames provided under state law to conduct a recount, this delay creates an increased risk that Lee County may not meet these deadlines. The importing of vote by mail digital ballot images can often take multiple day. Importing data from individual data sticks takes both time and manpower as it must be done manually.

20. With the exception of the digital images of the portion of a ballot where the voter made a write-in selection, the digital images created by the DS200 and DS850 units serve no other administrative purpose during the election. Therefore, complete digital images of voted paper ballots are redundant because the source of those images—the voted paper ballots—are retained in accordance with Florida law. This is no different than any other copy of a voted paper ballot created during the course of the election.

21. On the other hand, digital images of the portion of a ballot where the voter made a write-in selection serve a separate and unique purpose because Florida law allows a Supervisor of Elections to use those images to tabulate votes for write-in candidates. At present, Florida law does not permit digital images created by the DS200 and DS850 units to be used for any other purpose relating to the conduct of an election.

22. The digital images created by the DS200 and DS850 units are different than the digital images created by the Clear Ballot Audit System. Unlike the images from the DS200 and DS820 units, the images created by the Clear Ballot Audit System may be used under Florida law

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for an automated post-election audit and recounts. The current process regarding the storage of original paper ballots limits the handling of ballots to authorized Supervisor of Elections voting staff.

The August 18, 2020 Primary Election

23. For the August 18, 2020 Primary Election, Lee County will have four hundred and sixty-eight thousand one hundred forty-one (468,141) registered voters. To serve those voters, the County will provide ten (10) early voting sites utilizing a total of thirty (30) DS200 units and one hundred twenty-seven (127) election day precincts utilizing a total of approximately one hundred eighty (180) DS200 units. Lee County will also utilize a total of four (4) DS850 units for the purpose of tabulating vote-by-mail ballots.

24. The size of the ballot for the 2020 Primary Election is one (1) page. Already, tens of thousands of Vote-by-Mail ballots have been returned by Florida voters and are already being tabulating, even as thousands more arrive each day.

25. Preparation and planning for the 2020 Primary Election began months before the actual election. Lee County completed the procurement of thumb drives to properly stock all early voting sites and election day precincts with essential equipment for the estimated number of DS200 units that will be needed to conduct the election. The programming and preparation of the DS200 and DS850 units began well in advance of the start of early voting on August 8, 2020. Lee County completed its logic and accuracy test on July 29, 2020, and no material changes to the election equipment may be made without invalidating those tests required by State law.

26. For the 2020 Primary Election, Lee County has not write-in races on the ballot. Notwithstanding, all ballot images scanned by DS200s and saved.

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The November 3, 2020 General Election

27. For the November 3, 2020 General Election, Lee County will have an estimated four hundred seventy thousand (470,000) registered voters. To serve those voters, the County will provide eleven (11) early voting sites utilizing a total of thirty to thirty-five (30-35) DS200 units and one hundred twenty-seven (127) election day precincts utilizing a total of an estimated two hundred fifty-four (254) DS200 units. Lee County will also utilize a total of four (4) DS850 units for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office prepares for approximately three hundred ninety-five thousand (395,000) voters to vote in the General Election.

28. Based on ballot sizes in prior presidential elections, the size of the ballot for the 2020 General Election could reach six (6) pages.

29. Preparation and planning for the 2020 General Election began well before start of the Primary Election. Lee County completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with DS200 units and other essential equipment necessary to conduct the election. The programming and preparation of both the DS200 and DS850 units will begin immediately after the Primary Election. Lee County anticipates to code this election on August 22, 2020, the date of the Logic and Accuracy testing. After which, no changes can be made to the system.

30. For the 2020 General Election, Lee County will have no choice but to set its DS850 units to only save a digital image of the portion of a ballot where the voter made a write-in selection. All DS200 units will save digital ballot images. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law.

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31. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Lee County with a ballot length that could reach six (6) pages may risk reaching the digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts in a high turnout election and create delays in the reporting of elections results.

Additional Costs of Creating and Maintaining Ballot Images

32. Since the state-mandated Logic & Accuracy Test of voting equipment used in the 2020 Primary Election was completed on July 29, 2020, any order issued on or after August 13, 2020 will simply be too late to allow for implementation for the August 18, 2020 Primary Election.

33. If Lee County were ordered to retain a complete digital image of each voted paper ballot, we anticipate needing many additional DS200 units and an equal number of additional thumb drives to properly account for the very real possibility of needing to replace equipment which has reached its storage capacity at early voting or election day precincts. Each DS200 Machine costs approximately \$6,000.00, and each 8GB flash drive costs approximately \$189.00. There is no guarantee that such equipment will be available and, even if available, such last-minute equipment purchases and/or rentals could potentially cost hundreds of thousands of dollars. At the present time, Lee County cannot bear those additional expenses. We have already expended considerable funds to adapt our processes and operations for the COVID-19 pandemic. For example, personal protective equipment for all staff and poll workers has been ordered. Hand sanitizer, disinfectant wipes, and other supplies have been purchased. Costly equipment upgrades have been procured to ensure that the county can process an anticipated increase in voters during the General Election.

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Administrative Challenges by Last-Minute Changes

34. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all their election-related responsibilities, particularly during a presidential election year.

35. Given the size of Lee County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience.

36. However, those challenges become more problematic when last-minute changes are made to my department's election preparations. Put simply, Lee County has already planned and prepared for how it will operate its ballot tabulation equipment during the 2020 Primary and General Elections and has made procurement, staffing, and resource decisions based on that initial plan.

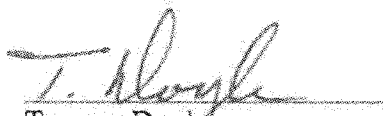
37. Any changes to tabulation equipment, even if it is to just store additional data on existing storage medium, will interject an additional unknown element into the election process. The ultimate effects of those changes cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Primary and General Elections.

38. Given the difficulty of conducting any election, generally, and the 2020 Primary and General Election, in particular, any change to the election plan at this late stage may harm the accuracy and reliability of the entire election, and would create a considerable burden on Lee

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County's ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to call into question the accuracy of the election or question the cause of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses too great a risk to the conduct and accuracy of the 2020 Primary and General Elections to implement any changes at this time.

On August 7, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Tommy Doyle
Supervisor of Elections, Lee County

DECLARATION OF TOMMY DOYLE

EXHIBIT A-5

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

GERALDINE THOMPSON et al.,

Plaintiffs,

v.

LAUREL LEE et al.,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF JULIE MARCUS, PINELLAS COUNTY SUPERVISOR OF ELECTIONS

1. I am Julie Marcus, Supervisor of Elections for Pinellas County, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I have been the Supervisor of Elections for Pinellas County since May 2020 and have worked for the Pinellas County Supervisor of Elections for 17 years. During my tenure with the Pinellas County Supervisor of Elections, I held the position of Deputy Supervisor from 2007-2012, and Chief Deputy from 2012-2020.

3. I am familiar with all aspects of election administration in Pinellas County, including voter outreach and education, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and paper for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

4. As the Pinellas County Supervisor of Elections, I am responsible for the conduct of federal, state and county elections in Pinellas County. By contract, I conduct municipal elections for the municipalities within Pinellas County.

5. As the Pinellas County Supervisor of Elections, I am responsible for ensuring the accuracy and reliability of the 2020 Primary and General Election in Pinellas County.

6. I am also an active member of Florida Supervisors of Elections (FSE), a professional membership association representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Department of State, Florida Division of Elections and the Florida Legislature. In addition, I am a Certified Election Registration Administrator (CERA) through The Election Center and Auburn University.

Retention and Inspection of Paper Ballots

7. As the Supervisor of Elections for Pinellas County, it is my responsibility to maintain the voted paper ballots cast during any county, state, or federal election. These voted paper ballots are the official record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official vote for these elections.

8. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. This includes all paper ballots removed from vote-by-mail certificate envelopes and all voted paper ballots received from election boards at early voting or at election day polling places.

9. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state, and local elections is one (1) year after the certification of the election. In municipal elections, the municipal clerk serves as supervisor of elections and is responsible to retain records.

10. In accordance with Florida law, the voted paper ballots are available for public inspection or examination while in the custody of my office at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be

securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these voted paper prior to the end of the election contest period, Florida law requires that my office notify all other candidates who appear on the ballot of such request and allow all parties to be present for the examination.

11. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of a recount and post-election manual audit under Florida law.

Digital Representations of Ballots

12. For purposes of tabulating ballots, Pinellas County utilizes the DS200 and DS850 ballot scanners manufactured by Election Systems and Software. ("ES&S"). The DS200 scanners are used to scan and tabulate ballots at early voting and election day locations, and the DS850 scanners are used to scan and tabulate vote-by-mail and provisional ballots. The DS200 and DS850 scanners can be programmed to (a) save a complete digital image of each voted paper ballot, (b) only save a digital image of the portion of a ballot where the voter made a write-in selection, or (c) not save any digital images as unneeded duplicates of voted paper ballots.

13. Whenever digital images are saved, they may only be saved onto storage media tested and approved by the Florida Secretary of State for such purposes. No other storage media may be used. The largest storage media approved by the Florida Secretary of State for use with the DS200 scanners, which are used to scan and tabulate ballots at early voting and election day locations, is an 8GB USB thumb/flash drive. Whether a thumb/flash drive can store all digital images that its corresponding DS200 scanner has been programmed to capture before reaching its capacity limit depends on the number of ballot pages for the election and the contents of those ballots.

14. In addition, Pinellas County only has enough 8GB USB thumb/flash drives for its central count tabulation equipment (DS850s). Pinellas County currently utilizes 4GB USB thumb/flash drives for all DS200 units used on Election Day and Early Voting.

15. In addition to size limitations, I have been informed by my information technology staff that, when there is a greater amount of data retained on the digital storage media used by the scanners, there are concerns regarding delays.

16. Pinellas County will use 25 DS200 units during early voting for the General Election. More than 80,000 voters are expected to take part in early voting in Pinellas County. If Pinellas County is required to save a complete image representation of each voted paper ballot, all of that data will have to be written to the thumb drive before Pinellas County can close that DS200 unit and upload the results into the Election Management System.

17. According to ES&S, this process will take exponentially longer if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. This creates additional concerns regarding the ability for our election equipment to write this much data timely and without fail.

18. Moreover, ES&S has also advised that it could take up to an additional hour per DS200 unit to close polls on election day if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. Given that some polling places contain multiple DS200 units, this could delay the reporting of election day results by hours.

19. If Pinellas County were required to conduct a recount, the additional time that would be required to close election tabulation equipment could potentially cause delays in uploading the results into the Election Management System. Given the narrow time frames provided under state law to conduct a recount, this delay creates an increased risk that Pinellas County may not meet these deadlines.

20. With the exception of the digital images of the portion of a ballot where the voter made a write-in selection, the digital images created by the DS200 and DS850 units serve no other administrative purpose during the election. Therefore, complete digital images of voted paper ballots are redundant because the source of those images—the voted paper ballots—are retained in accordance with Florida law.

21. On the other hand, digital images of the portion of a ballot where the voter made a write-in selection serve a separate and unique purpose because Florida law allows a Supervisor of Elections to use those images to tabulate votes for write-in candidates. At present, Florida law does not permit digital images created by the DS200 and DS850 units to be used for any other purpose relating to the conduct of an election.

The August 18, 2020 Primary Election

22. For the August 18, 2020 Primary Election , Pinellas County will have 687,592 registered voters. To serve those voters, the County will provide three early voting sites utilizing a total of 15 DS200 units and 16 election day locations utilizing a total of 243 DS200 units. Pinellas County will also utilize a total of 6 DS850 units for the purpose of tabulating vote-by-mail ballots.

23. The size of the ballot for the 2020 Primary Election is a 17-inch one sided ballot.

24. Preparation and planning for the 2020 Primary Election began months before the actual election. Pinellas County completed the procurement of thumb drives to properly stock all early voting sites and election day precincts with essential equipment for the estimated number of DS200 units that will be needed to conduct the election. The programming and preparation of the DS200 and DS850 units began well in advance of the start of early voting on August 8, 2020. Pinellas County completed its logic and accuracy test on July 30, 2020, and no material changes to the election equipment may be made without invalidating those tests required by State law.

25. For the 2020 Primary Election, Pinellas County has already set its tabulation equipment to only save a digital image of the portion of a ballot where the voter made a write-in selection. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law. Moreover, retaining all ballot images for the 2020 Primary Election in a county the size of Pinellas County would risk reaching the digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts and potentially create delays in the reporting of elections results.

The November 3, 2020 General Election

26. For the November 3, 2020 General Election, Pinellas County will have more than 690,000 registered voters. To serve those voters, Pinellas County will provide five early voting sites utilizing a total of 25 DS200 units and approximately 166 election day precincts utilizing a total of 320 DS200 units. Pinellas County will also utilize a total of six DS850 units for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office prepares for approximately 552,000 voters to vote in the General Election.

27. Based on ballot sizes in prior presidential elections, the size of the ballot for the 2020 General Election could reach three, 17-inch pages front and back.

28. Preparation and planning for the 2020 General Election began months before the Primary Election. Pinellas County completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with DS200 units and other essential equipment necessary to conduct the election. The programming and preparation of both the DS200 and DS850 units will begin immediately after the Primary Election. Pinellas County anticipates to code this election on August 28, 2020. The first Logic and Accuracy test is scheduled for October 14, 2020, after which, no changes can be made to the system.

29. For the 2020 General Election, Pinellas County will have no choice but to set its DS200 and DS850 units to only save a digital image of the portion of a ballot where the voter made a write-in selection. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law.

30. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Pinellas County with a ballot length that could reach three, 17-inches pages front and back would risk reaching the digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts and create delays in the reporting of elections results.

Additional Costs of Creating and Maintaining Ballot Images

31. Since the state-mandated Logic & Accuracy Test of voting equipment used in the 2020 Primary Election was completed on July 30, 2020, any order issued on or after August 13, 2020 will simply be too late to allow for implementation for the August 18, 2020 Primary Election.

32. If Pinellas County were ordered to retain a complete digital image of each voted paper ballot, we anticipate needing 700 additional thumb drives to properly account for the very real possibility of needing to replace equipment which has reached its storage capacity at early voting or election day precincts. 8GB flash drive costs \$210.00. There is no guarantee that such equipment will be available and, even if available, such last-minute equipment purchases and/or rentals could potentially cost more than \$147,000.00. At the present time, Pinellas County cannot bear those additional expenses. We have already expended considerable funds to adapt our processes and operations for the COVID-19 pandemic. For example, personal protective equipment for all staff and poll workers has been ordered. Hand sanitizer, disinfectant wipes, and other supplies have been purchased.

Administrative Challenges by Last-Minute Changes

33. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all of their election-related responsibilities, particularly during a presidential election year.

34. Given the size of Pinellas County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience.

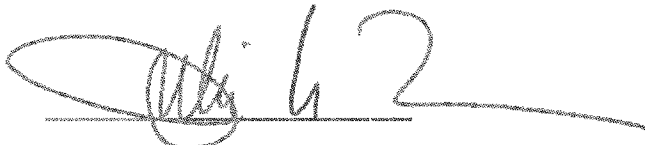
35. However, those challenges become more problematic when last-minute changes are made to my department's election preparations. Simply put, Pinellas County has already planned and prepared for how it will operate its ballot tabulation equipment during the 2020 Primary and General Elections and has made procurement, staffing, and resource decisions based on that initial plan.

36. Any changes to tabulation equipment, even if it is to just store additional data on existing storage medium, will interject an additional unknown element into the election process. The

ultimate effects of those changes cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Primary and General Elections.

37. Given the difficulty of conducting any election, generally, and the 2020 Primary and General Election, in particular, any change to the election plan at this late stage may harm the accuracy and reliability of the entire election, and would create a considerable burden on Pinellas County's ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to call into question the accuracy of the election or question the cause of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses too great a risk to the conduct and accuracy of the 2020 Primary and General Elections to implement any changes at this time.

On August 7, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

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

JULIE MARCUS
Supervisor of Elections, Pinellas County

EXHIBIT A-6

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GERALDINE THOMPSON, et al.,

Plaintiffs,

v.

CASE NO. 2020-ca-001238

LAUREL LEE, et al.,

Defendants.

**DECLARATION OF ORANGE COUNTY SUPERVISOR OF ELECTIONS
BILL COWLES**

1. I am Bill Cowles, Supervisor of Elections for Orange County, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I have been the Supervisor of Elections for Orange County since 1996 (24 years) and have worked at the Department of Elections since 1989.

3. I am familiar with all aspects of election administration in Orange County, including voter outreach and education, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and paper

for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

4. As the Orange County Supervisor of Elections, I am responsible for the conduct of federal, state, county and municipal elections in Orange County.

5. As the Orange County Supervisor of Elections, I am responsible for ensuring the accuracy and reliability of the 2020 Primary and General Election in Orange County.

6. I am also the past president and an active member of Florida Supervisors of Elections, Inc. (FSE), a professional membership organization representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Florida Division of Elections and the Florida Legislature.

Retention and Inspection of Paper Ballots

7. As the Supervisor of Elections for Orange County, it is my responsibility to maintain the voted paper ballots cast during any non-municipal local, state, or federal election. These voted paper ballots are the official record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official record of the votes for these elections.

8. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. This includes all paper ballots removed from vote-by-mail envelopes and all official ballots and ballot cards received from election boards at early voting or at election day polling places.

9. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state and local elections is one (1) year after the certification of the election.

10. In accordance with Florida law, the voted paper ballots and ballot cards are available for public inspection or examination while in the custody of my office at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these ballots and ballot cards prior to the end of the election contest period, Florida law requires that my office notify all other candidates who appear on the ballot of such request and allow all parties to be present for the examination.

11. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of a recount under Florida law.

Digital Representations of Ballots

12. Regarding the technical issue of digital representations of ballots, I have requested my Technical Services Manager, Luis Torres, to prepare a Declaration. I concur with the facts provided by Manager Torres and adopt his statements as though restated here.

The August 18, 2020 Primary Election

13. For the August 18, 2020 Primary Election , Orange County will have nearly 822,000 registered voters. To serve those voters, the County will provide 18 early voting sites utilizing a total of 36 DS200 scanners and 247 election day precincts utilizing a total of 247 DS200 scanners. Orange County will also utilize a total of 8 DS 850 scanners for the purpose of tabulating vote-by-mail ballots.

14. A one-page ballot is being used for the 2020 Primary Election in Orange County.

15. The preparation and planning needed to prepare for the 2020 Primary Election began months before the actual election. The Orange County Supervisor of Elections completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with sufficient ballot scanners and

other essential equipment necessary to conduct the election. The programming and preparation of the ballot scanners began immediately following qualification on June 12, 2020. Orange County completed its logic and accuracy test on July 24, 2020 and no material changes to the election equipment may be made without invalidating those tests required by State law.

16. For the 2020 Primary Election, Orange County will set its tabulation equipment to only retain those digital representations of voted paper ballots that include a write-in candidate selection by the voter. The remaining temporary digital representations of voted paper ballots will not be retained as they do not serve any administrative purpose and are superseded and made obsolete by the physical voted paper ballot.

The November 3, 2020 General Election

17. For the November 3, 2020 General Election, Orange County anticipates having approximately 850,000 registered voters. To serve those voters, the County anticipates providing 20 early voting sites utilizing a total of 60 DS200 scanners and 247 election day precincts utilizing a total of 320 DS200 scanners. Orange County will also utilize a total of 8 DS 850 scanners for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office prepares for approximately 80% to vote in the General Election.

18. The size of the ballot for the 2020 General Election is anticipated to be 4 pages (2 double-sided pages).

19. The preparation and planning needed to prepare for the 2020 General Election began well before start of the Primary Election. The Orange County Supervisor of Elections completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with sufficient ballot scanners and other essential equipment necessary to conduct the election. The programming and preparation of the ballot scanners will begin immediately after the Primary Election. Orange County anticipates completing its logic and accuracy test for the 2020 General Election on or before October 9, 2020.

20. For the 2020 General Election, Orange County will have no choice but to set its tabulation equipment to retain only those digital representation of voted paper ballots that include a write-in candidate selection by the voter. Other temporary digital representations of voted paper ballots will not be retained as they do not serve any administrative purpose and are superseded and made obsolete by the physical voted paper ballot. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Orange County with a ballot length of 4 pages (2 double-sided pages) would likely reach the digital storage capacity of tabulation equipment at early voting locations and election day precincts and create delays in the reporting of elections results.

Additional Costs of Creating and Maintaining Ballot Images

21. Any order issued today or later will simply be too late to allow for implementation for the August 18, 2020 Primary Election. The vast majority of early voting will be completed and there will be insufficient time to reprogram, retest and prepare election equipment for deployment at election day precincts

Administrative Challenges by Last-Minute Changes

22. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all of their election-related responsibilities, particularly during a presidential election year.

23. Given the size of Orange County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience, potential recounts, candidate withdrawals, or other electoral court challenges.

24. However, those challenges become more problematic when last-minute changes are made during election preparations. Put simply, the Orange County Supervisor of Elections has already planned and prepared for how it will operate its ballot tabulation equipment during the 2020 Primary and General Elections and have made procurement, staffing, and resource decisions based on that initial plan.

25. Any changes to tabulation equipment will interject an additional

unknown element into the election process, the ultimate effects of which cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Elections.

26. Given the difficulty of conducting any election, generally, and the 2020 Election, in particular, any change to the election plan at this late stage may harm the accuracy and reliability of the entire election, and would create a considerable burden on the Orange County Supervisor of Elections' ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to call into question the accuracy of the election or question the cause of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses too great a risk to the conduct and accuracy of the 2020 Elections to implement any changes at this time.

Dated this 7th day of August, 2020.



Bill Cowles
Orange County Supervisor of Elections

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of
Page 8 of 9

physical presence on August 7, 2020, by Bill Cowles, who identified this instrument as his Declaration. Bill Cowles is personally known to me.



Notary Public – State of Florida



12/5/2023

My Commission Expires

EXHIBIT A-7

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al,,

Plaintiffs,

v.

LAUREL LEE et al,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF CHRISTINA WHITE

1. I am Christina White, Supervisor of Elections for Miami-Dade County, Florida, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I have been the Supervisor of Elections for Miami-Dade County for approximately 5 years and have worked at the Department of Elections since 2006. During my prior tenure with the Miami-Dade County Department of Elections, I held the position of Chief Deputy Supervisor from July 2013 to May 2016.

3. I am familiar with all aspects of election administration in Miami-Dade County, including voter outreach and education, poll worker hiring and training, selection, staffing, and operation of Early Voting and Election Day sites, acquisition of voting equipment, programming of voting equipment, ballot layout, ballot printing, acquisition of supplies such as vote-by-mail envelopes and paper for paper ballots, canvassing, uploading of election results, recounts, and post-election audits.

4. As the Miami-Dade County Supervisor of Elections, I am responsible for the conduct of federal, state and county elections in Miami-Dade County.

5. As the Miami-Dade County Supervisor of Elections, I am responsible for ensuring the accuracy and reliability of the 2020 Primary and General Election in Miami-Dade County.

Declaration of Christina White

Page 1 of 9

6. I am also an active member of Florida Supervisors of Elections Association, Inc. (FSE), a professional membership organization representing the Supervisors of Elections of Florida's 67 counties. FSE's goal is to support fair, honest, and accurate elections in the State of Florida. FSE collaborates with state and federal policymakers in furtherance of this goal, including the Florida Division of Elections and the Florida Legislature. After the 2018 General Election, I was invited to testify by the Florida Legislature as part of a panel of Supervisors of Elections on proposed changes to the Florida Statutes.

Retention and Inspection of Paper Ballots

7. As the Supervisor of Election for Miami-Dade County, it is my responsibility to maintain the voted paper ballots cast during any local, state, or federal election. These voted paper ballots are the official record of the votes cast in any election and the primary record of the individual votes cast in the election. All other copies of these voted paper ballots are duplicates of the official vote for these elections.

8. Under Florida law, the Supervisor of Elections retains all ballots, forms, and other elections materials in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. This includes all paper ballots removed from vote-by-mail envelopes and all official ballots and ballot cards received from election boards at early voting or at election day polling places.

9. Under the General Records Schedule GS3 for Election Records, the retention period for all voted paper ballots cast in federal elections is twenty-two (22) months after the certification of the election and the retention period for all voted paper ballots cast in state and local elections is one (1) year after the certification of the election.

10. In accordance with Florida law, the voted paper ballots and ballot cards are available for public inspection or examination while in the custody of my office at any reasonable time and under reasonable conditions. Because these ballots are the official records of the election and, therefore, must be securely maintained, only elections employees are permitted to handle the official ballot and ballot cards. If a request is made to examine these ballots and ballot cards prior to the end of the election contest period, Florida law requires that my office notify all other

candidates who appear on the ballot of such request and allow all parties to be present for the examination.

11. For the upcoming 2020 Primary and General Elections, the voted paper ballots are the official election record used for the purposes of a recount under Florida law.

Digital Representations of Ballots

12. For purposes of tabulating ballots, Miami-Dade County utilizes the DS200 and DS850 ballot scanners/tabulators manufactured by Election Systems and Software. (“ES&S”). The DS200 units are used to scan and tabulate ballots at early voting and election day locations, and the DS850 units are used to scan and tabulate vote-by-mail ballots. The DS200 and DS850 units can be programmed to (a) save a complete digital image of each voted paper ballot, (b) only save a digital image of the portion of a ballot where the voter made a write-in selection, or (c) not save any digital images as unneeded duplicates of voted paper ballots.

13. Whenever digital images are saved, they may only be saved onto storage media tested and approved by the Florida Secretary of State for such purposes. The Florida Secretary of State has only approved three sizes of USB flash drives: 1GB, 4GB, and 8GB. These USB drives are proprietary to ES&S; no other storage media may be used and the D200 units have no internal storage. Thus, the largest storage media approved by the Florida Secretary of State for use with the DS200 units, which are used to scan and tabulate ballots at early voting and election day locations, is an 8GB USB thumb/flash drive. Whether a thumb/flash drive can store all digital images that its corresponding DS200 unit has been programmed to capture before reaching its capacity limit depends on the number of ballot pages for the election and the contents of those ballots.

14. In addition, Miami-Dade County only has enough 8GB USB thumb/flash drives for its early voting equipment. Miami-Dade County currently utilizes 4GB USB thumb/flash drives for all DS200 units used on Election Day.

15. In addition to size limitations, I have been informed by my information technology staff that, when there is a greater amount of data retained on the digital storage media used by the scanners, there are concerns regarding delays.

16. Miami-Dade County will be using hundreds of DS200 units during early voting. More than 500,000 voters are expected to take part in early voting in Miami-Dade County. If Miami-Dade County is required to save a complete image representation of each voted paper ballot, all of that data will have to be written to the thumb drive before Miami-Dade County can close that DS200 unit and upload the results into the Election Management System.

17. According to ES&S, this process will take exponentially longer if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. This creates additional concerns regarding the ability for our election equipment to write this much data timely and without fail. Importantly, Fla. Stat. § 102.141(4)(a) requires that each Supervisor of Elections upload early voting results into its Election Management System on the Monday before the election. Any activity that delays Miami-Dade County's ability to close out its early voting equipment creates an increased risk that Miami-Dade County may not meet this deadline.

18. Moreover, ES&S has also advised that it could take up to an additional hour per DS200 unit to close polls on election day if the DS200 units are reprogrammed to save a complete digital representation of each voted paper ballot. Given that some polling places contain multiple DS200 units, this could delay the reporting of election day results by hours.

19. If Miami-Dade County were required to conduct a recount, the additional time that would be required to close election tabulation equipment could potentially cause delays in uploading the results into the Election Management System. Given the narrow time frames provided under state law to conduct a recount, this delay creates an increased risk that Miami-Dade County may not meet these deadlines.

20. With the exception of the digital images of the portion of a ballot where the voter made a write-in selection, the digital images created by the DS200 and DS850 units serve no other administrative purpose during the election. Therefore, complete digital images of voted paper ballots are redundant because the source of those images—the voted paper ballots—are

retained in accordance with Florida law. This is no different than any other copy of a voted paper ballot created during the course of the election.

21. On the other hand, digital images of the portion of a ballot where the voter made a write-in selection serve a separate and unique purpose because Florida law allows a Supervisor of Elections to use those images to tabulate votes for write-in candidates. At present, Florida law does not permit digital images created by the DS200 and DS850 units to be used for any other purpose relating to the conduct of an election.

22. The digital images created by the DS200 and DS850 units are different than the digital images created by the Clear Ballot Audit System. Unlike the images from the DS200 and DS850 units, the images created by the Clear Ballot Audit System may be used under Florida law for an automated post-election audit and recounts.

The August 18, 2020 Primary Election

23. For the August 18, 2020 Primary Election, Miami-Dade County will have 1,499,402 registered voters. To serve those voters, the County will provide 23 early voting sites utilizing a total of 92 DS200 units and 859 election day precincts utilizing a total of 1,604 DS200 units. Miami-Dade County will also utilize a total of 9 DS850 units for the purpose of tabulating vote-by-mail ballots.

24. The size of the ballot for the 2020 Primary Election is 1 page. For many of those ballots, there is content on both sides of that page. Already, approximately 145,000 Vote-by-Mail ballots have been returned by voters in Miami-Dade County alone, and at least 10,000 additional Vote-by-Mail ballots arrive each day. In addition, Miami-Dade County has seen an approximate 20% increase in voters at its early voting sites for the 2020 Primary Election when compared on a day-to-day basis to early voting participation in the 2016 and 2018 Primary Elections.

25. Preparation and planning for the 2020 Primary Election began months before the actual election. Miami-Dade County completed the procurement of thumb drives to properly stock all early voting sites and election day precincts with essential equipment for the estimated number of DS200 units that will be needed to conduct the election. The programming and preparation of

the DS200 and DS850 units began well in advance of the start of early voting on August 3, 2020. Miami-Dade County completed its logic and accuracy test on July 29, 2020 and no material changes to the election equipment may be made without invalidating those tests required by State law.

26. For the 2020 Primary Election, Miami-Dade County County has already set its tabulation equipment to only save a digital image of the portion of a ballot where the voter made a write-in selection. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law. Moreover, retaining all ballot images for the 2020 Primary Election in a county the size of Miami-Dade County would risk reaching the digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts and potentially create delays in the reporting of elections results.

The November 3, 2020 General Election

27. For the November 3, 2020 General Election, Miami-Dade County will have an estimated 1.5 million registered voters. To serve those voters, the County will provide 33 early voting sites utilizing a total of 330 DS200 units and an estimated 859 election day precincts utilizing a total of 1,639 DS200 units. Miami-Dade County will also utilize a total of 9 DS850 units for the purpose of tabulating vote-by-mail ballots. For planning purposes, my office prepares for approximately 1.2 million voters to vote in the General Election.

28. Based on ballot sizes in prior presidential elections, the size of the ballot for the 2020 General Election could reach 4 pages with content on both sides of each page.

29. Preparation and planning for the 2020 General Election began well before start of the Primary Election. Miami-Dade County completed the procurement of enough equipment to properly stock all early voting sites and election day precincts with DS200 units and other essential equipment necessary to conduct the election. The programming and preparation of both the DS200 and DS850 units will begin immediately after the Primary Election. Miami-Dade

County anticipates beginning to code this election on August 25, 2020. After which, no changes can be made to the system.

30. For the 2020 General Election, Miami-Dade County will set its DS200 and DS850 units to only save a digital image of the portion of a ballot where the voter made a write-in selection. The remaining temporary digital images of voted paper ballots will not be retained because they do not serve any administrative purpose since the source of those images—the voted paper ballots—are already retained in accordance with Florida law.

31. Moreover, retaining all ballot images for the 2020 General Election in a county the size of Miami-Dade County with a ballot length that could reach 4 pages, with content on both sides of each page, would risk reaching the digital storage capacity of the thumb drives used with the DS200 units at early voting locations and election day precincts and create delays in the reporting of elections results.

Administrative Challenges by Last-Minute Changes

32. Since the state-mandated Logic & Accuracy Test of voting equipment used in the 2020 Primary Election was completed on July 29, 2020, any order issued on or after August 13, 2020 will simply be too late to allow for implementation for the August 18, 2020 Primary Election.

33. If Miami-Dade County were ordered to retain a complete digital image of each voted paper ballot, we are unable at this time to estimate what additional expenses would be required to properly account for the very real possibility of needing to replace equipment which has reached its storage capacity at early voting or election day precincts. There is no guarantee that such equipment will be available and, even if available, such last-minute expenditures would be an administrative and financial burden because Miami-Dade County has already expended considerable funds to adapt our processes and operations for the COVID-19 pandemic. For example, personal protective equipment for all staff and poll workers has been ordered. Hand sanitizer, disinfectant wipes, and other supplies have been purchased. Costly equipment upgrades have been procured to ensure that the county can process an anticipated increase in voters during the General Election.

34. The State of Florida's election laws impose very tight timeframes for Supervisors of Elections to accomplish all of their election-related responsibilities, particularly during a presidential election year.

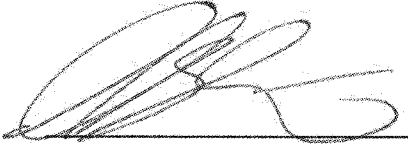
35. Given the size of Miami-Dade County, there are always considerable challenges in meeting those deadlines even under the best of circumstances based on the volumes we experience.

36. However, those challenges become more problematic when last-minute changes are made to my department's election preparations. Put simply, Miami-Dade County has already planned and prepared for how it will operate its ballot tabulation equipment during the 2020 Primary and General Elections and has made procurement, staffing, and resource decisions based on that initial plan.

37. Any changes to tabulation equipment, even if it is to just store additional data on existing storage medium, will interject an additional unknown element into the election process. The ultimate effects of those changes cannot be reasonably anticipated, tested, and accounted for given the proximity to this election and the extraordinary difficulties attendant to the 2020 Primary and General Elections.

38. Given the difficulty of conducting any election, generally, and the 2020 Primary and General Election, in particular, any change to the election plan at this late stage may harm the accuracy and reliability of the entire election, and would create a considerable burden on Miami-Dade County's ability to meet other obligations which would need to be put on hold to effectuate any emergency relief. Even if the net effect of any change would only be a delay in the reporting of election day voting results, such delay could be used to call into question the accuracy of the election or question the cause of such delay. In my professional opinion, a last-minute change to the digital tabulation storage policy poses too great a risk to the conduct and accuracy of the 2020 Primary and General Elections to implement any changes at this time.

On August 6, 2020 pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

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

Christina White
Supervisor of Elections, Miami-Dade County

EXHIBIT B-1

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al.,

Plaintiffs,

v.

LAUREL LEE et al.,

Defendants.

Case No. 2020 CA 001238

DECLARATION OF JOHN WOLF AT SUPERVISOR OF ELECTIONS

1. My name is John Wolf. I am over the age of twenty-one and of sound mind. I have personal knowledge of the facts set forth in this Declaration.
2. Since September 23, 2019, I have been employed by the Supervisor of Elections for Broward County (the "Supervisor") as an IT Director.
3. Based on both my current role as IT Director and my prior experience with the Supervisor, I am familiar with the information technology and vote tabulation systems used in Broward County elections.

Election Tabulation Equipment

4. When a voter marks a paper ballot in any election, that paper ballot must be run through tabulation equipment to record the voter's choices and have them counted in the election results. For all 2020 elections, the Supervisor will use ES&S/DS200 and ES&S/DS850 tabulation machines (the "ES&S Machines").
5. In addition to storing the tabulated votes, the ES&S Machines can be programmed to (a) save a complete digital representation of every voted paper ballot, (b) save only those digital representations that include a write-in candidate selection by the voter, or (c) not save the digital representations as unneeded duplicates of voted paper ballots.
6. When the ES&S Machines are programmed to save a complete digital representation of every voted paper ballot, or to save only those digital representations that include a write-in

candidate, the saved file does not include an actual image of the ballot. Instead, the information is saved in a propriety ES&E format.

7. In order to view the information saved in the propriety ES&E format, the files must be exported into a different format?

8. The Supervisor also uses the Clear Ballot Audit System, which takes an actual digital image of ballots after they are run through the ES&S Machines and tabulated.

Storage Issues with Election Tabulation Equipment

9. The ES&S Machines do not have sufficient internal storage capacity to save a complete digital representation of each paper ballot cast in an election.

10. The Florida Secretary of State has only approved certain external storage devices for use with election tabulation equipment, and no other storage media may be used. The largest storage media approved by the Florida Secretary of State is an 8 gigabyte USB thumb/flash drive.

11. The state-approved 8GB USB drives would have sufficient storage capacity to save digital representations of ballots that include a write-in candidate selection by the voter.

12. However, given the number of registered voters in Broward County (1,227,938), the expected number of votes cast in any given county-wide election, and the file size for complete digital representations of voted paper ballots, the state-approved 8GB USB drive will almost certainly not have sufficient capacity to save a complete digital representation of every paper ballot cast.

13. If a USB drive in an ES&S Machine reaches its storage limit during early voting or election-day voting, the machine unit would have to be shut down and replaced with another machine with its own USB drive. This process would continue until the last voter has voted, or until the end of the designated time of early voting (as applicable).

14. Replacing ES&S Machines during the voting process would impact the accuracy and reliability of the election in the following ways: (1) the Supervisor would not have enough equipment for all 577 precincts to be able to change units out; (2) because the Supervisor cannot predict turnout, a precinct may be shut down until a machine arrives; (3) ensuring that chain of custody for all units is strictly adhered to would be more difficult; (4) tabulation of results on

election night would be slower because there would be more USB drives per precinct; and (5) Broward County would need to spend hundreds of thousands of dollars in new equipment.

Delay Concerns with Election Tabulation Equipment

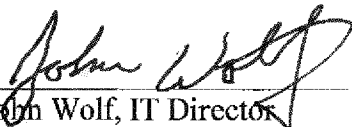
15. ES&S/DS200 machines process 200 ballots per hour. ES&S/DS850 machines process 850 ballots per hour.

16. When early voting or election day voting has concluded, the ES&S Machines must be “closed out,” with all data being properly saved on to the state-approved USB drives.

17. If the ES&S Machines were configured to save a complete digital representation of each voted paper ballot, the time needed to close out the equipment would increase considerably because a greater amount of data would need to be transferred on to the USB drives. This would very likely cause unusual delays in the reporting of results on election day and increase the potential for technical errors to occur during transmission of the results to the state.

18. These concerns are also more acute in heavily populated counties, like Broward County, because heavily populated counties expect to have a larger number of ballots cast in any given state-wide election.

On Aug. 06, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



John Wolf, IT Director
Office of the Supervisor of Elections, Broward County

EXHIBIT B-2

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al.,

Plaintiffs,

v.

LAUREL LEE et al.,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF STAN BETHEA

1. I am Stan Bethea, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I am currently employed with the Supervisor of Elections for Duval County as a Director of Information Services. I have worked for the Supervisor of Elections for Duval County for approximately 15 years. During my tenure with the Supervisor of Elections for Duval County, I held the position of Director of Information Services from August 2006 to present.

4. Based on both my current role as Director of Information Services and my prior experience with the Supervisor of Elections for Duval County, I am familiar with the following aspects of election administration: ballot creation and layout, Vote-By-Mail processing and verification, and vote tabulation and vote tabulation and reporting.

Election Tabulation Equipment

5. Whenever a voter marks a paper ballot in any election, that paper ballot must be run through tabulation equipment to have the voter's choices added to the election results.

6. For all elections conducted in Duval County during 2020, we use the following tabulation equipment: ES&S DS200 and ES&S DS850.

7. These above-listed tabulation equipment can be programmed to (a) save a complete digital representation of each voted paper ballot, (b) save only those digital representations that include a

write-in candidate selection by the voter, or (c) discard those digital representations as unneeded duplicates of voted paper ballots.

8. When tabulation equipment is programmed to save a complete digital representation of each voted paper ballot, the saved file does not include an actual image of the ballot. Instead, the following information is saved in the following format: proprietary format.

9. In order to view the information that has been saved as a ballot image, the following must occur: EACH USB MEMORY DEVICE USED MUST BE INGESTED INTO TWO PROGRAMS – ERM AND ELECTIONWARE.

9. When tabulation equipment is programmed to save only those digital representations that include a write-in candidate selection by the voter, the following information is saved in the following format: proprietary format.

10. When tabulation equipment is programmed to “clear” (i.e. discard those digital representations as unneeded duplicates of voted paper ballots), the following information is saved in the following format: proprietary format.

11. For those counties that have opted to use the Clear Ballot Audit System, a complete digital representation of each voted paper ballot is not taken at the time the voted paper ballot is initially run through tabulation equipment. Instead, that digital representation is made. The Supervisor of Elections for Duval County does not use the Clear Ballot Audit System.

Storage Issues with Election Tabulation Equipment

12. Based on the number of ballots that are fed into each tabulator, the above-listed tabulation equipment does not have sufficient internal storage capacity to save a complete digital representation of each voted paper ballot.

13. In addition, the Florida Secretary of State has only approved certain external storage devices for use with election tabulation equipment; no other storage media may be used. The largest storage media approved by the Florida Secretary of State for the early voting and election day tabulation equipment is an 8GB USB thumb/flash drive.

14. The ability of the largest authorized digital storage medium to record digital representations of voted paper ballots will depend on the number of ballot pages for the election and the contents of those ballots.

15. When the election tabulation equipment is set to either (a) save only those digital representations that include a write-in candidate selection by the voter, or (b) discard those digital representations as unneeded duplicates of voted paper ballots, the state-approved 8GB USB thumb/flash drives have sufficient storage capacity to save all information without storage concerns.

16. Given the number of registered voters in Duval County, the expected number of votes cast in any given county-wide election, and the file size for complete digital representations of voted paper ballots, the state-approved 8GB USB thumb/flash drive may not have sufficient capacity to save a complete digital representation of each voted paper ballot.

17. If the thumb/flash drive reaches its storage limit during early voting or election day voting, the following actions would need to be taken: Each precinct tabulator can only “close” a single USB memory device and have that device upload into the correct counter group (Election Day, Early Voting, Vote-By-Mail or Provisional). To use a second USB thumb/flash drive is to either deploy an additional tabulator or if the same tabulator is used, create a second counter group which would look strange. If the same tabulator is used, the time to close a poll on a tabulator that is at or near storage capacity on the USB drive is quite a lengthy process. More importantly, these additional actions could impact on the accuracy and reliability of the election in the following ways: multiple counter groups, the times it would take to close and reuse a tabulator, Duval County only has 4GB USB memory drives.

Delay Concerns with Election Tabulation Equipment

18. Whenever a ballot is run through the above-listed tabulation equipment, it takes the following amount of time for that ballot to be processed through the equipment: about 20 seconds for an 11” ballot on a DS200. A DS850 is rated at 300 11” ballots per minute.

19. Furthermore, when early voting or election day voting has concluded, the above-listed tabulation equipment must be closed out with all data being properly saved on to the state-approved thumb/flash drives.

20. If the above-listed tabulation equipment were configured to save a complete digital representation of each voted paper ballot, the time needed to close out the equipment would increase considerably because a greater amount of data would need to be transferred on to the state-approved thumb/flash drives. This would very likely cause unusual delays in the reporting of results on election day and increase the potential for technical errors to occur during that transmission.

21. These concerns are also more acute in heavily populated counties, like Duval County, because heavily populated counties expect to have a larger number of ballots cast in any given state-wide election.

On Aug. 5, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ Stan Bethea

Stan Bethea
Director of Information Services
Office of the Supervisor of Elections, Duval County

EXHIBIT B-3

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et. al,

Plaintiffs,

v.

LAUREL LEE et. al,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF EMPLOYEE AT HILLSBOROUGH COUNTY SUPERVISOR OF ELECTIONS

1. I am Heather Hains, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I am currently employed with the Supervisor of Elections for Hillsborough County as a Director of IT. I have worked for the Supervisor of Elections for Hillsborough County for approximately 2.5 years. During my tenure with the County, I hold the position of Director of IT from January 28, 2018 to Current.

3. Based on both my current role as Director of IT and my prior experience with the Supervisor of Elections for Hillsborough County, I am familiar with the following aspects of election administration: Election Management Systems, Coding, Tabulation, Reporting, and Cyber Security.

Election Tabulation Equipment

4. Whenever a voter marks a paper ballot in any election, that paper ballot must be run through tabulation equipment to have the voter's choices added to the election results.

5. For all elections conducted in Hillsborough County during 2020, we use the following tabulation equipment: Election Systems & Software, (ES&S): Election Management System (EMS), precinct scanners (DS200), and central count scanners (DS850).

Declaration of Employee at Hillsborough County Supervisor of Elections

6. These above-listed tabulation equipment can be programmed to (a) save a complete digital representation of each voted paper ballot, (b) save only those digital representations that include a write-in candidate selection by the voter, or (c) discard those digital representations as unneeded duplicates of voted paper ballots.

7. When tabulation equipment is programmed to save a complete digital representation of each voted paper ballot: Election Reporting Manager (ERM) is used to archive the DS200/DS850 media, and users can then use Electionware software to display and export all cast vote records and those ballot images. If the option to save all images is set, the ballot images are exported as individual .pdf files within a .zip archive. Files are exported in folders, by precinct and party.

8. In order to view the information that has been saved as a ballot image, the following must occur: DS200 Digital Precinct Scanner and Electionware: When a paper ballot is scanned, an image is temporarily captured into random access memory (RAM). The scanner then uses ES&S's patented Intelligent Mark Recognition (IMR) and Positive Target Recognition and Compensation (OTAC) technology to provide the most advanced and accurate mark recognition available. The voter's selections are identified and stored, the DS200 either writes the ballot image in RAM to the internal USB media or clears the image from the DS200's RAM depending on the image capture setting in the election programming software. If the option to save all images or save write-in images is set, the said image is then written to the internal USB media, and is digitally signed for added security. At the close of polls, all image files saved are encrypted and resigned before the USB media is removed from each DS200. DS850- Digital Central Scanner and Electionware: The same image capture options exist on the Central scanners as the Precinct scanners and are set during the election programming process. When a paper ballot is scanned, the central scanner system uses the same IMR and PTAC technology as described for the DS200 to capture and record the voter's candidate selections. DS850 scanners retain the ballot image and based on the programmed image capture settings can then be exported to a thumb drive. Election Reporting Manager (ERM) is used to archive the DS200/DS850 media, and users can then use Electionware software to display and export all cast vote records and those ballot images images.

9. When tabulation equipment is programmed to save only those digital representations that include a write-in candidate selection by the voter, the following information is saved in the following format: Election Reporting Manager (ERM) is used to archive the DS200/DS850 media, and users can then use Electionware software to display and export all cast vote records and those ballot images. If the option to save write-in images is set, the data can be exported as Excel (.xlsx) which inserts the image of the write-in response in a cell along with header data that identifies the ballot.

10. When tabulation equipment is programmed to “clear” (i.e. discard those digital representations as unneeded duplicates of voted paper ballots), the following information is saved in the following format: The election results which can be printed or exported as reports.

11. For those counties that have opted to use the Clear Ballot Audit System, a complete digital representation of each voted paper ballot is not taken at the time the voted paper ballot is initially run through tabulation equipment. Instead, that digital representation is made after the ballot has been scanned thru the tabulation equipment. The ballots are scanned thru Fujitsu optical scanners and are stored as .JPG images of the ballot.

Storage Issues with Election Tabulation Equipment

12. Based on the number of ballots that are fed into each tabulator, the above-listed tabulation equipment does not have sufficient internal storage capacity to save a complete digital representation of each voted paper ballot.

13. In addition, the Florida Secretary of State has only approved certain external storage devices for use with election tabulation equipment; no other storage media may be used. The largest storage media approved by the Florida Secretary of State for the early voting and election day tabulation equipment is an 8GB USB thumb/flash drive.

14. The ability of the largest authorized digital storage medium to record digital representations of voted paper ballots will depend on the number of ballot pages for the election and the contents of those ballots.

15. When the election tabulation equipment is set to either (a) save only those digital representations that include a write-in candidate selection by the voter, or (b) discard those digital representations as unneeded duplicates of voted paper ballots, the state-approved 8GB USB thumb/flash drives have sufficient storage capacity to save all information without storage concerns.

16. Given the number of registered voters in Hillsborough County, the expected number of votes cast in any given county-wide election, and the file size for complete digital representations of voted paper ballots, the state-approved 8GB USB thumb/flash drive may not have sufficient capacity to save a complete digital representation of each voted paper ballot.

17. If the thumb/flash drive reaches its storage limit during early voting or election day voting, the following actions would need to be taken: The DS200 unit would be replaced with another DS200 unit to ensure no interruption to the voting process.

Delay Concerns with Election Tabulation Equipment

18. Whenever a ballot is run through the above-listed tabulation equipment, it takes the following amount of time for that ballot to be processed through the equipment: The DS200 Expected speed is 2 to 3 ballots per minute. 153 ballots per hour. Approx. 2,300 ballots per terminal over the course of a 15-hour counting period. The DS850 expected speed is 365 11-inch ballots per minute or 235 19-inch ballots per minute. Approx. 8,640 11-inch ballots/hour or 7,200 19-inch ballots per hour.

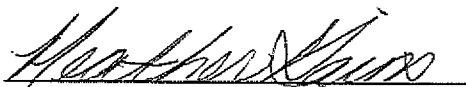
19. Furthermore, when early voting or election day voting has concluded, the above-listed tabulation equipment must be closed out with all data being properly saved on to the state-approved thumb/flash drives.

20. If the above-listed tabulation equipment were configured to save a complete digital representation of each voted paper ballot, the time needed to close out the equipment would increase considerably because a greater amount of data would need to be transferred on to the state-approved thumb/flash drives. This would very likely cause unusual delays in the reporting

of results on election day and increase the potential for technical errors to occur during that transmission.

21. These concerns are also more acute in heavily populated counties, like Hillsborough County, because heavily populated counties expect to have a larger number of ballots cast in any given state-wide election.

On Aug. 05, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Heather Hains

Director of IT

Office of the Supervisor of Elections, Hillsborough County

EXHIBIT B-4

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Geraldine Thompson et al,

Plaintiffs,

v.

LAUREL LEE et al,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

DECLARATION OF TODD PUTNAM

1. I am Todd Putnam, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I am currently employed with the Supervisor of Elections for Lee County as a System Administrator. I have worked for the Supervisor of Elections for Lee County for approximately seven (7) years.

3. Based on both my current role as System Administrator and my experience with the Supervisor of Elections for Lee County, I am familiar with the following aspects of election administration tabulation systems and network administration.

Election Tabulation Equipment

4. Whenever a voter marks a paper ballot in any election, that paper ballot must be run through tabulation equipment to have the voter's choices added to the election results.

5. For all elections conducted in Lee County during 2020, we use the following tabulation equipment DS200 precinct scanners, DS850 central scanners, an Election Management System server and the Election Reporting Management software (EVS, Release 4.5.3.0, Version 2 (Revision 3) all manufactured by Election Systems & Software, LLC. The Orange County SOE's

DECLARATION OF TODD PUTNAM

election system has been certified by the Florida Secretary of State, Division of Elections, as required by the Florida Election Code.

6. These above-listed tabulation equipment can be programmed to (a) save a complete digital representation of each voted paper ballot, (b) save only those digital representations that include a write-in candidate selection by the voter, or (c) discard those digital representations as unneeded duplicates of voted paper ballots.

7. When tabulation equipment is programmed to save a complete digital representation of each voted paper ballot, the saved file does not include an actual image of the ballot. Instead, the information saved is in a trade secret, proprietary, encrypted format.

8. To view the information that has been saved as a ballot image, the USB data stick to which the ballot images being saved must be removed from the tabulation machine, said data must then be imported into the Election Reporting Manager, decrypted, and a database built for purposes of review of the ballot images data.

9. When tabulation equipment is programmed to save only those digital representations that include a write-in candidate selection by the voter, the vote totals and digital images are saved in a trade secret, proprietary, encrypted format.

10. When tabulation equipment is programmed to “clear” (i.e. discard those digital representations as unneeded duplicates of voted paper ballots), only vote totals are saved in a trade secret, proprietary, encrypted format.

11. For those counties that have opted to use the Clear Ballot Audit System, a complete digital representation of each voted paper ballot is not taken at the time the voted paper ballot is initially run through tabulation equipment. Instead, that digital representation is made by running

DECLARATION OF TODD PUTNAM

the voted ballot through a second, non-state certified, but Clear Ballot approved, scanner where it is indexed and saved by the Clear Ballot software.

Storage Issues with Election Tabulation Equipment

12. Based on the number of ballots that are fed into each tabulator, the above-listed tabulation equipment's external drives have insufficient storage capacity to save a complete digital representation of each voted paper ballot.

13. In addition, the Florida Secretary of State has only approved certain external storage devices for use with election tabulation equipment; no other storage media may be used. The largest storage media approved by the Florida Secretary of State for the early voting and election day tabulation equipment is an 8GB USB thumb/flash drive.

14. The ability of the largest authorized digital storage medium to record digital representations of voted paper ballots will depend on the number of ballot pages for the election and the contents of those ballots.

15. When the election tabulation equipment is set to either (a) save only those digital representations that include a write-in candidate selection by the voter, or (b) discard those digital representations as unneeded duplicates of voted paper ballots, the state-approved 8GB USB thumb/flash drives have sufficient storage capacity to save all information without storage concerns.

16. Given the number of registered voters in Lee County, the expected number of votes cast in any given county-wide election, and the file size for complete digital representations of voted paper ballots, the state-approved 8GB USB thumb/flash drive may not have sufficient capacity to save a complete digital representation of each voted paper ballot.

DECLARATION OF TODD PUTNAM

17. If the thumb/flash drive reaches its storage limit during early voting or election day voting, according to Election Systems & Software, LLC technical support, both the DS200 and the data stick should be swapped out. These additional actions would increase the preparation time and cost of conducting the election by requiring additional backup DS200 scanners and data sticks to be purchased, Logic and Accuracy tested, and deployed.

Delay Concerns with Election Tabulation Equipment

18. For a ballot image to be reviewable, the data constituting the ballot image must be imported from its respective USB data stick into the Election Reporting Manager, decrypted and put into a database using a proprietary, trade secret, software, in a very time consuming processing, which may take days depending upon the number of ballot images to be reviewed.

19. Furthermore, when early voting or election day voting has concluded, the above-listed tabulation equipment must be closed out with all data being properly saved on to the state-approved thumb/flash drives.

20. If the above-listed tabulation equipment were configured to save a complete digital representation of each voted paper ballot, the time needed to close out the equipment would increase considerably because a greater amount of data would need to be transferred on to the state-approved thumb/flash drives. This would very likely cause unusual delays in the reporting of results on election day and increase the potential for technical errors to occur during that transmission.

21. These concerns are also more acute in heavily populated counties, like Lee County, because heavily populated counties expect to have a larger number of ballots cast in any given state-wide election.

DECLARATION OF TODD PUTNAM

22. Preservation and storage of all digital ballot images from an election and any associated recounts would require the Lee County Supervisor of Elections to purchase extensive USB storage capacity and to add considerable new storage capacity to its server. In addition, the process of retaining all digital ballot images will create delays to the conduct of an election. For example, it will add considerable additional time to close out each DS200 precinct scanner and DS850 – this means longer hours for the staff at each site. The process in which you consume the audit data will likely take hours and potentially days, depending upon the length of the ballot. Furthermore, each precinct site would need an additional poll worker to monitor tabulation equipment to ensure that the USB storage devices in use do not reach capacity. There would also be an additional cost associated with training of the additional poll workers.

On August 7, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Todd Putnam

System Administrator for the Lee County Supervisor of Elections

DECLARATION OF TODD PUTNAM

EXHIBIT B-5

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GERALDINE THOMPSON et al.,

Plaintiffs,

v.

LAUREL LEE et al,

Defendants.

Circuit Civil Division

Case No. 2020 CA 001238

**DECLARATION OF MARC GILLETTE, CHIEF DEPUTY
PINELLAS COUNTY SUPERVISOR OF ELECTIONS**

1. I am Marc Gillette, over the age of twenty-one, and under no disabilities. I have personal knowledge with regard to the facts described in this Declaration.

2. I am currently employed with the Supervisor of Elections for Pinellas County as Chief Deputy Supervisor of Elections. I have worked for the Supervisor of Elections for Pinellas County for approximately 12 years. During my tenure with the Pinellas County Supervisor of Elections, I also held the position of IT Administrator from 2010 to 2019.

3. Based on both my current role as Chief Deputy SOE and my prior experience with the Supervisor of Elections for Pinellas County, I am familiar with the following aspects of election administration: Election Management Systems, Coding, Tabulation, Reporting, and Cyber Security.

Election Tabulation Equipment

4. Whenever a voter marks a paper ballot in any election, that paper ballot must be run through tabulation equipment to have the voter's choices added to the election results.

5. For all elections conducted in Pinellas County during 2020, we use the following tabulation equipment: Election Systems & Software (ESS&S) Election Management System, Precinct Scanners (DS200), and Central Count Scanners (DS850).

6. These above-listed tabulation equipment can be programmed to (a) save a complete digital representation of each voted paper ballot, (b) save only those digital representations that include a write-in candidate selection by the voter, or (c) discard those digital representations as unneeded duplicates of voted paper ballots.

7. When tabulation equipment is programmed to save a complete digital representation of each voted paper ballot. The following information is saved in the following format: Encrypted .TIFF file format.

8. In order to view the information that has been saved as a ballot image, the following must occur: When a paper ballot is scanned, an image is temporarily captured into random access memory (RAM). The scanner then uses ES&S's patented Intelligent Mark Recognition (IMR) and Positive Target Recognition and Compensation (OTAC) technology to provide the most advanced and accurate mark recognition available. The voter's selections are identified and stored, the DS200 either writes the ballot image in RAM to the external USB media or clears the image from the DS200's RAM depending on the image capture setting in the election programming software. If the option to save all images or save write-in images is set, the said image is then written to the external USB media, and is digitally signed for added security. At the close of polls, all image files saved are encrypted and resigned before the USB media is removed from each DS200. DS850-Digital Central Scanner and Electionware: The same image capture options exist on the Central scanners as the Precinct scanners and are set during the election programming process. When a paper ballot is scanned, the central scanner system uses the same IMR and PTAC technology as described for the DS200 to capture and record the voter's candidate selections. DS850 scanners retain the ballot image and based on the programmed image capture settings can then be exported to a thumb drive. Election Reporting Manager (ERM) is used to archive the DS200/DS850 media, and users can then use Electionware software to display and export all cast vote records and those ballot images.

9. When tabulation equipment is programmed to save only those digital representations that include a write-in candidate selection by the voter, the following information is saved in the following format: Encrypted .TIFF file format.

10. When tabulation equipment is programmed to “clear,” the digital representations of voted paper ballots are cleared from Random Access Memory.

Storage Issues with Election Tabulation Equipment

11. Based on the number of ballots that are fed into each tabulator, the above-listed tabulation equipment does not have sufficient internal storage capacity to save a complete digital representation of each voted paper ballot.

12. In addition, the Florida Secretary of State has only approved certain external storage devices for use with election tabulation equipment; no other storage media may be used. The largest storage media approved by the Florida Secretary of State for the early voting and election day tabulation equipment is an 8GB USB thumb/flash drive.

13. The ability of the largest authorized digital storage medium to record digital representations of voted paper ballots will depend on the number of ballot pages for the election and the contents of those ballots.

14. When the election tabulation equipment is set to either (a) save only those digital representations that include a write-in candidate selection by the voter, or (b) clear those digital representations as unneeded duplicates of voted paper ballots, the state-approved 8GB USB thumb/flash drives have sufficient storage capacity to save all information without storage concerns.

15. Given the number of registered voters in Pinellas County, the expected number of votes cast in any given county-wide election, and the file size for complete digital representations of voted paper ballots, the state-approved 8GB USB thumb/flash drive may not have sufficient capacity to save a complete digital representation of each voted paper ballot.

16. If the thumb/flash drive reaches its storage limit during early voting or election day voting, the following actions would need to be taken: The DS200 unit would be replaced with another DS200 unit to ensure no interruption to the voting process.

Delay Concerns with Election Tabulation Equipment

17. Whenever a ballot is run through the above-listed tabulation equipment, it takes the following amount of time for that ballot to be processed through the equipment: The D5200 Expected speed is 2 to 3 ballots per minute; 153 ballots per hour; approximately 2,300 ballots per terminal over the course of a 15-hour counting period. The D5850 expected speed is 365 11-inch ballots per minute or 235 19-inch ballots per minute; approximately 8,640 11-inch ballots/hour or 7,200 19-inch ballots per hour.

18. Furthermore, when early voting or election day voting has concluded, the above-listed tabulation equipment must be closed out with all data being properly saved on to the State-approved thumb/flash drives.

19. If the above-listed tabulation equipment were configured to save a complete digital representation of each voted paper ballot, the time needed to close out the equipment would increase considerably because a greater amount of data would need to be transferred on to the state-approved thumb/flash drives. This would very likely cause unusual delays in the reporting of results on election day and increase the potential for technical errors to occur during that transmission.

20. These concerns are also more acute in heavily populated counties, like Pinellas County, because heavily populated counties expect to have a larger number of ballots cast in any given state-wide election.

On August 6, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Marc Gillette
Chief Deputy Supervisor of Elections
Office of the Supervisor of Elections, Pinellas County

EXHIBIT B-6

Declaration of Employee at Palm Beach County Supervisor of Elections Office

I am Jorge Luis Nuñez, a US Citizen and of legal age. As the Director of Election Technologies, I have technical knowledge with regard to the election equipment used for tabulating paper ballots.

Palm Beach County Supervisors of Elections Office (SOE) is my current employer. I have been under employment with this office approximately 3 months. Prior to my employment to the SOE in Palm Beach, I was employed for 16 years at the Broward County Supervisor of Elections Office (BSOE) as the Information Technology Director.

Throughout my 17 years of experience in the elections field, I have gained detail knowledge of the following systems, technologies. Elections System & Software (ES&S): Election Management System (EMS), precinct scanners (DS200 tabulators), and central count high speed scanners (DS850 tabulators).

Election Tabulation Process

A voter is provided their specific paper ballot, once completed by the voter, this paper ballot must be inserted into our DS200 device to be tabulated at the precinct. If the voter chooses to vote by mail, then once we receive their paper ballot and it is accepted, then the ballot must be tabulated by our DS850 device at the SOE tabulation operations office.

For all elections to be conducted at the SOE during our 2020 election cycle, we use the following tabulation equipment and system: Elections System & Software (ES&S): Election Management System (EMS), precinct scanners (DS200 tabulators), and central count high speed scanners (DS850 tabulators).

Both the DS200 and the DS850 can be programmed in one of the following ways.

- a. Save a complete captured digital image of each voted paper ballot.
Or
- b. Save only a complete captured image of each voted ballot that contains a write-in candidate.
Or
- c. Do not capture and save any image, as a duplicate digital image is not necessary.

When tabulation equipment is programmed to capture and save a digital image of each voted paper ballot: Election Reporting Manager (ERM) is used to archive the DS200/DS850 media, SOE

tabulation staff can then display and export all cast vote records and the captured paper ballot images. Paper ballot images can then be exported as individual pdf files within a zip folder archive.

When tabulation equipment is programmed to save only those digital images that include a write-in candidate selection by the voter: Election Reporting Manager (ERM) is used to archive the DS200/DS850 media, SOE tabulation staff can then use Electionware software to display and export all cast vote records and those write-in ballot images. The exported data is saved as an Excel (xlsx file format). The write-in captured image is inserted into the corresponding cell along with header data that identifies the captured ballot image.

When tabulation equipment is programmed to not capture the digital images, the following information is saved in the following format: The election results which can be printed or exported as reports.

Image Indexing and Cataloging

Palm Beach County SOE uses a digital ballot imaging, indexing system (ClearBallot) to capture a digital image of all voted paper ballots. This process occurs after the paper ballot has been tabulated by our DS200 or DS850 scanners at our central counting facility. The ballot images are store as JPG (JPEG) files.

Digital Ballot Image Storage Issues with Election Tabulation Equipment

Captured digital ballot images consume a large amount digital memory, based on this specification requirement, there is a limited capacity for storage in both the DS200 and DS850 tabulators. The defining factor for maximum storage is the size of the storage media. The maximum storage media available as required by the election vendor and certified by the state, is an 8 gigabyte (GB) USB media drive, which can be easily consumed with a large turnout by voters, voting a multiple page paper ballot at Early Voting and or Election Day.

Concerns on implementing Image Capture on Election Tabulation Equipment

Once storage capacity is consumed on the 8GB drive, the DS200 device can no longer accept additional paper ballots and therefore requires removal and replacement of that unit. This is an action that causes disruption within the process of proper election operations and therefore not recommended.

There will be a need for additional processing time of the 8GB drives, as each drive must be transferred to the tabulation central counting system to collect and archive the ballot images. This in turn can delay reporting times as the process of collection can be very slow in time.

These concerns will occur in heavily populated counties such as Palm Beach County, which has 993,000 plus voters as of the writing of this document.

On August 07, 2020, pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

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

Jorge Luis Nuñez
Election Technology Director
Supervisor of Elections Office. Palm beach County

EXHIBIT C

**IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

GERALDINE THOMPSON, et al.,

Plaintiffs,

v.

CASE NO: 2020-CA-001238

LAUREL M. LEE, in her official capacity as
Florida Secretary of State, et al.,

Defendants.

**DECLARATION OF LUIS TORRES, TECHNICAL SERVICES MANAGER
FOR ORANGE COUNTY SUPERVISOR OF ELECTIONS**

I, Luis Torres, being first duly sworn, do hereby swear and affirm:

1. This affidavit is based on my personal knowledge of the matters set forth herein; I am over eighteen (18) years old; and I am competent to testify to the same.
2. I am employed by the Orange County Supervisor of Elections (“SOE”) where I have worked for over 23 years.
3. My current title at the Orange County SOE is Technical Services Manager, and I have served in that capacity for over 9 years. I previously worked at the Orange County SOE as a Systems Technician for 16 years. My current job duties as Technical Services Manager include collaborating with staff and vendors to

implement and manage systems, processes, technical support, and security for the Orange County (SOE) election-related equipment.

4. The Orange County SOE utilizes hardware and software manufactured by Election Systems & Software, LLC (“ES&S”) to conduct elections in Orange County. The Orange County SOE first purchased the current ES&S equipment and software in 2007 and has used the ES&S equipment and software to conduct all elections in Orange County since that date. I have direct personal knowledge of the features and functionality of all ES&S equipment and software utilized by Orange County and I have over 23 years of experience with the ES&S equipment and software.

5. The Orange County SOE’s election system consists of DS200 precinct scanners, DS850 central scanners, an Election Management System (“EMS”) server and the Election Reporting Management (“ERM”) software (EVS, Release 4.5.3.0, Version 2 (Revision 3)) all manufactured by ES&S. The Orange County SOE’s election system has been certified by the Florida Secretary of State, Division of Elections, (“DOE”) as required by the Florida Election Code.

6. The Orange County SOE currently owns approximately 380 DS200 precinct scanners. The DS200 precinct scanners are used to tabulate votes during early voting and at polling places on Election Day. The DS200 precinct scanners do not have any built-in storage capacity. The Orange County SOE currently owns

eight DS850 central scanners. The DS850 central scanners are used to tabulate vote-by-mail ballots and sort ballots for recounts or audits. The DS850 has an internal one terabyte hard drive, network card, and USB ports.

7. The software that runs the DS200 and DS850 scanners allows users to specify if any ballot image will be saved. Consistent with its practices and prior elections, the Orange County SOE specified that “write-in images only” would be saved during the 2020 Primary Election.

8. Each DS200 Machine is “married” to a specific encrypted USB drive for each election at the time of programming and, once the machine has been programmed, no other USB drive can be used in that machine in that election without reprogramming the DS200 Machine.

9. During the use of the DS200 Machines in an election, the attached USB drive stores both the tabulation of the votes from the original paper ballots scanned into the machine and any digital ballot image copies of the original paper ballots the machine has been programmed to store, until the device reaches its memory capacity.

10. Once a DS200 Machine’s USB drive is full, the machine can no longer be used in that election and must be replaced with a different machine and its “married” USB flash memory drive or the machine would need to be reprogrammed “on the fly” at a polling site to accept a new USB flash memory drive.

11. On July 24, 2020 the Orange County SOE as required by Florida Statute 101.5612 conducted logic and accuracy (“L&A”) testing of its election system for the 2020 Primary Election. The L&A testing was conducted with the DS200 and DS850 scanners set to save “write-in images only.” Pursuant to a best practices recommendation provided by ES&S and the Florida Division of Elections, any change to the settings on the DS200 and DS850 scanners would require the Orange County SOE to conduct new L&A testing on the election system.

12. The Plaintiffs are seeking a preliminary injunction requiring the Orange County SOE (and other SOEs) to preserve all digital ballot images from the 2020 Primary and General Election. Other than the images of write-in ballots, which have been programmed to be preserved, no such digital ballot images will exist. With regard to the DS200 precinct scanners, all digital ballot images (other than write-ins) are temporarily captured into random access memory (“RAM”) and then overwritten when the next ballot is scanned. Our eight DS850 central scanners work differently from the 320 DS200 precinct scanners; for those machines only, we recently discovered that all digital ballot images get saved to the internal one terabyte hard drive regardless of what selection was made in the EMS system. The DS850 central scanner removes these images once the results are cleared or the machine is qualified (EQC).

13. If every DS200 Machine was programmed to save digital copies of the original paper ballots scanned into it, a 1 gigabyte flash drive would only store approximately 1,925 ballot pages, a 4 gigabyte flash drive would only store approximately 7,700 ballot pages, and a 8 gigabyte flash drive would only store 15,395 ballot pages. Metrics for DS200 Capturing All Images attached hereto as **Exhibit A.**

14. At the conclusion of voting, each DS200 Machine must be “closed out,” after which the ballot tabulation results stored on the attached USB flash memory drive are transmitted wirelessly to the Supervisor Defendants’ computer servers.

15. If the DS200 Machine is programmed to store digital copies of the original paper ballots in its “married” USB drive, such data is stored in an encrypted format, which can only be read on a machine utilizing ES&S proprietary software, which is not available to the public.

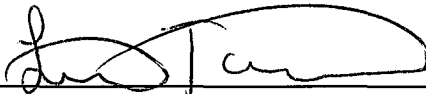
16. In order to be viewable by anyone not using the ES&S proprietary software, digital ballot image copies of the original paper ballots would need to be converted into a new format by staff of the Supervisor Defendants.

17. It is estimated that for each 1,500 digital ballot page copies of the original paper ballots stored on a USB drive in a flash memory drive, it would take an additional 15 minutes for each DS200 Machine to “close out” and commence transmitting data of the ballot results to the applicable Supervisor Defendant.

18. Given that some polling places contain multiple DS200 Machines, this could delay the reporting of Election Day results by hours.

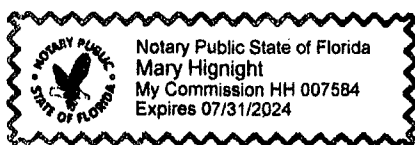
19. Plaintiffs contend that the cost of preservation and storage of digital ballot images is negligible. I disagree. Preservation and storage of all digital ballot images from an election and any associated recounts would require the Orange County SOE to purchase extensive USB storage capacity and to add considerable new storage capacity to its server. See Exhibit A (Metrics for DS200 Capture images). In addition, the process of retaining all digital ballot images will create delays to the conduct of an election. For example, it will add considerable additional time to close out each DS200 precinct scanner and DS850 – this means longer hours for the staff at each site. The process in which you consume the audit data will likely take hours and potentially days, depending upon the length of the ballot.

FURTHER AFFIANT SAYETH NAUGHT.



LUIS TORRES, TECHNICAL SERVICES MANAGER
FOR ORANGE COUNTY SUPERVISOR OF
ELECTIONS

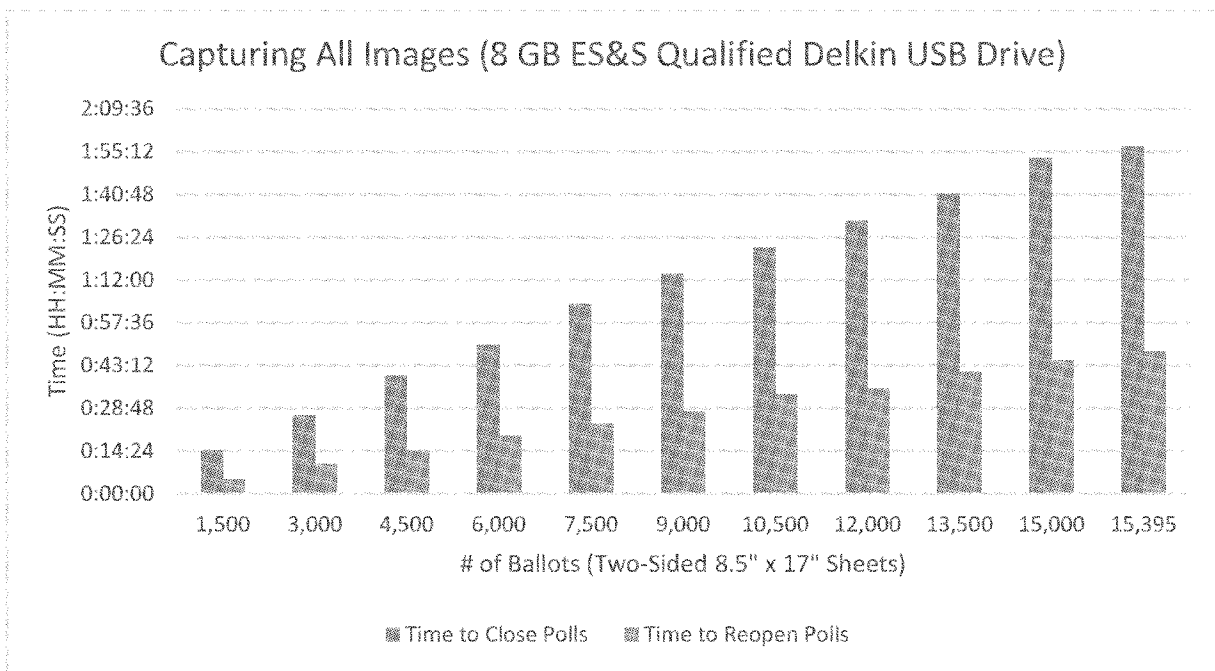
The foregoing instrument was acknowledged before me by means of physical presence on August 6, 2020, by LUIS TORRES, who identified this instrument as his Declaration. LUIS TORRES is personally known to me.



NOTARY PUBLIC

Metrics for DS200 Capturing All Images (Exhibit A)

# of Ballots	Time to Close Polls	Time to Reopen Polls
1,500	14 min, 30 sec	5 min
3,000	26 min, 30 sec	10 min
4,500	39 min ,47 sec	14 min, 30 sec
6,000	50 min, 8 sec	19 min, 30 sec
7,500	1 hr, 4 min	23 min, 30 sec
9,000	1 hr, 14 min	27 min, 50 sec
10,500	1 hr, 23 min	33 min, 35 sec
12,000	1 hr, 32 min	35 min, 30 sec
13,500	1 hr, 41 min	41 min
15,000	1 hr, 53 min	45 min
15,395	1 hr, 57 min	48 min



15,395 is the maximum amount of ballots on 8GB thumb drive. Ballot 8 ½ by 17 double sided

