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IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT
LARAMIE COUNTY, WYOMING

WYOMING REPUBLICAN PARTY,)
HON. BEN HORNOK, HON. CLARENCE)
STYVAR, TAFT LOVE, DALLAS TYRRELL,)
and KATHY SCIGLIANO,)
)
Plaintiffs,)
)
vs.) Docket No.: 2024-CV-0202597
)
DEBRA LEE, in her official capacity as)
LARAMIE COUNTY CLERK,)
)
Defendant.)

DEFENDANT’S FINAL PREHEARING MEMORANDUM

COME NOW Defendant, by and through her attorneys and respectfully submit their Final Prehearing Memorandum pursuant to Stipulation as to Discovery approved by the Court in this matter.

A. STATEMENT OF THE CASE

The Sole matter at issue before the Court is Plaintiffs’ Motion for Order to Show Cause and Motion to Enforce Consent Decree. Specifically, the limited issue is whether Debra Lee, the Laramie County Clerk, made the disclosures agreed to in Paragraph 3 of the Consent Decree related to the testing of Laramie County’s DS200 tabulation machines.

On July 19, 2024, Clerk Lee properly noticed and conducted a public test of Laramie County's DS200 tabulation machines. The DS200 machines are used to tabulate votes at each of Laramie County's polling places. Each of the DS200 tabulation machines utilizes identical software. Consequently, the testing of each machine is the same. None of the Plaintiffs attended that public test and none of the Plaintiffs offered any comment or criticism at the time of the testing.

Despite not having attended the public testing of the DS200 machines, Plaintiffs filed the above-captioned matter on the eve of the primary elections seeking a retest of all DS200 tabulation machines utilized by Laramie County, Wyoming. The vast majority of those machines had already been certified, sealed and made ready to be used on primary election day. Consequently, a retest along the timelines requested by the Plaintiffs was neither practical nor in the best interest of Laramie County. As a result, Clerk Lee entered the Consent Decree entered by this Court on August 19, 2024, in order to allow the elections to move forward expeditiously.

Paragraph 3 provides two separate ways to meet its obligations. Clerk Lee was to provide the test deck summary sheets and post-test receipts from DS200 testing that occurred before the Primary Election "if available". Under the terms of Paragraph 3, that information alone was considered "sufficient information for the purposes of this paragraph." If that information was not available, then the statement describing the date of the testing, the parties conducting the testing, and the nature of the test was to be provided. Before this court, and in its demands to Clerk Lee, Plaintiff has demanded Clerk Lee provide both sets of allowable information in order to meet the obligations of Paragraph 3. In fact, in its prayer for relief, Plaintiff continues to ask for both pieces of

information despite its express agreement under Paragraph 3, that either production of the test receipts, **or** providing a statement about the testing would be sufficient to meet the terms of the parties agreement. Before this Court, Plaintiffs embrace a repeated pattern, demanding more than they negotiated for and more than they are entitled to.

Upon investigation, Clerk Lee learned from her staff that there was not a readily available method of printing duplicate receipts. Moreover, because the printed receipts that were in the Clerk's possession were on lengthy strands of thermal paper she had concerns that trying to copy those receipts could damage them and compromise the integrity of the official election records that must be retained and protected by her office. Consequently, Clerk Lee concluded that the receipts were not readily available and through counsel informed Plaintiffs of that fact. Because they were unavailable, Clerk Lee issued her statement regarding the testing as Plaintiffs agreed.

It is important to keep in mind that Clerk Lee made multiple offers to the Plaintiffs to allow them to inspect the test receipts and if desired to even take pictures of the receipts for their records. Through her counsel, by letter dated September 9, 2024, Clerk Lee explained these issues to Plaintiffs and raised the option of allowing them to inspect the post-test receipts and to take pictures of them if desired. Plaintiffs were expressly invited to contact Defendant and let her know if they wanted to take her up on that offer. *Id.*

For the next four weeks Plaintiffs did not respond in any way to the offer. They remained completely silent. It was not until October 9, 2024 that Plaintiffs responded and demanded that they be allowed to review the receipts. During that critical four (4) week period the machines had to be readied for the General Election. Once the Primary Election counting was complete and the results were certified without challenges, the test receipts

from the Primary Testing were sealed and the machines were cleared and readied for deployment as part of the General Election. Plaintiffs lack of diligence and failure to respond to Clerk Lee’s offer now makes their request impossible.

Clerk Lee fully complied with the Consent Decree by providing a statement that described the testing of the DS200s in the exact manner outlined by the Consent Decree. The plain language of the Consent Decree contemplated that a statement could be provided in lieu of test receipts if they proved to be unavailable. That is exactly what happened here.

The statement was timely issued within 10 days of the Primary Election. The statement was also complete. It included each of the elements to which the parties agreed. The statement was to describe “any non-public testing conducted by the Defendant of the DS200 Tabulation Machines describing the date of such test, the parties conducting the test, and the nature of the test.” (Consent Decree ¶ 3).

The Date of Such Test – Clerk Lee noted in her statement that the testing of the tabulation machines was performed “on July 19 and continuing through August 13, 2024, until all machines to be used at the Primary Election were tested and sealed.” The testing was not done all at once or on a set schedule. Instead, it was performed as personnel in the Laramie County Clerk’s office had time and availability. The Laramie County Clerk’s Office does not keep a document that reflects specific dates that specific machines were tested, nor is it a requirement and would not have promised information that it did not have. The information provided in the statement is exactly what the parties agreed to.

Plaintiffs now argue that the agreement required Clerk Lee to “provide specific information as to the dates that Defendant tested each DS200 tabulators [sic] . . .” Plaintiffs

certainly could have negotiated a requirement that specific dates of the testing of each individual machine be provided, but they did not. Moreover, Plaintiffs fail to provide any indication of *why* such specific information would be in any way material. The information provided confirms that all the machines were tested and were tested prior to the Primary Election.

The Parties Conducting the Test - Similarly, the agreement states that Clerk Lee must describe “the parties conducting the test”. Importantly, the language does not mandate that specific individuals be named. Plaintiffs could have requested language that individuals, not parties be described, but they did not do so. Clerk Lee clarified in her statement that all testing was done by personnel in her office. She ultimately is responsible for any such testing so the identity of specific individuals who tested specific machines is not material.

The key issue is really whether those who tested the machines are authorized and empowered by law to perform the testing. Clerk Lee’s statement confirms that those involved in the testing were limited to those in her office. She is the chief election officer for Laramie County and her staff are certainly the appropriate parties to be conducting the test.

The Nature of the Test – Finally, the Plaintiffs agreed that a statement would be sufficient if it “described the nature of the tests”. Clerk Lee specified in her statement that the “methodology used for testing mirrored that utilized for the DS200 tests conducted in public on July 19th, with the same number of ballots and ballot styles to create a test deck for each vote center.”

While Plaintiffs failed to avail themselves of the opportunity to attend the July 19th test, they were fully informed regarding its details. A central basis of Plaintiffs' Complaint is the alleged insufficiency of the July 19th test. Plaintiffs' motion includes the affidavit of an individual who did take the time to attend the public test. They rely upon her detailed description of the July 19th testing in both the Complaint and their motion. The attendee Julie Formby, notes not only the serial numbers of the machines used for the public test, but explains that she had questions regarding the process and Clerk Lee "was accommodating and answered our questions." Mr. Formby provided a picture of the Election Summary Results Report and the Test Deck. (Formby Aff.). Plaintiffs have demonstrated beyond question that they had full knowledge methodology used for the July 19, 2024 test. They also know that the remaining testing was done with the same methodology. There are no additional details to be provided.

Contrary to the factual assertions made by Plaintiffs throughout this matter, the evidence will show that there is not an electronic record of the test results from the DS200 tabulation machines that were conducted prior to the 2024 primary election. The only test deck summary sheets or results receipts (those records referred to in Paragraph 3 of the Consent Decree) are the paper records that constitute the official records which are stored and sealed as required by Wyoming law. Those are the official records of the County. They are not "available". Plaintiffs have repeatedly tried to make the argument that "available" simply means that there is a mere possibility that the documents could be duplicated. The plain meaning of available is "present or ready for immediate use". (Merriam-Webster Dictionary). The election records do not meet that definition and

meeting the unsupported demands of Plaintiffs in this case could jeopardize the integrity of those records.

B. STATEMENT OF THE FACTUAL AND LEGAL ISSUES PRESENTED

1. Are official records of the pre-primary election tests of DS200 election machines that are stored under seal by the County Clerk, records that are “available” to be provided to the Plaintiffs as contemplated under the Consent Decree?

2. Does the Clerk’s statement that describes when pre-primary testing of the DS200 machines occurred, who performed the testing and how it was performed meet the requirements of Paragraph 3 of the Consent Decree?

3. Are Plaintiffs entitled to audit data and log data for the pre-primary testing of the DS200 machines when they failed to include that information in the Consent Decree?

4. Have the Plaintiffs proven by clear and convincing evidence that Clerk Lee failed to comply with the clear language of the Consent Decree and that such a failure was a willful violation?

5. Are Plaintiffs’ claims moot given that they only relate to pre-primary testing of election tabulation machines and that the 2024 primary election was conducted eight months ago without any challenge to the election with the results having been subsequently certified by both the County and State Canvassing Boards without objection?

C. STATEMENT OF THE PARTIES CLAIMS AND CONTENTIONS

Plaintiffs’ Contentions

1. Plaintiffs claim that Clerk Lee’s statement regarding the pre-primary election testing of DS200 tabulation machines does not meet the requirements of Paragraph 3 of the Consent Decree.

2. Plaintiffs further claim that they were entitled to a copy, electronic or otherwise, of the test receipts and test deck summary sheet.

3. Plaintiffs further claim that they are entitled to records not mentioned in the Consent Decree including audit logs for the pre-primary testing of the DS200 machines.

4. Plaintiffs further claim that they are entitled to a contempt order against Clerk Lee.

Clerk Debra Lee's Contentions

1. Clerk Lee contends that the only record of the test receipts and test deck summary sheet was the official record preserved under seal and that there was not a copy available for the Plaintiffs as contemplated by the Consent Decree.

2. Clerk Lee also contends that the statement she made regarding the pre-primary testing of the DS200 machines includes all the elements contemplated by the Consent Decree and fulfills the requirements of Paragraph 3.

3. Clerk Lee further contends that she fully and completely complied with the Consent Decree entered by the Court in this matter.

4. Clerk Lee further contends that she did not in any way willfully violate the clear and unambiguous orders of this Court.

G. WITNESSES

The following are Defendants' will call witnesses:

Debra Lee, Laramie County Clerk, to testify regarding the statement of testing that she provided pursuant to the Consent Decree, the testing of DS200's prior to the 2024 primary and all matters covered in her deposition in this case.

Mikayla Portz, Election Manager, Laramie County Clerk's Office, to discuss the testing of the DS200's prior to the 2024 primary, all matters related to the Laramie County Clerk's procedures for testing, elections and record retention and all matters covered in her deposition in this case.

H. EXHIBITS –

Defendants have attached a list of exhibits as **Exhibit A**. Defendants also reserve the right to introduce any Exhibit listed by any other party, to introduce rebuttal exhibits and to introduce summaries of evidence pursuant to Rule 1006 of the Wyoming Rules of Evidence.

DATED this 23rd day of April, 2025.

CROWLEY FLECK PLLP

By: /s/Timothy M. Stubson

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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document was mailed via file and serve this 23rd day of April, 2025.

Caleb C. Wilkins, WSB #7-5527
Robert Piper, WSB# 8-6719
COAL CREEK LAW LLP
P.O. Box 467
Cheyenne, WY 82003-0467

By: /s/Timothy M. Stubson
Timothy M. Stubson

EXHIBIT A

DEFENDANT'S EXHIBIT LIST

<u>Defendant's Exhibit</u>	<u>Brief Description</u>	<u>Bates Range/ Deposition Exhibit</u>	<u>Stipulated</u>	<u>Offered</u>	<u>Admitted</u>	<u>Refused</u>	<u>Court Use Only</u>
A	ES&S Checklist for DS200	LCC-00001-00002					
B	Placement of Seals	LCC-00005-00009					
C	Sanitization Excerpt	LCC-000010					
D	7-10-24 Laramie Co. 2024 Primary Election Public Test	LCC-000012					
E	July 1, 2022 Guidelines	LCC-000013-000046					
F	Primary Election Transfer of Records Sheet	LCC-000047					
G	Standard 4GB Memory Device	LCC-000051					
H	Thermal Paper Roll	LCC-000052					
I	Statement re. DS200 Testing	Lee Deposition Exhibit 10.2					
J	E-mail dated 8.30.24	Lee Deposition Exhibit 10.1					

<u>Defendant's Exhibit</u>	<u>Brief Description</u>	<u>Bates Range/ Deposition Exhibit</u>	<u>Stipulated</u>	<u>Offered</u>	<u>Admitted</u>	<u>Refused</u>	<u>Court Use Only</u>
K	List of Machine Serial #s locations for Laramie Co.						
L	Ltr from Stubson re Consent Decree Compliance 9.9.24						
M	Voting Machines Certification-Central Counts 8-13-24						
N	Voting Machines Certification 7-24-24						
O	Voting Certification Early Voting 7-19-24						
P	Voting Machines Certification Election Day Sites 8-14-24						