WY Laramie County District Court
1st JD
Aug 19 2024 10:23AM
2024-CV-0202597
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FILED

This order has been:
Granted

Judge Catherine Rogers

LARAMIE COUNTY

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.

DEBRA LEE, in her official capacity as
LARAMIE COUNTY CLERK,

    Defendant.

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Docket No.: 2024-CV-0202597

STIPULATED CONSENT DECREE

COME NOW, Plaintiffs, by and through undersigned counsel, and Defendant, by and through undersigned counsel, and submit to this Court for approval the following Stipulated Consent Decree:

WHEREAS, Laramie County will be holding its 2024 Primary Election on Tuesday, August 20, 2024 ("Primary Election").

WHEREAS, Laramie County utilizes two forms of vote tabulation machines in the Primary Election – DS450 Tabulation Machines ("DS450") which tabulate early and absentee ballots and DS200 Tabulation Machines ("DS200") which are deployed to the individual voting

centers and tabulate same-day ballots. There are two DS450 Tabulation Machines and 13 DS200

Tabulation Machines in use within Laramie County.

WHEREAS, Defendant held a public test of two DS200 Tabulation Machines on July 19,

2024 ("DS200 Test") and a public test of two DS450 Tabulation Machines on August 5, 2024

("First DS450 Test").

WHEREAS, Wyo. Stat. Ann. § 22-11-104(b)(iii) states:

[The county clerk of each county using an electronic voting systems shall…] Before testing an electronic voting system for an election, notify the county chairman of each political party having a candidate on the ballot, stating the time and place of the test. The political party representatives and representatives of independent candidates may be present for the test, which shall be held at least two (2) weeks before the election. The test shall ascertain that the automatic tabulating equipment will accurately count the votes cast for all offices and all measures. The test shall be conducted by processing a preaudited group of paper ballots or ballot cards on which are recorded a predetermined number of valid votes for each candidate and on each measure and shall include for each office one (1) or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes shall be assigned to each candidate for an office, and for and against each measure. If any error is detected, the cause of it shall be ascertained and corrected and an errorless count shall be secured and certified to by the county clerk. On completion of the count, the programs, test materials and ballots shall be sealed and retained as provided for paper ballots….

WHEREAS, Plaintiffs, through their representatives, expressed their concerns regarding

the DS200 Test and First DS450 Test on August 5, 2024 and requested retesting of the same.

WHEREAS, Plaintiffs filed the above Captioned matter on August 7, 2024 ("Litigation").

WHEREAS, Defendant conducted a second public test of both DS450 Tabulation

Machines on August 13, 2024 ("Second DS450 Test").

WHEREAS, The Second DS450 Test comported with the requirements of Wyo. Stat. Ann.

§ 22-11-104(b)(iii). The Second DS450 Test resolved Plaintiffs' concerns regarding the DS450

Tabulation Machines.

WHEREAS, Plaintiffs seek a retest of all the DS200 Tabulation Machines prior to the Primary Election.

WHEREAS, Defendant has already deployed the DS200 Tabulation Machines to individual polling sites and does not believe there is sufficient time or manpower to test all 13 DS200 Tabulation Machines prior to the Primary Election.

WHEREAS, the Plaintiffs and Defendant (individually a "Party" and collectively the "Parties") seek to ensure a proper and lawful Primary Election and work together to ensure public confidence in Wyoming's elections.

THE PARTIES THEREFORE AGREE, AND THE COURT ORDERS, AS FOLLOWS:

1.   On or before the Primary Election, Defendant shall conduct a public test of one or more of the DS200 Tabulation Machines using the "Test Deck" of ballots, used in the Second DS450 Test, which shall include both regular and express ballots and that shall 1) include at least one vote for every candidate on the ballot, 2) a different number of votes for each candidate on the ballot, and 3) a number of one or greater write-in votes in every race which is different than the number of votes assigned to any candidates in such race, and 4) at least one ballot which contains an excess number of votes (overvote) for each office to ensure that the tabulation machine can detect such excess number of votes.

2.   Within thirty (30) days of the Primary Election, Defendant shall conduct a public test of two additional DS200 Tabulation Machines, randomly selected by the Plaintiffs, using the Test Deck as set forth in Paragraph 1 above. As part of such test, Defendant shall provide available audit logs for such machines and Defendant shall not update, alter, or amend the machines or software from the date of the Primary Election until the completion of the tests described in this Paragraph. Defendant shall provide ten (10) days written notice to the chairmen of each political

party with a candidate on the ballot as well as any independent candidates for the test described in this paragraph. Defendant shall provide to the Plaintiffs a copy of the list of the Test Deck used in such test and the corresponding post-test receipts from the tabulation machines the same day as the test.

3.   Defendant shall provide, within ten (10) days of the Primary Election, a written statement describing 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. Defendant shall, if available, provide the Test Deck summary sheets and the corresponding post-test receipts from the tabulation machines, and such information shall considered sufficient information for the purposes of this paragraph for any such individual tabulation machine for which such information is provided. Nothing in this paragraph shall limit the Defendant from providing additional information within such written statement regarding other tests or security measures implemented to test or secure such tabulation machines.

4.   Upon execution of this Stipulated Consent Decree, this matter shall be closed subject to the continued jurisdiction of this Court to enforce the same.

THIS STIPULATED CONSENT DECREE, having come before the Court by motion of the Parties, the Court having reviewed the same and finding that this Stipulated Consent Decree resolves all issued before this Court in this matter, is hereby adopted by the Court and shall be binding upon the Parties.

DATED this _____ day of _____, 2024.

_____
HON. JUDGE ROGERS

Copies to:
Caleb Wilkins for Plaintiffs
Timothy Stubson for Defendant
********** PARTY SIGNATURES ON FOLLOWING PAGES **********

FOR THE PLAINTIFFS:

WYOMING REPUBLICAN PARTY

By: _W. Frank Ethorne_ (Aug 16, 2024 14:54 MDT)
_____
    W. FRANK ETHORNE, Chairman   DATE

Ben Hornok (Aug 16, 2024 15:10 MDT)
_____
HON. BEN HORNOK   DATE

Clarence Styvar (Aug 16, 2024 15:35 MDT)
_____
HON CLARENCE STYVAR   DATE

Taft Love (Aug 16, 2024 22:59 GMT+2)
_____
TAFT LOVE   DATE

Dallas Turrell
Dallas Tyrrell (Aug 16, 2024 15:17 MDT)
_____
DALLAS TYRRELL   DATE

Kathy Scigliano
Kathy Scigliano (Aug 16, 2024 15:29 MDT)
_____
KATHY SCIGLIANO   DATE

APPROVED AS TO FORM:

/s/Caleb C. Wilkins   August 16, 2024
_____
CALEB WILKINS   DATE
Attorney for Plaintiffs

FOR THE DEFENDANT:

_____   **B-16-2024**
DEBRA LEE AS LARAMIE COUNTY   DATE
CLERK

APPROVED AS TO FORM

_____   **8/16/2024**
TIMOTHY M. STUBSON   DATE
Attorney for Defendant