IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

[redacted]

Plaintiff,

v.

MICHAEL ADAMS, in his official capacity as the Secretary of State of Kentucky; *et al.*,

Defendants.

Civil Action No. 3:22-cv-45-REW

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION AND SUMMARY

Plaintiff [redacted], a self-described conspiracist, brings this suit to challenge the certification of electronic voting machines used in Kentucky elections. [redacted] filed his "Complaint and Request for Injunctive Relief" in this action on or about August 17, 2022, alleging multiple constitutional claims against Defendants, Secretary of State Michael G. Adams ("the Secretary") and the State Board of Elections ("the Board") (collectively "the Defendants"), related to the accreditation and certification of various voting systems used in the 2020 election and subsequent elections in Kentucky. [*See generally* DN 1]. Among other things, [redacted] seeks the following relief: (a) "an emergency injunction preventing the use of electronic voting machines in the state and in the interim, replace with paper ballots"; (b) an emergency injunction prohibiting Defendants from destruction/deletion of any election records created under KRS 117.027(4); (c) compel the Secretary of State office and State Board of Elections to halt the use of any electronic voting machine in the Commonwealth of Kentucky"; (d) "compel the Secretary of State office to issue a criminal referral to Attorney General Daniel Cameron and the Civil Rights Department of the Department of Justice; (e) "order that the Defendants be cited to appear herein and, upon final hearing, that this Court sustain these elections and enter a final judgment directing Governor Beshear to render elections void no later than 10 days after the date of judgment becomes final as 'fraud vitiates everything'"; (f) for the Court to "strike down the HAVA Act and declare it unconstitutional for limiting our forms of voting"; and (g) "an order requiring Defendants to provide to Plaintiff all correspondence relating to the certification of the electronic voting machines." [DN 1, PageID# 19-21].

His suit against the Secretary and the Board must be dismissed for several reasons:[1] First,

[1] To the extent [redacted] Complaint attempts to sue the Defendants in their individual capacities, [*see* DN 1,

this case is not justiciable under settled principles of standing and mootness. [redacted] claims are based on generalized grievances regarding the Defendants' compliance with the law in past elections, not connected to an individualized injury to him. Consequently, under the case-or-controversy requirements of Article III, he lacks standing, and this Court lacks jurisdiction.

Second, [redacted] fails to state a claim upon which relief may be granted. His central argument—that the Defendants have erroneously certified election systems—misunderstands the statutory structure that governs the certification of voting systems. Contrary to [redacted] assertion, the accreditation of the federal testing labs does not affect Defendants, as Kentucky has its own rules for certifying election systems. All of [redacted] claims are based on an incorrect reading of election statutes—many of which do not even apply to Kentucky—should thus be dismissed. More fundamentally, the Sixth Circuit has held that such routine election administration disputes are subject to rational basis review. Consequently, [redacted] Fourteenth Amendment right-to-vote claim fails as a matter of law because the actions of the Secretary the Board were rationally related to a legitimate government interest. His claims under the Tenth Amendment ignore the text of Article I § 4 of the Constitution and fare no better.

Finally, [redacted] requested relief is not appropriate under the circumstances, as he has not shown any irreparable harm. A preliminary injunction to overturn an election that happened almost two years ago is not in the public's interest. Nor is it in the public interest to entangle the Court in an upcoming election less than a month away.

PageID# 5, ¶ 2], it is barred by *Ex parte Young* and the Eleventh Amendment. *See Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997).

FACTUAL BACKGROUND

I. STATUTORY AND REGULATORY FRAMEWORK

The Court need not and should not reach the merits of [redacted]claims. Nonetheless, the Secretary and Board offers the following brief primer on the statutory and regulatory regime with which Mekus takes issue.

A. The Help America Vote Act (HAVA) of 2002

Enacted in 2002, the Help America Vote Act ("HAVA"), Pub. L. 107–252 Title III, § 302, 116 Stat. 1706 (2002) (codified at 52 U.S.C. § 20901, et seq.), made numerous improvements to the nation's voting processes, including, as relevant here, the creation of the Election Assistance Commission ("EAC"), to "serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of Federal elections[.]" 52 U.S.C. § 20922. HAVA assigns to the EAC several important roles to improve the administration of federal elections. Key among these responsibilities is the promulgation of the Voluntary Voting System Guidelines ("VVSG" or "Guidelines"), which constitute a set of voluntary "specifications and requirements against which voting systems can be tested to determine if the systems meet required standards." U.S. Election Assistance Comm'n, *Voluntary Voting System Guidelines*, available at https://perma.cc/EJ93-PP56.

Significantly, there is no federal requirement that states or localities use VVSG-compliant voting systems to conduct their elections. States and localities *may*, however, voluntarily set such requirements by law or policy. Consistent with the "cooperative federalism" principles underlying the EAC's Testing and Certification Program, when a state or locality chooses to avail itself of the VVSG and/or the Program, the state or locality retains for itself several important roles to play in the selection and certification of voting systems for use in its elections. *See generally,* U.S. Election

Assistance Commission, *Voting System Testing & Certification Program Manual* (2015), available at https://www.eac.gov/sites/default/files/eac_assets/1/28/Cert.Manual.4.1.15.FINAL.pdf. State and local officials are responsible for: "testing voting systems to ensure the system will support the specific requirements of each individual State," VSTC Program Manual § 1.6.1.2, "performing acceptance testing to ensure that the equipment delivered is identical to the equipment certified at the federal and state levels [and] is fully operational," *id*. § 1.6.1.4; and "confirm[ing] [that] equipment is operating properly and is unmodified from its certified state[.]" *Id*. § 1.6.1.5; *see also id*. § 3.2.3 (explaining the limitation of an EAC-issued voting system certification).

B. Kentucky's requirements for the certification of voting systems

The EAC has identified four categories of state voting system certification processes: (1) states that do not require voting systems be tested to federal standards or be certified by a federal agency or federally accredited laboratory but only meet basic standards for voting equipment set for under HAVA; (2) states that require testing that meets federal voting system standards (*see* 52 U.S.C. § 21081); (3) states that require testing by a federally accredited laboratory; and (4) states that require voting systems be certified by the appropriate federal agency responsible for testing and certification of compliance with federal voting system guidelines.[2]

Kentucky falls under the second category, requiring that in order to be certified and approved for use by the Kentucky State Board of Elections, a voting system in question must, among other conditions, "[m]eet or exceed the standards for a voting system established by the Election Assistance Commission, as amended from time to time, and those approved under KRS 117.379[,]" KRS 117.125(26). Significantly, under Kentucky law, voting systems need not be certified by the EAC or a federally accredited laboratory, such as Pro V&V or SLI. [*See* DN 1,

[2] Information about states' use of the VVSG is available at https://perma.cc/5WCM-SK3Z.

PageID# 12-13]. Instead, Kentucky law provides that the certification and approval of voting systems is the sole province of Kentucky's State Board of Elections, and requires that this agency appoint a committee of three examiners to examine each voting system and submit a written report. KRS 117.379(2)(a). Moreover, the law provides that "a voting system shall be approved and certified if the examiners' report states, . . . and the State Board of Elections finds[,] that the voting systems meet all of the requirements of KRS 117.125 and applicable federal law." KRS 117.379(2)(b); *see also, generally* KRS 117.383; 31 KAR 2:020.

Contrary to what [redacted] suggests, the federal testing labs' accreditation (or lack thereof) does not affect the certification of Kentucky's voting systems.

LEGAL STANDARDS

I. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

[redacted] Complaint should be dismissed under both Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal for "lack of subject-matter jurisdiction." Rule 12(b)(1) motions "fall into two general categories: facial attacks and factual attacks." *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). "A facial attack is a challenge to the sufficiency of the pleading itself," whereas a factual attack challenges "the factual existence of subject matter jurisdiction." *Id*. For factual attacks – such as here – no level of presumptive truthfulness is warranted. *Id*. Rather, "the court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id*. "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice" to defeat it. *O'Bryan v. Holy See*, 556 F.3d 361, 376 (6th Cir. 2009) (citing *Mezibov v. Allen*, 411 F.3d 712, 716 (6th Cir. 2005)); *accord Rote v. Zel Custom Mfg. LLC*, 816 F.3d 383, 387 (6th Cir. 2016).

Under Federal Rule of Civil Procedure 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is *plausible* on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added) (cleaned up). A claim is plausible on its face only if it contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. The Court is "'not bound to accept as true a legal conclusion couched as a factual allegation.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

II. PRELIMINARY INJUNCTION STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The movant "bears the burden of justifying such relief." *ACLU Fund of Mich. v. Livingston Cnty.,* 796 F.3d 636, 642 (6th Cir. 2015). Indeed, "the proof required is much more stringent than the proof required to survive a summary judgment motion." *Farnsworth v. Nationstar Mortg., LLC*, 569 F. App'x 421, 425 (6th Cir. 2014) (cleaned up).

The Court must balance four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." *City of Pontiac Retired Emples. Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (en banc) (citation omitted); *see also Winter*, 555 U.S. at 19-20. As to the first factor, a plaintiff must establish a "strong" likelihood of success, *Jolivette v. Husted*, 694 F.3d 760, 765 (6th Cir. 2012) (quotation omitted); a mere possibility of success does not suffice. *Summit Cnty. Democratic Cent. & Exec. Comm. v. Blackwell*, 388 F.3d 547, 551 (6th Cir. 2004). Similarly, plaintiffs must show a likelihood, not just

a possibility, of irreparable injury. *Winter*, 555 U.S. at 22. "Even the strongest showing on the other three factors cannot 'eliminate the irreparable harm requirement.'" *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326-27 (6th Cir. 2019) (quoting *Friendship Materials, Inc. v. Mich. Brick, Inc.*, 679 F.2d 100, 105 (6th Cir. 1982)). As discussed more fully below, Mekus fails on all four elements.

ARGUMENT

This Court should dismiss [redacted] Complaint pursuant to Fed. R. Civ. P. 12(b)(1): the Court has no jurisdiction over the subject matter because (a) [redacted] lacks standing and (b) his speculative claims are moot; (2) the Complaint fails to state a claim upon which relief can be granted; (3) [redacted] has failed to join indispensable parties, the 120 county clerks, and the Governor of Kentucky.

Because this Court lacks subject matter jurisdiction, it need not (and should not) reach the issue of preliminary injunction. If it does, [redacted] Complaint/Motion for Preliminary Injunction must be denied, as he is unlikely to succeed on the merits. He has alleged no cognizable injury to warrant injunctive relief, and the relief sought would not even redress his alleged injury because he has brought suit too late and failed to sue the right people. Moreover, Kentucky has a compelling interest in regulating the mechanics of its election, particularly an election that is less than one month away.

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER [redacted] CLAIMS.

A. [redacted] cannot establish Article III standing.

Article III "limits the category of litigants empowered to maintain a lawsuit in federal court" to those with "actual cases or controversies." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *see also Harris v. Lexington-Fayette Urban Cnty. Gov.*, 685 F. App'x 470, 472 (6th Cir.

2017) ("Standing is a component of subject-matter jurisdiction."). [redacted] standing must be addressed as a threshold matter because it is jurisdictional. *Nikolao v. Lyon*, 875 F.3d 310, 315 (6th Cir. 2017) (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998)). Standing requires plaintiffs to prove: "(1) they have suffered an injury-in-fact that was (2) caused by defendants' conduct and that (3) this court can likely redress the injury with a decision for the Plaintiffs." *Nikolao*, 875 F.3d at 315-16; *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)[redacted] bears the burden of establishing these elements, as he is the party attempting to invoke this Court's jurisdiction. *See Shearson v. Holder*, 725 F.3d 588, 592 (6th Cir. 2013). "[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought," *Town of Chester v. Laroe Estates, Inc*., 137 S. Ct. 1645, 1650 (2017).

[redacted] Complaint makes passing reference to the *Lujan* elements for standing. Then he cites platitudes about courts not holding pro se plaintiffs to hyper-technical standards. [DN 1, PageID# 9]. That is all well and good, but there is no pro se exception to the standing requirement of Article III. Nor can there be: standing is a jurisdictional prerequisite. Moreover, [redacted] is no ordinary pro se plaintiff; his Complaint appears to have been ghost written by an attorney.

Regardless of who really wrote his Complaint, [redacted] has failed to establish any of the required Article III standing elements and his suit, therefore, must be dismissed in its entirety for lack of subject matter jurisdiction.

1. [redacted] has not alleged any cognizable injury-in-fact.

To be "particularized," an injury-in-fact must "affect the plaintiff in a personal and individual way." *Spokeo*, 136 S. Ct. at 1547 (citation omitted). The very opposite of a particularized injury is a "generalized grievance"—that is, an asserted injury "shared in substantially equal measure by all or a large class of citizens[.]" *Warth v. Seldin*, 422 U.S. 490,

499 (1975). That's what we have here.

Such a generic grievance—"undifferentiated and common to all members of the public," *Lujan*, 504 U.S. at 575—can never support standing, "no matter how sincere." *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013); *see also Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (emphasizing that "a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of the law does not count as an 'injury in fact'"). This longstanding and familiar limit "serves vital interests going to the role of the Judiciary in our system of separated powers." *Hollingsworth*, 570 U.S. at 715.

The Supreme Court, the Sixth Circuit, and courts across the country have consistently applied these requirements with full force in the election context. For example, in *Lance v. Coffman*, 549 U.S. 437 (2007) (per curiam), a group of voters alleged that a provision of the Colorado Constitution permitting congressional redistricting only once per census violated their Elections Clause right to have their elected representatives set their congressional districts. *See id.* at 438. The Court in *Lance* ruled that the voters lacked Article III standing on the basis that "the only injury alleged [by plaintiffs] [wa]s that the Elections Clause has not been followed—precisely the kind of undifferentiated, generalized grievance about government conduct [the] Court has refused to countenance in the past." *Id.* at 442; *see also id.* at 439-40 ("Our refusal to serve as a forum for generalized grievances has a lengthy pedigree.") (citing *Fairchild v. Hughes*, 258 U.S. 126, 129-30 (1922)); *Ex parte Levitt*, 302 U.S. 633, 634 (1937) (per curiam); *United States v. Richardson*, 418 U.S. 166, 176-77 (1974); *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 220-22 (1974)).

Lance underscores that a plaintiff may not bring an election suit asserting merely "a general interest common to all members of the public," or arising from an undifferentiated belief that votes

in general may be miscounted or diluted. 549 U.S. at 440 (cleaned up). "Refusing to entertain generalized grievances ensures that 'there is a real need to exercise the power of judicial review' in a particular case, and it helps guarantee that courts fashion remedies 'no broader than required by the precise facts to which the court's ruling would be applied.' . . . In short, it ensures that courts exercise power that is judicial in nature." *Id.* at 441 (citing *Schlesinger*, 418 U.S. at 221-22).[3]

[redacted] seeks standing in his capacity as a resident, voter and taxpayer. The gravamen of [redacted]' suit is an overarching complaint about the general administration of Kentucky elections, which is "precisely the kind of undifferentiated, generalized grievance about the conduct of government that [the Supreme Court has] refused to countenance[.]" *Lance*, 549 U.S. at 442; *see also Warth*, 422 U.S. at 499 ("[W]hen the asserted harm is . . . shared in substantially equal measure by . . . a large class of citizens," it is not a particularized injury). Because [redacted] asserted injury is generalizable to all members of the public—and he cannot explain how his interest in

[3] Similar cases abound across the federal court system. *See, e.g., Crist v. Comm'n on Presidential Debates*, 262 F.3d 193, 195 (2d Cir. 2001) (per curiam); (concurring with other circuit courts that "a voter fails to present an injury-in-fact when the alleged harm is abstract and widely shared"); *accord Becker v. Fed. Election Comm'n*, 230 F.3d 381, 389 (1st Cir. 2000) (holding that "the harm done to the general public by [alleged] corruption of the political process is not a sufficiently concrete, personalized injury to establish standing"); *Jones v. Bush*, 122 F. Supp. 2d 713, 715 (N.D. Tex. 2000) (dismissing for lack of standing, suit by voters challenging the qualifications of then-Governor George W. Bush and Richard Cheney to be elected President and Vice-President of the United States, respectively, on the grounds that they were both "inhabitants" of Texas in violation of the requirement of the Twelfth Amendment), *aff'd without opinion*, 244 F.3d 134 (5th Cir. 2000); *Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021) (dismissing for lack of standing a suit claiming vote dilution resulting from Georgia's purportedly unlawful processing of absentee ballots, and explaining that such allegations are a "'paradigmatic generalized grievance'" because "'no single voter is specifically disadvantaged' if a vote is counted improperly, even if the error might have a 'mathematical impact on the final tally and thus on the proportional effect of every vote.'") (quoting *Bognet v. Sec'y of Commonwealth of Pa.*, 980 F.3d 336, 356 (3d Cir. 2020), *vacated as moot*, 141 S. Ct. 2508 (2021)); *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1333 (11th Cir. 2007) (per curiam) (holding that "an asserted interest in being free of an allegedly illegal electoral system" is not a particularized injury); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 711 (D. Ariz. 2020) (voter dilution "allegations are nothing more than generalized grievances that any[one] . . . who voted could make if they were so allowed") (collecting cases); *Feehan v. Wis. Elections Comm'n*, 506 F. Supp. 3d 596, 609 (E.D. Wis. 2020) ("The plaintiff has not alleged that, as a voter, he has suffered a particularized, concrete injury sufficient to confer standing.").

compliance with election laws differs from that of any other voter—it constitutes a paradigmatic generalized grievance that cannot supply an injury-in-fact.

Nor is bare suspicion that his ballot may not be accurately counted in future elections sufficient for standing. [*See* DN 1, PageID# 18]. "'[T]hreatened injury must be *certainly impending* to constitute injury in fact';] '[a]llegations of *possible* future injury' are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore v. Ark.*, 495 U.S. 149, 158 (1990)) (emphasis added). Mekus' "speculative chain of possibilities" does not establish that injury based on alleged vote dilution "is certainly impending or is fairly traceable to" the election administration practices he challenges. *See Clapper*, 568 U.S. at 414; *see also Lake v. Hobbs*, No. CV-22-00677-PHX-JJT, 2022 WL 3700756, at *9 (D. Ariz. Aug. 26, 2022) (in granting motion to dismiss for lack of standing, the district court held that "a long chain of hypothetical contingencies must take place for any harm to occur—(1) the specific voting equipment used in Arizona must have 'security failures' that allow a malicious actor to manipulate vote totals; (2) such an actor must actually manipulate an election; (3) Arizona's specific procedural safeguards must fail to detect the manipulation; and (4) the manipulation must change the outcome of the election."). [redacted] Complaint is a similar hodgepodge of hypothetical contingencies.

Because [redacted] has only raised generalized grievances and has not alleged that he personally will imminently suffer any discrete and particularized injury, his Complaint must be dismissed.

2. Any injury to [redacted] is neither traceable to the Secretary and Board nor redressable by them.

Even assuming, wholly *arguendo*, that [redacted] has alleged a cognizable injury-in-fact, the injury must also be "fairly traceable to the defendant's conduct" and capable of being remedied by a favorable decision against the defendant in question. *Fair Elections Ohio v. Husted*, 770 F.3d

456, 459 (6th Cir. 2014) (citing *Lujan*, 504 U.S. at 560-61). [redacted] likewise fails to satisfy these elements of standing as to the Defendants.

The causation and redressability elements of Article III standing are closely linked, because "a federal court [can] act only to redress injury that fairly can be traced to the challenged action of the defendant[.]'" *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). "[C]ausation focuses on the 'connection between the assertedly unlawful conduct and the alleged injury,' whereas redressability focuses on the 'connection between the alleged injury and the judicial relief requested.'" *West v. Lynch*, 845 F.3d 1228, 1235-36 (D.C. Cir. 2017) (quoting *Allen v. Wright*, 468 U.S. 737, 753 (1984)).

The Supreme Court has held that a valid "Article III remedy must 'operate with respect to specific parties,' not with respect to a law or regulation 'in the abstract.'" *Ass'n of Am. Physicians & Surgs v. United States FDA*, 13 F.4th 531, 540 (6th Cir. 2021) (quoting *California v. Texas*, 141 S. Ct. 2104, 2115 (2021)). This party-focused rule means that a "remedy must be 'limited to the inadequacy that produced [a plaintiff's] injury in fact.'" *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018) (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). "The plaintiff must show that each requested remedy will redress some portion of the plaintiff's injury." *two of Am. Physicians & Surgs*, 13 F.4th at 540 (citing *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352-53 (2006)). "Conversely, the plaintiff cannot seek a remedy that has no ameliorative effects on that injury." *Id.* (citing *California*, 141 S. Ct. at 2116). Although a completed injury may give a plaintiff the right to seek damages, it does not alone give the plaintiff the right to seek injunctive relief. *See id.* (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)).

At the core of [redacted] Complaint is the general claim that the Defendants unlawfully certified certain voting machines for use in Kentucky elections. [DN 1, PageID# 16] ("The

Secretary of State and the State Board of Elections have deprived the People of Kentucky our right to liberty by allowing the use of illegally certified machines in the November 2020 General Election, thereby rendering the results null and void."). [redacted] beef, however, is with the EAC and its federally accredited testing labs. [DN 1, PageID# 10-16]. Specifically, he argues that "the EAC [broke] federal law by not following their own guidelines" and that somehow the "responsibility falls to our Chief Election Official and Board of Elections to ensure Kentucky remains compliant." [DN 1, PageID# 11]. For reasons set forth in more detail in Section II.A, *infra*, this is not the case. Defendants are required under both Kentucky and federal law to ensure that the voting systems used in state elections meet federal standards. *See, e.g.,* KRS 117.125(26); KRS 117.379. And they have done so.

Moreover, although the Secretary of State provides support and resources to county election officials as "an *ex officio*, nonvoting member" of the State Board of Elections, KRS 117.015(2)(a), the manner in which the election is conducted is the legal responsibility of the local precinct election officers. These officers are not appointed by the Secretary or Board but rather by each of the respective 120 counties' board of elections. KRS 117.045. The county clerks are independent constitutional officers; they do not report to the Secretary or the Board. None of the enumerated duties of the Secretary or the Board grant them any control over these officers. Kentucky's 120 counties present an array of different challenges and contexts. Kentucky's electoral system consequently is decentralized to reflect that reality and the differences in geography, resources, facilities and manpower.

Yet despite the clear statutory duties of county election officials and the scope of the relief sought, [redacted] has only sued the Secretary and the State Board of Elections. He has failed to join any of these independent local election officials who would have to print and set up a method to

hand count the ballots per [redacted] demands.[4] The mere fact that the Secretary is designated the "chief election officer of the state," KRS 117.015(2)(a), does not make every particular injury or relief relating to an election traceable to him. Nor has [redacted] sued Governor Andy Beshear—though his prayer for relief demands that the Governor set aside an election that took place years ago. Therefore, even if an injury exists, [redacted] has sued the wrong Defendants for the relief he seeks.

Where, as here, the Defendants in question lack any control or enforcement authority over a challenged statute or policy, courts have consistently dismissed plaintiffs' claims for failure to establish causation and/or redressability.[5] To the extent [redacted] alleged generalized grievances concerning the certification of voting systems used in Kentucky actually constitutes a justiciable injury-in-fact, any such injury was not caused by the Defendants, nor is it even arguably redressable through them. The Complaint should likewise be dismissed on these independent grounds.

[4] The 120 county clerks are indispensable parties under Federal Rule of Civil Procedure 19. This suit should be dismissed for the failure to join them. *See*, *e.g.*, *Keweenaw Bay Indian Community v. Michigan*, 11 F.3d 1341, 1346 (6th Cir. 1993); *Hood ex. Rel. Mississippi v. City of Memphis*, 570 F.3d 625 628 (5th Cir. 2009).

[5] *See, e.g., Nat'l Ass'n for Advancement of Multijurisdiction Prac. v. Howell*, 851 F.3d 12, 17 (D.C. Cir. 2017) (dismissing claims for lack of standing, where the plaintiff "failed to identify any role whatsoever" of the defendants "in promulgating or enforcing" the challenged rules); *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017) (dismissing on standing grounds claims against various state entities which lack enforcement authority over the challenged provision); *Okpalobi v. Foster,* 244 F.3d 405, 426 (5th Cir. 2001) (*en banc*) ("The requirements of *Lujan* are entirely consistent with the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute."); *Doe v. Pryor*, 344 F.3d 1282, 1285 (11th Cir. 2003) (dismissing claims on standing grounds where "[t]he only defendant in this case is the Alabama Attorney General, and the only injuries J.B. has alleged stem from a state court custody proceeding in which the Attorney General played no role. The Attorney General has taken no action to enforce the [challenged policy] against J.B."); *Winsness v. Yocom,* 433 F.3d 727, 737 (10th Cir. 2006) (no standing where "defendants did not issue the [challenged] citation . . . and are not responsible for maintaining any record of it").

B. Mekus' claims about past elections are moot.

Even if Mekus could establish standing, it would pertain only to claims and relief related to the 2020 election. *See Town of Chester*, 137 S. Ct. at 1650 (plaintiff must establish standing for each claim pressed and each form of relief sought). Because the 2020 election has come and gone, any claims related to it are now moot.

The judicial power of federal courts extends only to *live* "Cases" and "Controversies," U.S. Const. art. III, § 2, cl. 1. "Once the plaintiff has overcome the standing hurdle, mootness doctrine comes into play, ensuring that the plaintiff maintains his personal stake in the outcome throughout the pendency of the case." *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 565 (6th Cir. 2021) (citing *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)). Consequently, "if the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome, then the case is moot and the court has no jurisdiction." *Thompson v. Dewine*, 7 F.4th 521, 523-24 (6th Cir. 2021) (cleaned up); *see also Davis v. Colerain Twp.*, No. 21-3723, 2022 WL 4351074, 2022 U.S. App. LEXIS 26498, at *18 (6th Cir. Sep. 20, 2022).

Most of [redacted] asserted grievances concern the manner in which Kentucky's 2020 election was conducted. [*See* DN 1, PageID# 9, 16]. Because the election has already occurred, the court can no longer offer effective relief with respect to that election, thus rendering [redacted] claims moot. *See Thompson*, 7 F.4th at 521 (holding that claims are moot with respect to an election that has already passed). To be sure, [redacted] seeks a variety of forms of relief, most of which are prospective. [*See* DN 1, PageID# 18-19] (requesting, *inter alia*, "an emergency injunction

preventing the use of electronic voting machines in the state and in the interim, replace with paper ballots[,]" and "the Secretary of State office and State Board of Elections to halt the use of any electronic voting machine in the Commonwealth of Kentucky"). Setting aside the question of whether such relief would have been appropriate before the 2020 election, none of the requested relief can have any impact on that election now that it has already come and gone. The Court cannot "turn back the clock and create a world in which" voters were not permitted to use electronic voting machines. *King v. Whitmer*, 505 F. Supp. 3d 720, 731-32 (E.D. Mich. 2020) (quoting *Wood*, 981 F.3d at 1317).

1. [redacted] claims also are barred by the doctrine of laches.

Courts also routinely apply the doctrine of laches to reject tardy challenges to elections that have already come and gone. *See, e.g., Detroit Unity Fund v. Whitmer*, 819 F. App'x 421, 422 (6th Cir. 2020) (affirming holding that plaintiff's claims regarding deadline for local ballot initiatives were "barred by laches, considering the unreasonable delay on the part of [p]laintiffs and the consequent prejudice to [d]efendants"); *King*, 505 F. Supp. 3d at 731-32 (plaintiffs' delay in initiating their lawsuit "results in their claims being barred by laches"); *cf. Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (per curiam) ("[A] party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere.").

"A constitutional claim can become time-barred just as any other claim can." *United States v. Clintwood Elkhorn Min. Co*., 553 U.S. 1, 9 (2008). An action may be barred by the doctrine of laches if: (1) the plaintiff delayed unreasonably in asserting his rights and (2) the defendant is prejudiced by this delay. *Brown-Graves Co. v. Central States, Se. and Sw. Areas Pension Fund*, 206 F.3d 680, 684 (6th Cir. 2000); *Ottawa Tribe of Oklahoma v. Logan*, 577 F.3d 634, 639 n.6 (6th Cir. 2009) ("Laches arises from an extended failure to exercise a right to the detriment of

another party."); *see also See Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980).

Here, [redacted] inexplicably and unreasonably delayed to assert his claims about the 2020 election. And the prejudice in forcing Defendants to change election procedures on the eve of an election in response to events that supposedly happened two years ago cannot be overstated. [redacted]' claims are properly barred by the doctrine of laches.

II. [redacted]' ELECTION SYSTEM CERTIFICATION AND SECURITY ALLEGATIONS DO NOT STATE A CLAIM FOR WHICH RELIEF MAY BE GRANTED.

As set forth *infra*, [redacted]' wild-eyed conspiracy theories are not "plausible" under *Twombly* and *Iqbal*.

A. Federal statutory claims

The centerpiece of [redacted]' complaint is that the Defendants unlawfully certified certain voting machines for use in Kentucky elections. He does not identify any violations of federal constitutional or statutory requirements. And his state-law theory—that a test lab lacked the accreditation from the EAC—fails as a matter of law, as such does not concern Kentucky's self-certification of its voting systems.

Federal law provides that so long as a state's systems meet federal statutory requirements for voting systems, the approval of voting systems is a matter of state law, not federal law. *See* 52 U.S.C. § 21085 ("The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State."); *see also* 52 U.S.C. § 20971(a)(2) ("At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section."). [redacted] does not allege, and provides no facts sufficient to show, that Kentucky's voting systems fail to meet the federal statutory requirements for voting systems. *See* 52 U.S.C. § 21081(a)(1)(A).

Pursuant to Kentucky state law, any voting system or voting equipment to be used in Kentucky elections must first be certified under KRS 117.379. *See* KRS 117.125. Kentucky law notably does not require EAC certification of the voting system itself but requires only that the voting system be tested by an independent testing authority approved by the State Board of Elections, demonstrating that the voting systems meet federal standards. *See* KRS 117.379; KRS 117.125(26).

[redacted]Complaint acknowledges that the EAC has accredited two voting systems testing laboratories: Pro V&V and SLI. [*See* DN1, PageID #11-12]. *See also* 52 U.S.C. § 20971(b)(2)(A) His claims hinge on the assertion that these labs' EAC accreditations "expired." [*See* DN1, PageID# 11-12] ("Evidence shows both labs were not accredited for the 2020 November election which means all 120 counties in our state (Exhibit 3) used either Hart or ES&S and were illegally certified."). Such an assertion is beside the point, however, as Kentucky does not even use these laboratories for certification.

B. Tenth Amendment claims

"The Constitution grants States broad power to prescribe the 'Times, Places and Manner of holding Elections for Senators and Representatives,' Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices." *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (cleaned up). The Kentucky General Assembly has delegated portions of this power to the Secretary and the State Board of Elections. The General Assembly has taken the power it derives from the federal constitution and apportioned it among offices with the expertise to carry out that delegation. *See Arizona State Leg. v. Arizona Indep. Redistricting Comm'n.,* 576 U.S. 787, 804-09 (2015).

[redacted]Tenth Amendment claim overlooks that the elections clause also gives Congress a

role to play if it so chooses. He claims that "[t]he US government took over elections in our state through the HAVA Act, this act of congress and the actions of our SOS and State Board of Elections are direct violations of the 10th amendment of the US Constitution." [DN 1, PageID# 16-17]. He asks the court to strike down HAVA as unconstitutional. But the Constitution provides otherwise.

The Elections Clause, Article I, §4 expressly provides for federal authority over federal elections: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; *but the Congress may at any time by Law make or alter such Regulations*, except as to the Places of choosing Senators." U.S. CONST. art. I, § 4 (emphasis added). The authority granted to the States under this "Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.'" *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013) (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)). "The power of Congress over the 'Times, Places and Manner' of congressional elections 'is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.'" *Id*. (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880)).

To the extent [redacted] complains of federal statutes that concern Kentucky's primary and general elections (like HAVA), such legislation is expressly authorized by the Constitution. None of [redacted] allegations about federal cooperation in the administration of Kentucky's election suggest a constitutional violation, let alone one tied to an injury personally suffered by him.

III. [redacted]' MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED.

For the reasons stated above, [redacted] claims against the Defendants should be dismissed,

and his motion for preliminary injunction should be denied on justiciability grounds alone. If [redacted] case is allowed to proceed, [redacted] motion for preliminary injunction should still be denied as he has failed to establish that such relief is necessary or appropriate. Application of the four factors that a court must consider before ruling on a motion for preliminary injunction do not justify the "extraordinary" form of relief [redacted] seeks. *Winter*, 555 U.S. at 24.

A. [redacted] has not shown a probability of success on the merits of his claims.

1. [redacted] lacks Article III standing.

For a plaintiff to establish that he is likely to succeed on the merits of his claims, he must first establish that the court is likely to be able to *reach* the merits of his claims. [redacted] has not done this. Without subject-matter jurisdiction, the court cannot rule in favor of him. For that reason, courts assess whether subject-matter jurisdiction exists as part of evaluating the moving party's probability of success of the merits. *See, e.g., Minn. Voters All. v. Walz*, 492 F. Supp. 3d 822, 828-35 (D. Minn. 2020) (examining jurisdictional arguments as part of likelihood of success on the merits); *Johnson v. Krebs*, No. 4:18-cv-04108, 2018 WL 4696754, at *7 (D.S.D. Oct. 1, 2018) (same); *Iowa Right to Life Comm., Inc. v. Smithsonian*, 750 F. Supp. 2d 1020, 1029-36 (S.D. Iowa 2010) (same). That is why courts deny preliminary relief where subject-matter jurisdiction is lacking. *See, e.g., K.B. Calloway Cty. Sch. Dist. Bd. of Edu.*, No. 5:21-cv-148 (TBR), 2022 U.S. Dist. LEXIS 5992, 2022 WL 125929, at *3 (W.D. Ky. Jan. 12, 2022) ("The possibility that Plaintiffs lack standing is a strong indicator that their claim is not likely to succeed on the merits"); *Gabriel v. Weber*, No. 21-cv-05605, 2021 WL 3475714, at *2 (N.D. Cal. Aug. 6, 2021) ("Without Article III standing, Plaintiff cannot show likelihood of success on the merits, let alone irreparable harm."); *Small Sponsors Working Grp. v. Pompeo*, No. 1:19-cv-2600, 2020 WL 2561780, at *4 (W.D. Tenn. May 20, 2020) ("The failure to show standing demonstrates that the plaintiff is

unlikely to succeed on the merits.").

Because the Court should dismiss each of [redacted] claims for lack of subject-matter jurisdiction, he has no probability of success on the merits of his claims whatsoever; his motion for preliminary injunction should be denied.

2. The Equal Protection claims fall under rational basis review.

A constitutional challenge to an election regulation or procedure requires the courts to balance the competing interests of the right to vote and the state's right to regulate elections under the so-called *Anderson-Burdick* framework, a flexible standard rooted in the Supreme Court cases of *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). However, because this case implicates the *manner* in which votes are tabulated (i.e., electronically versus on paper), rather than the fundamental right to vote itself, this is a case about election mechanics and thus is subject to rational basis review. *See Schmitt v. LaRose*, 933 F.3d 628, 644-46 (6th Cir. 2019) (Bush, J., concurring in part and in the judgment); *see also, e.g., Molinori v. Bloomberg*, 564 F.3d 587, 600-01 (2d Cir. 2009); *Initiative and Referendum Inst. v. Walker*, 450 F.3d 1082, 1101-05 (10th Cir. 2006) (en banc) (elections mechanics laws do not implicate First Amendment rights and should be reviewed under rational basis standard). That is, the Court need not second guess the Secretary and the Board's action in applying statutes that are rationally related to a legitimate government interest of running the election fairly and efficiently.

[redacted] attempts to establish an Equal Protection claim based on the theory that Defendants "deprived our right to vote in free and equal elections, violating 18 U.S. Code § 242, by ignoring state and federal election laws and allowing the use of illegally certified electronic voting machine systems for the November 2020 and subsequent elections." [DN 1, PageID# 9]. But to be perfectly clear, his equal protection claim is not supported by any allegation that Defendants' alleged

schemes caused any votes to be changed. The closest [redacted] gets to alleging that ballots were altered in such a way is the following statement: "The Beshear/Bevin race was a clear trial run on stealing elections by switching votes in real time, which were caught live on air." [DN 1, PageID# 14-16].[6] But of course, "'belief is not evidence' and falls far short of what is required to obtain any relief, much less the extraordinary relief Plaintiff[] request[s]." *King*, 505 F. Supp. 3d at 738 (citations omitted); *see also Brown v. City of Franklin*, 430 F. App'x 382, 387 (6th Cir. 2011). [redacted] theories, conjecture, and speculation do not survive rational basis review.

With nothing but suspicion that votes were destroyed, discarded, or switched, [redacted] equal protection claim fails as a matter of law. *See King*, 505 F. Supp. 3d at 738 ("[N]o single voter is specifically disadvantaged if a vote is counted improperly, even if the error might have a mathematical impact on the final tally and thus on the proportional effect of every vote.") (cleaned up).

B. [redacted] cannot show that he will suffer irreparable harm in the absence of a preliminary injunction.

The irreparable harm prong requires the injury to be imminent, meaning that the plaintiffs' injury be "both certain and immediate, not speculative or theoretical." *Memphis A. Philip Randolph Inst. v. Hargett*, 978 F.3d 378, 391 (6th Cir. 2020) (quoting *Sumner Cnty. Sch.*, 942 F.3d at 327). "Irreparable harm is an 'indispensable' requirement for a preliminary injunction, and 'even the strongest showing' on the other factors cannot justify a preliminary injunction if there is no 'imminent and irreparable injury.'" *Id.* (citation omitted).

[redacted] motion for preliminary injunction asserts that Defendants "deprived our right to

[6] This urban legend has been repeatedly and thoroughly debunked. *See, e.g., CNN graphic does not show 2019 election fraud in Kentucky*, AP News (July 19, 2022), https://apnews.com/article/fact-check-data-mistake-cnn-vote-141905993861

vote in free and equal elections, violating 18 U.S. Code § 242, by ignoring state and federal election laws and allowing the use of illegally certified electronic voting machine systems for the November 2020 and subsequent elections." [DN 1, PageID# 9]. As discussed above, these alleged harms are quintessential generalized grievances, and [redacted] has failed to demonstrate how he will suffer any particularized harm absent a preliminary injunction. Just as Mekus cannot establish standing based on this generalized grievance, he also cannot establish irreparable harm. *See King*, 505 F. Supp. 3d at 738. Further, [redacted]' grievances related to past elections, including the November 2020 election, have no bearing on his motion for preliminary injunction because the purpose of a preliminary injunction is not to remedy past harm but "to preserve the status quo until a trial on the merits." *S. Glazer's Distributors of Ohio, LLC v. Great Lakes Brewing Co*., 860 F.3d 844, 848-49 (6th Cir. 2017) (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). Moreover, [redacted] asserted injury is not in any way imminent, nor could it be prevented by his requested relief. *See Southern Milk Sales, Inc. v. Martin*, 924 F.2d 98, 103 (6th Cir. 1991) (finding that a showing of irreparable injury was "the single most important prerequisite" to an award of preliminary injunctive relief under the facts of that case, and affirming the district court's determination that "a preliminary injunction was not necessary if [the plaintiff] would not suffer 'irreparable harm' in the absence of such relief.") (cleaned up).

Finally, delay in seeking relief vitiates much of the force of allegations of irreparable harm—even in election cases. *See, e.g., Detroit Unity Fund*, 819 F. App'x at 422; *Brown-Graves Co.*, 206 F.3d at 684; *Ottawa Tribe of Oklahoma*, 577 F.3d at 639 n.6. [redacted] purports to have been harmed by an election that occurred almost two years ago, yet he waited until the eve of the November 2022 election to seek a preliminary injunction. Such a substantial delay severely undermines any claim that he will be irreparably harmed absent preliminary relief.

C. The balance of the equities and the public interest do not support a preliminary injunction.

[redacted] requested relief would require this Court to alter the current statutory and regulatory framework for Kentucky's elections at the last minute by placing additional requirements and duties upon Defendants and other non-parties to this litigation.

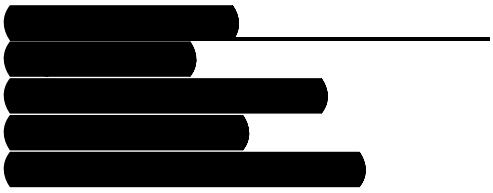
Even if [redacted] had shown a probability of success on the merits or irreparable harm—which he has not—the remaining *Winter* factors strongly counsel against a preliminary injunction. He asks the Court "provide extraordinary and expedited relief that would potentially dismantle the election process in Kentucky." Though the 2020 election has now passed (and his claim is moot), the November 8, 2022, election is less than a month away. It is not in the public interest for the Court to issue an extraordinary order—reverting the entire state of Kentucky back to hand-counted ballots—shortly before an election, especially where [redacted] has shown no likelihood that he will ultimately prevail in this litigation. *See, e.g.*, *Nemes v. Bensinger*, 467 F. Supp. 3d 509, 523 (W.D. Ky. 2020) (quoting *Ohio Dem. Party v. Husted*, 834 F.3d 620, 622 (6th Cir. 2016)) ("courts should not quickly 'become entangled, as overseers and micromanagers in the minutiae of state election processes.'"); *Esshaki v. Whitmer*, 813 F. App'x 170, 172 (6th Cir. 2020) ("Simply put, federal courts have no authority to dictate to the States precisely how they should conduct their elections."); *see also Benisek*, 138 S. Ct. at 1944-45 (holding that "a due regard for the public interest in orderly elections supported the District Court's discretionary decision to deny a preliminary injunction"); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) ("A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.").

CONCLUSION

For the above-stated reasons, the Court should dismiss this action in its entirety, with prejudice, and deny Plaintiff's Motion for a Preliminary Injunction.

Respectfully Submitted,

Counsel for Michael Adams, in his official capacity as the Secretary of State of Kentucky



Counsel for State Board of Elections

CERTIFICATE OF SERVICE

It is hereby certified by undersigned counsel that the foregoing was filed on this 18th day of October 2022 through the federal Case Management Electronic Case Filing (CM/ECF) system, which will generate a notice of electronic filing (NEF) to all users who have registered in this action and a true and correct copy was mailed via U.S.P.S. to the following:

[redacted]

[redacted]

Counsel for Michael Adams, in his official capacity as the Secretary of State of Kentucky

[redacted]

Counsel for State Board of Elections

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
DIVISION OF FRANKFORT

[redacted], Plaintiff, V. MICHAEL ADAMS, in his official Capacity as the Secretary of State of Kentucky; et al., Defendants.	Civil Action No. 3:22-CV-45-REW

PLAINTIFF'S RESPONSE IN OPPOSITION OF MOTION TO DISMISS

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW the Plaintiff, [redacted] who hereby submits his response in opposition of Defendants' Motion to Dismiss and states as follows:

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INTRODUCTION

As someone who served their country in the military, I am offended that the general opinion expressed by the Defendants and their Counsel(s) is that my complaint as well as the Constitution are moot. Mr. Adams and I both took an oath, Ky. Const. § 228, to defend the U.S. Constitution against enemies both foreign and domestic. I take my oath very seriously. Because of this document, I have the right to appear Pro Se and am doing so with the support of many members of the public who have had their voices silenced the last 2 years. The 9th amendment protects our God-given rights stating that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" meaning all rights are protected, not just specific ones expressly written in the Constitution. Any attempts to use specific caselaw as an authority over my general rights, is a violation of the 9th amendment. The 1st amendment reserves my right to redress grievances due to an overreaching government and I am here exercising this right to seek transparency in our elections. The 10th amendment limits the federal government by reserving the powers to the People, powers "not delegated to the United States by the Constitution, nor prohibited by it to the States…" I am reserving my power over my vote, my voice, Bond v. United States, 564 U.S. 211, where the Supreme Court of the United States ruled that individuals may have standing to raise 10th amendment challenges to a federal law. And Printz v. United States (1997), ruled that part of the Brady Handgun Violence Prevention Act violated the 10th amendment. The act required state and local law enforcement officials to conduct background checks on people attempting to purchase handguns. In this case, it was ruled the federal government overreached its powers by controlling affairs in the state and local governments just as DHS is controlling Kentucky's elections.

REPLY IN OPPOSITION OF MOTION TO DISMISS

According to Council(s) for the Defendants, this complaint should be dismissed per Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that it lacks subject-matter jurisdiction and that it "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." However, Defendants failed to provide any evidence disproving the core of this complaint, which is the affidavit of Terpsehore Maras (Exhibit 6 of Complaint). Please also refer to the declaration of Alex Halderman on record in the *Curling v. Raffensperger*[1] case, which supports Ms. Maras's statements (Exhibit 8 of Complaint). Calling my complaint moot because you don't believe it or don't understand it, does not make it any less true much less satisfy requirements of FRCP 12(b)(1) or 12(b)(6). Mr. Halderman is someone well-versed in the rigorous testing of voting machines and has stated "we made a number of discoveries, including that [voting machines] had vulnerabilities that basically anyone could exploit to inject malicious software and change votes."[2] Terpsehore Maras (Exhibit 6) is an Independent on the ballot in Ohio running for SOS and has a case[3] in Ohio Supreme Court that is seeking transparency with the machines. She is requesting the source code, as stated in definition[4] of a "black box" voting system, which shows how the tabulator counts votes and if it is indeed counting 1 to 1. She is well-versed in the handling of elections as stated in her affidavit:

[1] https://www.courtlistener.com/docket/6139924/curling-v-raffensperger/
[2] https://www.wnycstudios.org/podcasts/tnyradiohour/segments/voting-machines-security
[3] https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:48f2685e-4929-47b0-88d8-4227ab19ce9e
[4] https://definitions.uslegal.com/b/black-box-voting/

Declaration of Terpsehore P Maras

Pursuant to 28 U.S.C Section 1746, I, Terpsehore P Maras, make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I have been a private contractor with experience gathering and analyzing foreign intelligence and acted as a LOCALIZER during the deployment of projects and operations both OCONUS and CONUS. I am a trained Cryptolinguist, hold a completed degree in Molecular and Cellular Physiology and have FORMAL training in other sciences such as Computational Linguistics, Game Theory, Algorithmic Aspects of Machine Learning, Predictive Analytics among others.
3. I have operational experience in sources and methods of implementing operations during elections both CONUS and OCONUS
4. I am an amateur network tracer and cryptographer and have over two decades of mathematical modeling and pattern analysis.
5. In my position from 1999-2014 I was responsible for delegating implementation via other contractors sub-contracting with US or 9 EYES agencies identifying connectivity, networking and subcontractors that would manage the micro operations.
6. My information is my personal knowledge and ability to detect relationships between the companies and validate that with the cryptographic knowledge I know and attest to as well as evidence of these relationships.
7. In addition, I am WELL versed due to my assignments during my time as a private contractor of how elections OCONUS (for countries I have had an assignment at) and CONUS (well versed in HAVA ACT) and more.
8. On or about October 2017 I had reached out to the US Senate Majority Leader with an affidavit claiming that our elections in 2017 may be null and void due to lack of EAC certifications. In fact Sen. Wyden sent a letter to Jack Cobb on 31 OCT 2017 advising discreetly pointing out the importance of being CERTIFIED EAC had issued a certificate to

Ms. Maras recently admitted, at around 8:40 minute mark of the referenced video, to rigging 45 different elections in other countries.[5] John Bolton, former National Security Advisor, supports this claim when he recently admitted on Prime television to conducting coup d'états in other countries when discussing the possibility of one happening in America.[6]

[5] https://rumble.com/v1omrf8-ashland-coalition.html
[6] https://www.msn.com/en-us/news/politics/in-cnn-interview-john-bolton-says-he-has-planned-foreign-coups/ar-AAZwGZD

I. Claim that the Court has no jurisdiction over the subject matter

A. Did not establish Article III standing

Opposing counsel suggests this claim does not have standing under Article III as (1) no injury-in-fact was proven, (2) the conduct of the Defendants was not responsible for the injury, and (3) the court cannot redress the injury with a decision.

1. Injury was established by showing the Defendants actions resulted in the silencing of my voice. Not only has my voice been silenced at the ballot box, but I have been shamed and labeled names for voicing these concerns. Even the opposing counsel has called me a "self-described conspiracist", putting words in my mouth and labeling my complaint as "wild-eyed conspiracy theories." Again, no evidence has been brought forth by the Defendants or their Council(s) that disproves my complaint, but rather resorts to name calling and labeling it all moot.

2. According to Kentucky's State Certification Process, "the State Board of Elections will approve or disapprove voting systems…"[7] and are the only ones whose conduct is responsible for my injury. It is the State Board of Elections who receive HAVA funds from the EAC to purchase new voting systems.[8,9] On the contrary to statements made by Counsel(s), our "beef" is not with the EAC as evidence in the complaint shows how voting systems are vulnerable to hacking without proper testing and certifications which highlight those vulnerabilities (Please see Exhibit 8 for statements by Alex Halderman on the rigorous testing of voting machines). EAC's failure to accredit the VSTLs as required by 42 U.S.C. §15371(b),

[7]https://www.eac.gov/sites/default/files/TestingCertification/State_Requirements_for_Certification09042020.pdf
[8]https://www.eac.gov/sites/default/files/paymentgrants/Election%20Security/KY%202020%20ES%20Financial%20and%20Progress%20Report.pdf
[9]https://www.eac.gov/sites/default/files/paymentgrants/narrative2020/KY%202020%20ES%20State%20Narrative%20and%20Budget.pdf

only shows the voting systems provided by Hart Intercivic and ES&S are not secure. Both Hart Intercivic[10] and ES&S[11] are required to have their machines rigorously tested by VSTL's, the same labs that are not currently accredited to do testing and certifications. This further proves how important it is for VSTL's accreditation to remain current to identify ever-changing cybersecurity concerns (Please see Exhibit 6, page 28). It is not unreasonable to hold those responsible for Kentucky elections accountable for their inaction and total disregard of legitimate security concerns which resulted in the silencing of my voice at the ballot box.

3. Injury is most easily redressed by giving me my voice back at the ballot box and halting elections until we can secure our voting process by removing current voting systems. Any concerns of national security would be alleviated by using anti-counterfeit paper ballots which will then be hand counted at the precinct level while being live streamed. You cannot hack paper and the great People of this state can be trusted and are smart enough to hand count paper. This would save the taxpayers millions of dollars currently spent on these hackable voting systems which shuffle my vote while hiding the process from the voter. Opposing Counsel(s) stated my injury could not be traced to the Defendants, but it is the Elections board that "approve or disprove" per HAVA State Certification process, not the 120 County Clerks or Governor. Furthermore, the State Board of Elections is the entity that allocates and manages all HAVA funds while the Chief Election Officer monitors all HAVA funding.[12]

B. My claims are speculative moot.

A legitimate, factual complaint with evidence has been brought forth and should not be dismissed simply because the Defendants and their counsel fail to understand what was

[10] https://www.hartintercivic.com/faq/
[11] https://www.essvote.com/faqs/
[12] https://elect.ky.gov/Resources/Documents/HAVAstateplanpdf.pdf

presented in this complaint much less the mechanics of the very voting systems they approved. The public deserves the truth about our elections. Why are Kentucky and other states using voting systems that were designed with secrecy of the ballot and efficiency in mind rather than transparency and accuracy? Time is not a factor when accuracy of the count is the goal. In Mr. Adams own words, "the gold standard is paper ballots counted electronically, so we get the speed of a quick count but the security of a paper trail."[13] It is clear Mr. Adams and the members of the Board do not understand how our voting systems work or he would not make such a ridiculous statement. Electronic tabulators, the very same systems Defendants approved for purchase with HAVA funds, is designed to shuffle your vote to provide secrecy of the ballot. Subsequently, the paper trail, "paper ballot", on the other end is not your vote as you casted it, therefore, claiming a secure paper trail is a lie. The voting systems deploy algorithms known as FROGs and contain COTS or "Black Box" (please revisit Paragraph 15 in complaint). The term "Black box" means a device that can only be seen by the input and output, not the internal sources. This system does not disclose the mechanism of the voting system to the voters. It does not take a law degree to conclude my vote, along with all votes, were not secure nor were they counted with accuracy within a black box voting system.

II. Claim that complaint fails to state a claim upon which relief can be granted.

A. Federal Statutes

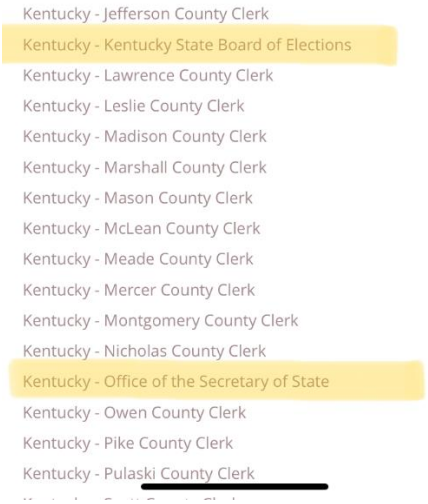
Once again, the Defendants and their Council(s) fail to understand that any claims about EAC and their Voting System Testing Laboratories are only to connect the dots that vulnerable voting systems were approved by what were supposed to be federally accredited labs. The two VSTL's (Pro V&V and SLI Compliance) who are responsible for certifying Hart Intercivic and

[13] https://www.kentucky.gov/Pages/Activity-stream.aspx?n=SOS&prId=341

ES&S, did not remain accredited which weakens any certifications of the voting systems performed during their lapsed accreditation.

B. Tenth amendment claims

Mr. Adams and the State Board of Elections have handed over our elections to the federal government by becoming EI-ISAC members which requires signing a contract[14] with the Center for Internet Security (CIS), who is contracted by DHS.[15] Attempts to locate this contract by way of FOIA communications have been made by members of the public with no success. Below is a snapshot of SOS and State Board of Elections listed as members on the EI-ISAC website:



Other states, such as North Carolina and Colorado, have state and/or local government EI-ISAC membership[16]. Below is Hoke County Board of Elections snapshot of members listed on the EI-ISAC website:

[14] https://www.cisecurity.org/terms-and-conditions-table-of-contents/terms-and-conditions-for-albert-monitoring-services
[15]https://www.cisecurity.org/ei-isac
[16] https://www.cisecurity.org/ei-isac/partners-ei-isac/

North Carolina - Hertford County Public Schools
North Carolina - Hoke County
North Carolina - Hoke County Board of Elections
North Carolina - Hyde County Board of Elections
North Carolina - International Association of Government Officials
North Carolina - Iredell County
North Carolina - Iredell County Board of Elections

Next is the first page of the Memorandum of Agreement[17] between CIS and Hoke Co. Board of Elections-North Carolina:

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MEMORANDUM OF AGREEMENT
BETWEEN THE CENTER FOR INTERNET SECURITY
AND
Hoke County Board of Elections
FOR
Endpoint Detection & Response (EDR) Services
(Federally Funded Services)

This MEMORANDUM OF AGREEMENT ("Agreement") by and between the Center for Internet Security, Inc. ("CIS"), operating in its capacity as the Multi-State Information Sharing and Analysis Center (MS-ISAC) and the Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC), located at 31 Tech Valley Drive, East Greenbush, NY 12061-4134, and Hoke County Board of Elections (Entity) with its principal place of business at: 423 E Central Ave, Raeford, North Carolina 28376 for EDR Services, as defined herein below (CIS and Entity collectively referred to as the "Parties").

- In its role as the MS-ISAC and the EI-ISAC, CIS has been recognized by the United States Department of Homeland Security (DHS) as a key Cyber Security resource for all fifty states, local governments, United States territories, and tribal nations (SLTT) and state and local elections entities; and
- CIS operates a twenty-four hours a day, seven days per week (24/7) Security Operations Center (SOC); and
- CIS has entered into an agreement with the federal government to provide EDR Services to certain SLTT entities.

In consideration of the mutual covenants contained herein, the Parties do hereby agree as follows:

I. Purpose

The purpose of this agreement is to set forth the mutual understanding between Entity and CIS with respect to the provision of EDR Services to Entity.

II. Definitions

A. **Security Operation Center (SOC)** – 24 X 7 X 365 watch and warning center that provides cybersecurity infrastructure monitoring, dissemination of cyber threat warnings and vulnerability identification and mitigation recommendations.

B. **EDR Services**: EDR Services is comprised of the following:

1. Deployment and maintenance of an EDR software agent on Entity's identified endpoint devices, which will (a) block malicious activity at a device level if agreed to by the Entity; (b) remotely isolate compromised systems after coordination with the Entity; (c) identify threats on premise, in the cloud, or on remote systems; (d) inspect network traffic in a decrypted state on the endpoint for the limited purpose of identifying malicious activity; and (e) identify and remediate malware infections.

[17] https://hoke.granicus.com/MetaViewer.php?view_id=1&clip_id=172&meta_id=17464

Based on the above evidence, it is easy to come to the conclusion that such an agreement exists between Kentucky's Secretary of State/State Board of Elections and CIS. According to Jason Dearing, State Board of Elections Executive Director, DHS routinely meets with our Elections Board to assist in cybersecurity. Mr. Dearing also testified that our state's election systems "are routinely scanned by Venezuela, by North Korea, by Russia on a regular basis," and "this is not something that is in the past, that happened in 2016. It happens on a weekly basis."[18] The State Board of Elections have admitted to foreign countries scanning our election systems as well as welcoming DHS here to help with the matter. Ky. Rev. Stat. § 117.125(25) "prohibits voting equipment that tabulates, or aggregates votes used in official results from connecting to any network, including the internet, or communicating with any device external to the voting system." Defendants could not disprove paragraph 17 of my complaint as voting systems are connected to networks and must do so to tabulate. Intranet or internet, it can all be hacked. How are other countries scanning our election systems if not connected to a network? With Mr. Dearing's admission as well as the additional evidence provided in this reply, the attempt to use the Elections Clause of Article 1 as reason for DHS's involvement in our elections is a conflicting argument. Understanding the history of Article 1 helps explain why it is contradictory to an original amendment of the Constitution.[19] Article 1 was another Act of Congress that diluted the U.S. Constitution, specifically the 10th. Opposition to the ratification of the Constitution warned that "Congress might prescribe the times of election so unreasonably, as to prevent the attendance of the electors; or the place at so inconvenient a distance from the body of the electors, as to prevent a due exercise of the right of choice. And congress might contrive

[18] https://thehill.com/policy/cybersecurity/483674-kentucky-state-official-says-foreign-adversaries-routinely-scan-election/
[19] https://constitution.congress.gov/browse/essay/artI-S4-C1-1/ALDE_00013351/

the *manner* of holding elections, so as to exclude all but their own favourites from office. They might modify the right of election as they please; they might regulate the number of votes by the quantity of property, without involving any repugnancy to the constitution." Therefore, the 10th amendment protects me from any intrusion by our federal government, resulting in the loss of my rights or the ability to protect them.

III. Claim that Motion for Preliminary Injunction Should be Denied.

The Defendants and Council(s) argue that a preliminary injunction should not be granted because once again, subject matter was not established and therefore this complaint cannot succeed on the merits. As said earlier in this reply, the US Constitution is my right to redress and I am asking this Honorable Court to look at the facts presented.

A. No probability of success on the merits of my claims.

Defendants claim I have not shown a probability of success on the merits simply because they state the Court has no subject-matter jurisdiction, which I have already addressed earlier in in this reply. There was, and is, great injury done to me because of the actions of the Defendants. Once again, the affidavit of Terpsehore Maras has yet to be disproven, even by the Defendants and their Council(s), because it is fact. Rather, Defendants state my claim is moot because it is no longer relevant and took too long to bring forth. Their argument is that the media, government, and some courts say there is nothing to see here and let's move on. What a ridiculous claim. Counsel(s) and the Defendants must have ignored the evidence in paragraph 15 and 16 of the complaint showing that the voting systems are vulnerable to hacking that can manipulate votes. Are we to ignore the problems with our voting systems because it was in the past and nothing can be done about it now? In 2018, Kentucky election officials were very worried about protecting elections from the threat of hacking and had DHS train all election

officials on cybersecurity. Election security has been an issue since before 2020 and it seems our government, who are elected by the People, want to control the narrative. In one instance, State Board of Elections claimed our election systems are being scanned by other countries and we need help with those cybersecurity concerns. But then, if an individual like myself raises concerns about our elections, I am labeled a conspiracy theorist and mocked by the very people saying our systems are vulnerable to hacking. You cannot have it both ways and discount facts at will using name calling and unconstitutional caselaw.

B. Cannot show irreparable harm in the absence of a preliminary injunction.

Opposing counsel suggests no irreparable harm has been shown to exist, but I disagree when there is an assault on our Constitutional rights. Freedom of speech, whether it's expressed at the ballot box or in a poem, is protected. When our vote is vulnerable to hacking on electronic voting systems, our voice has been successfully silenced thus causing irreparable harm. People who raise concerns about the lack of transparency and security in our elections are shamed and silenced for doing so. Because these concerns have been silenced, a tyrannical administration's policies have destroyed the state of our economy causing higher costs, shortages, the loss of security due to threats of nuclear war, and open borders. These are just a few examples, and all have caused irreparable harm to me, my family, and the public. But the greatest harm of all is the upending of the U.S. Constitution resulting in the loss of our state's sovereignty. If our states lose their sovereignty, then we are no longer a country of "united states", but rather a piece of land with an uncontrollable government. If my Constitutional rights are not upheld by the very government officials elected to do so, then we are nothing more than a Banana Republic. Without the U.S. Constitution, Americans would have no protection from an over-reaching government and the harm done would be boundless.

C. Balance of equities and the public interest do not support a preliminary injunction.

Council(s) and Defendants claim granting this preliminary injunction is not of public interest. However, during the August 30th State Board of Elections meeting, Jason Denny was complaining about clerks being inundated with requests regarding our state's elections and were having trouble fulfilling them all. That video went viral and has since been removed like many links referenced in this complaint. According to a NYT poll "more than a third of independent voters and a smaller but noteworthy contingent of Democrats said they were open to supporting candidates who reject the legitimacy of the 2020 election" as concerns about the economy mount.[20] I would argue that there is a public interest for this Honorable Court to grant my preliminary injunction because without it, elections will continue to be conducted on the same insecure voting systems used in coup d'états of other nations.

CONCLUSION

If those tasked with elections in our state do not understand the very voting systems they approve, then how can I, or anyone else for that matter, have any confidence in our elections process. It is time we conduct elections in a way that is best for the People, not any corporate interest or government entities. I can think of no better time in our history to set precedence and this Honorable Court to rule based on the merits of this complaint denying this Motion to Dismiss and granting my injunction. All those who submitted affidavits in support of this complaint and countless more, including people from other states like Texas, Missouri, Michigan, Louisiana, Oregon, Minnesota, Illinois, Florida, South Carolina, California, Oklahoma, Ohio, Hawaii, Iowa, and more are battling for truth, transparency, and accuracy in

[20] https://www.nytimes.com/2022/10/18/us/politics/midterm-election-voters-democracy-poll.html?smid=url-share

their elections. Across the Nation, We the People have been lied to, shamed, and ignored for far too long. It is time that the law of this land, the U.S. Constitution, be upheld and all my rights as an American be restored.

For the foregoing reasons, Defendants' Motion to Dismiss should be denied. If the Court grants the motion in whole or in part, Plaintiff should be given leave to amend the Complaint.

RESPECTFULLY submitted this ___ day of _____, 2022.

_____

[redacted]

CERTIFICATION OF SERVICE

I, [redacted] certify that on this 28th day of October 2022 I sent a complete and accurate copy of this Reply to Motion to Dismiss by U.S. mail to every other party or their attorneys listed below:

[redacted]

Counsel for Michael G. Adams in his official capacity of Secretary of State of Kentucky

[redacted]

Counsel for State Board of Elections

Signature_____ Date_____

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

[redacted]

Plaintiff,

v.

MICHAEL ADAMS, in his official capacity as the Secretary of State of Kentucky; *et al.*,

Defendants.

Civil Action No. 3:22-cv-45-REW

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS

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INTRODUCTION

Defendants take seriously Plaintiff [redacted] genuine concerns about election security and, indeed, have taken many measures to improve ballot security, including, but not limited to, becoming members with the EI-ISAC, removing well over one hundred thousand ineligible voters from Kentucky's voter rolls,[1] and helping pass legislation to require the use of video surveillance on voting machines when polling locations are closed.[2] Not satisfied with these steps, [redacted] demands a return to the era of hand-counted paper ballots. However well-intentioned his efforts, this Court still lacks subject-matter jurisdiction as to any of the claims that [redacted] purportedly asserts against the Defendants: [redacted] lacks Article III standing against the Defendants, and any claims pertaining to Kentucky's past and present election are plainly moot.[3] [redacted] Response does not rebut these fatal infirmities. As matter of law, his claims must be dismissed in their entirety.

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[1] *See, e.g.,* Mario Anderson, *KY's Voter Rolls Purged Of 10,000+ Deceased Citizens*, (Nov. 3, 2021), SpectrumNews1, https://spectrumnews1.com/ky/louisville/in-focus-shows/2021/11/03/purging-voter-rolls-of-deceased-citizens-and-bolstering-civic-education; Tom Latek, *Adams continues state voter registration clean up*, The State Journal (Nov. 27, 2021), https://www.state-journal.com/news/adams-continues-state-voter-registration-clean-up/article_308df57a-4fc6-11ec-8168-f331cceda5a2.html; *Voter purge begins on Kentucky rolls*, 95.3 WIKI (Feb. 24, 2022), https://www.953wiki.com/news/local-news/voter-purge-begins-on-kentucky-rolls/; Steve Rogers, *UPDATE: 100,000 dead voters now off rolls, more to come*, ABC 36 News (Feb. 25, 2022), https://www.wtvq.com/state-begins-court-ordered-process-to-purge-inactive-voters/; Hannah Hageman, *Sec. of State Adams continues to clean-up voter rolls*, WHOP NewsRadio (Mar. 25, 2022), https://whopam.com/2022/03/25/sec-of-state-adams-continues-to-clean-up-voter-rolls/.

[2] *See* KRS 117.295(1); *see also* John Gregory, *Secretary of State Discusses New Legislation to Expand Voting and to Improve Election Security*, KET (Dec. 11, 2022), https://www.ket.org/program/connections/kentucky- secretary-of-state-michael-adams-188083/.

[3] To the extent [redacted] requested relief concerns voting systems used in the November 2022 election, such claims are moot as that election has come and gone. *See Thompson v. Dewine*, 7 F.4th 521, 521 (6th Cir. 2021) (en banc), *cert. denied, Thompson v. Dewine*, 142 S. Ct. 1233 (2022) (holding that claims are moot with respect to an election that has already passed); *see also Davis v. Colerain Twp.*, No. 21-3723, 2022 WL 4351074, 2022 U.S. App. LEXIS 26498, at *18 (6th Cir. Sep. 20, 2022). [*See also* DN 23-1, PageID# 1688-1689].

ARGUMENT

I. [redacted] HAS NOT ALLEGED THAT HE PERSONALLY SUFFERED ANY COGNIZABLE INJURY-IN-FACT.

As set forth in Defendants' opening brief, [*see* DN 23-1, PageID# 1681-1684], [redacted] alleged harms constitute a quintessential "generalized grievance against allegedly illegal governmental conduct of which he does not approve." The Supreme Court has repeatedly refused to recognize "generalized grievances" as sufficient for standing to invoke the federal judicial power. *United States v. Hays*, 515 U.S. 737, 745 (1995) (cleaned up); *id*. at 743 (collecting cases). Rather than rebut this argument, [redacted] Response further illustrates how his alleged injury is precisely too general as to confer standing under Article III. [*See* DN 24, PageID# 1709, 1714]. For example, when describing the alleged harm caused by Defendants, [redacted] writes: "Opposing counsel suggests no irreparable harm has been shown to exist, but I disagree when there is an assault on *our Constitutional rights*. . . .When *our vote* is vulnerable to hacking on electronic voting systems, *our voice* has been successfully silenced thus causing irreparable harm." [DN 24, PageID# 1714] (emphasis added). There is nothing specific to [redacted] no injury to him different than anyone else who shares his worries.

[redacted] attempts to explain why his alleged injury is "non-speculative". Even assuming—wholly *arguendo*—that his speculation is well founded, his Response provides no rejoinder to the bedrock principle that, in order to present a justiciable "case" or "controversy," "the party bringing suit must show that the action injures him in a concrete and personal way." *Summers v. Earth Island Inst*., 555 U.S. 488, 497 (2009) (citations omitted)). To be "particularized," an injury-in-fact must "affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citation omitted). The very opposite of a particularized injury is a "generalized grievance"—that is, an asserted injury "shared in substantially equal measure by all or a large class

of citizens[.]" *Warth v. Seldin*, 422 U.S. 490, 499 (1975). That's what we have here.

Despite claiming that "Defendants actions resulted in the silencing of [his] voice" at the ballot box, [DN 24, Page ID# 1707], [redacted] has not credibly alleged that Defendants caused any votes in the 2020 election to be altered or changed. Nor does he allege that his personal vote in the 2020 election was tampered with and/or discounted. Rather, [redacted] asserts generally that "[i]t does not take a law degree to conclude *my vote, along with all votes*, were not secure nor were they counted with accuracy within a black box voting system." [DN 24, Page ID# 1709] (emphasis added). Belief and conjecture fall far short of what is required to obtain the relief requested here. *King v. Whitmer*, 505 F. Supp. 3d 720, 738 (E.D. Mich. 2020). [redacted] is speculating—implausibly at that. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Regardless, "no single voter is specifically disadvantaged if a vote is counted improperly, even if the error might have a mathematical impact on the final tally and thus on the proportional effect of every vote." *King*, 505 F. Supp. 3d at 738 (cleaned up). [redacted] allegations that election machines and software changed or altered votes in favor of one candidate over another, therefore, amount to nothing more than an amalgamation of theories, conjecture, and speculation that such tampering was possible. [*See* DN 1, PageID# 14-16; DN 24, Page ID# 1709, 1713-1714].

In sum, "[c]onstitutional limits on the role of the federal courts preclude such a transformation" of a generalized grievance into a basis for Article III standing. *Allen v. Wright*, 468 U.S. 737, 756 (1984). Here, the generalized nature of [redacted] asserted harms "does not warrant exercise of jurisdiction," *Warth*, 422 U.S. at 499.

II. [redacted] IGNORES THAT IN OUR FEDERAL ELECTION SYSTEM, STATE VOTING SYSTEMS VARY AND KENTUCKY'S IS SECURE AND COMPLIANT.

As set forth in greater detail in Defendants' opening memorandum [*see* DN 23-1, PageID#

1684-1685], [redacted] attempt to establish standing also fails on the independent ground that his asserted injuries are neither "fairly traceable" to the Defendants, nor capable of being redressed by them.

As with his Complaint, [*see* DN 1, PageID# 11-12], [redacted] Response misunderstands the statutory framework governing the certification of voting systems in Kentucky. Federal law provides that so long as a state's systems meet federal statutory requirements, the approval of voting systems is a matter of state law, not federal law. *See* 52 U.S.C. § 21085 ("The specific choices on the methods of complying with the requirements of this subchapter shall be left to the discretion of the State."); *see also id*. at § 20971(a)(2) ("At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section."). In short, contrary to [redacted] assertions, federal law does not require states to use Voting System Test Laboratories (VSTLs) offered under HAVA. *See id.* Kentucky is one of many states that does not use the VSTLs but rather provides its own process for certifying voting systems. *See* KRS 117.379; KRS 117.125.

Despite clarifying that his "beef" is not with the EAC, [*see* DN 24, Page ID# 1705], [redacted] continues to argue that the EAC's failure to accredit federal testing labs somehow affects Kentucky elections and that "evidence in [his] complaint shows how voting systems are vulnerable to hacking without proper testing and certifications." [*Id.*] [redacted] has not credibly alleged that Kentucky's certification process fails to meet federal or state statutory requirements. *See* 52 U.S.C. § 21081(a)(1)(A); *see also* KRS 117.379; KRS 117.125. [redacted] relies primarily on the affidavit of QAnon podcaster and "whistleblower" Terpsehore Maras.[4] [*See* DN 1, PageID# 40-76; DN 24,

[4] *See* Morgan Trau, *Ohio Supreme Court puts conspiracy theory podcaster back on ballot*, News5 Cleveland WEWS (Sept. 20, 2022), https://www.news5cleveland.com/news/politics/ohio-politics/ohio-supreme-

Page ID# 1705, 1708]. That affidavit addresses the accreditation status of VSTLs used by other states, such as Michigan, Wisconsin, Georgia, Pennsylvania, and Arizona—but not Kentucky. [DN 1, PageID# 43-47]. Moreover, even the Maras affidavit notes that "participation in the [EAC VSTL Accreditation] program is voluntary[.]" [DN 1, PageID# 42].

Kentucky does not participate in the VSTL program but instead certifies its own voting systems. Consequently, the bulwark of "evidence" [redacted] relies on has nothing to do with how Kentucky manages its elections or certifies its voting systems. [*See* DN 1, PageID# 10-16].

III. CYBERSECURITY OF KENTUCKY ELECTIONS

A. EI-ISAC has no control over Kentucky elections.

[redacted] continues to argue that "[t]he US government took over elections in our state through the HAVA Act," [DN 1, PageID# 16-17], claiming that Defendants have "handed over our elections to the federal government by becoming EI-ISAC members which requires signing a contract with the Center for Internet Security (CIS), who is contracted by [the U.S. Department of Homeland Security (DHS)]." [DN 24, PageID# 1710]. But EI-ISAC membership does not, *ipso facto*, grant CIS or DHS the ability to decide how Kentucky's elections are conducted. [*See* DN 1, PageID# 16]. Informative bulletins addressing periodic developments in the field of election cybersecurity are the extent of the "cybersecurity tools and protections" Defendants receive from their membership to EI-ISAC.[5]

B. Kentucky's voting machines are never connected to the internet.

Criminal charges are imposed on anyone who attempts to connect Kentucky election

court-puts-conspiracy-theory-podcaster-back-on-ballot.

[5] *See EI-ISAC Membership FAQ*, https://www.cisecurity.org/ei-isac/ei-isac-membership-faq ("Membership benefits include direct access to cybersecurity advisories and alerts, vulnerability assessments and incident response for entities experiencing a cyber threat, secure information sharing through the Homeland Security Information Network (HSIN) portal, tabletop exercises, a weekly malicious domains/IP report, multiple CISA initiatives, CIS SecureSuite® Membership, and more.").

equipment to the internet. KRS 117.995(4); KRS 117.125(25). It does not happen.[6] [redacted] main grievance with Defendants is the alleged vulnerability of Kentucky's voting systems to foreign hacking. [DN 24, PageID# 1712]. [redacted] argues that such vulnerabilities were revealed by the hearing testimony given before the Kentucky House Budget Review Subcommittee on General Government by previous State Board of Elections Executive Director, Jared Dearing. [*Id.*; *see also* House Budget Review Subcommittee on General Government Meeting Minutes (2/18/2022), attached as **Exhibit 1**]. In advocating for the continued allocation of funds to help combat cyber threats, Dearing informed the subcommittee that Kentucky' election systems were "routinely scanned by foreign adversaries" on a weekly basis in 2016. [redacted] cherry-picks Dearing's testimony to support the proposition that "voting systems are connected to networks and must do so to tabulate" as "[h]ow are other countries scanning our election systems if not connected to a network?" [*Id.*] The "systems" Dearing references in his testimony, however, are not the actual voting machines contemplated by [redacted] rather, Dearing specified that all governmental systems—including the voter registration systems independently maintained by the local county clerks, *see* KRS 116.045—are routinely pinged by foreign actors. [*See* Exhibit 1]. Nothing in Dearing's testimony supports the conclusion that voting machines are connected to the internet. [*Id.*] *See also*, Joe Sonka, *Kentucky official: Foreign actors, including Russians, North Koreans, target election system*, THE COURIER-JOURNAL (Feb. 18, 2020), https://www.courier-journal.com/story/news/politics/2020/02/18/kentucky-official-foreign-actors-targeting-2020-election/4798535002/.

Defendants agree with [redacted] on the importance of election security.[7] That is why Kentucky's voting machines do not ever get connected to the internet; they are safe from

[6] *See Elections: Rumor Control*, https://www.sos.ky.gov/elections/Pages/Rumor-Control.aspx
[7] *See* Footnote 1, *supra*.

interference by foreign hackers. Indeed, even the article [redacted] cites to for support undermines this theory, noting that "[t]here is no evidence any votes were changed by hackers in 2016." Maggie Miller, *Kentucky state official says foreign adversaries 'routinely' scan election systems*, THEHILL.COM (Feb. 19, 2020), https://thehill.com/policy/cybersecurity/483674-kentucky-state-official-says-foreign-adversaries-routinely-scan-election/.

IV. MEKUS' TENTH AMENDMENT CLAIMS FAIL AS A MATTER OF LAW.

A. Tenth Amendment claims under *Bond* and *Printz* still must be justiciable.

[redacted] argues that he has "standing to raise 10th amendment challenges to a federal law" under *Bond v. United States*, 564 U.S. 211 (2011), and *Printz v. United States*, 521 U.S. 898 (1997). Mekus fails to specify exactly which "federal law" he is challenging. [*See* DN 24, PageID# 1704, 1712 (inferring that DHS is controlling Kentucky's elections by way of assisting the State Board of Elections with cybersecurity); DN 24, Page ID# 1709 (stating that "any clams about EAC and their Voting System Testing Laboratories are only to connect the dots that vulnerable voting systems were approved by what were supposed to be federally accredited labs.")]. Regardless, Mekus' reliance on *Bond* and *Printz* is misplaced. Indeed, *Bond* and *Printz* cut the other way.

The Supreme Court's standing jurisprudence contains two strands: Article III standing, which enforces the Constitution's case-or-controversy requirement, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-62 (1992); and "prudential" standing, which embodies "judicially self-imposed limits on the exercise of federal jurisdiction," *Allen*, 468 U.S. at 751. *See also Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11-12 (2004). Prudential standing bars *"adjudication of generalized grievances more appropriately addressed in the representative branches*." *Elk Grove*, 542 U.S. at 12 (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)) (emphasis added). In *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), the Supreme Court explained

that "[w]ithout such limitations the courts would be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions." *Id.* at 126 (citing *Warth*, 422 U.S. at 500).

Bond makes clear that "[i]ndividuals seeking to challenge such measures *are subject to Article III and prudential standing rules applicable to all litigants and claims*[.]" *Bond*, 564 U.S. at 213 (emphasis added).[8] As set forth in Section I, *supra*, [redacted] has not suffered a justiciable injury as he only alleges generalized grievances. He has neither Article III standing, nor "prudential" standing under *Bond* and *Printz*.

B. The notion that the Tenth Amendment renders Article I's Election Clause unconstitutional has never been accepted by any court, anywhere.

[redacted] relies heavily on Supreme Court opinions that extoll the virtues of federalism. Defendants have no quarrel with the proposition that federalism protects individual liberty. However, Congress has certain enumerated powers, including these derived from Article I, § 4, the Elections Clause. [redacted] overlooks that this clause gives Congress the authority to regulate elections if it so chooses.

The Elections Clause provides that "Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; *Congress may at any time by Law make or alter such Regulations*, except as to the Places of choosing Senators." U.S. CONST. art. I, § 4 (emphasis added). The authority granted to the States under this "Clause functions as 'a default provision; it invests the States with responsibility for the mechanics of congressional elections, but

[8] More recently, the Supreme Court has questioned whether the doctrine of prudential standing should even exist, indicating that the bar on generalized grievances, such as those asserted by [redacted] here, is a constitutional (and not prudential) requirement. *Lexmark*, 572 U.S. at 127 n.3 (citations omitted); *see also Ass'n of Am. Physicians & Surgs v. United States FDA*, 13 F.4th 531, 541-42 (6th Cir. 2022) ("*Lexmark*'s skepticism of prudential standing suggests that the Court should reexamine all of the doctrines that have grown out of it . . . .").

only so far as Congress declines to pre-empt state legislative choices.'" *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013) (quoting *Foster v. Love*, 522 U.S. 67, 69 (1997)). "The power of Congress over the 'Times, Places and Manner' of congressional elections 'is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.'" *Id*. (quoting *Ex parte Siebold*, 100 U.S. 371, 392 (1880)).

[redacted] argues that an "[u]nderstanding the history of Article I helps explain why it is contradictory to an original amendment of the Constitution" and that "the attempt to use the Elections Clause of Article 1 as reason for DHS's involvement in our elections is a conflicting argument." [DN 24, Page ID# 1712]. According to [redacted] "Article 1 was another Act of Congress that diluted the U.S. Constitution, specifically the 10th. . . ." [redacted] relies on what appears to be commentary from opposition to the Constitution's ratification. ." [*See* DN 24, Page ID# 1712-1713]. [redacted] claims that this commentary, which warns that Congress might use its powers under Article I to manipulate federal elections, supports the conclusion that "the 10th amendment protects [him] from any intrusion by our federal government, resulting in the loss of my rights or the ability to protect them." [*Id*.]

As an initial matter, Article I cannot be understood to "dilute the U.S. Constitution" as it is part and parcel of the U.S. Constitution. Moreover, the commenta[redacted]us relies on in support of his claims is just that—commentary, and from the losing side in the ratification debate. No federal court has ever held that the Tenth Amendment renders Article I unconstitutional, and for good reason. HAVA and statutes like it are expressly authorized by the U.S. Constitution. None of [redacted] allegations about federal cooperation in the administration of Kentucky's election suggest a constitutional violation, let alone one tied to an injury personally suffered by him.

V. [redacted] REQUESTED RELIEF SHOULD BE DENIED AS IT IS NOT IN THE PUBLIC'S INTEREST.

[redacted] claims against the Defendants should be dismissed and his motion for preliminary injunction should be denied on justiciability grounds alone. Even if [redacted] case is allowed to proceed, his motion for preliminary injunction should still be denied as he has likewise failed to establish that such relief is necessary or appropriate. Application of the four *Winter* factors shows that the "extraordinary" form of relief [redacted] seeks in not justified. [*See* DN 23-1, PageID# 1692-1697].

Before granting injunctive relief a Court must evaluate "whether the public interest would be served by issuance of the injunction." *City of Pontiac Retired Emples. Ass'n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014) (en banc) (per curiam) (citation omitted); *see also Winter v. NRDC, Inc.*, 555 U.S. 7, 19-20 (2008). [redacted] argues here that his "injury" is "most easily redressed by . . . halting elections until we can secure our voting process by removing current voting systems." [DN 24, PageID# 1708]. He further claims that "[a]ny concerns of national security would be alleviated by using anti-counterfeit paper ballots which will then be hand counted at the precinct level while being live streamed." [*Id.*] According to [redacted] "[y]ou cannot hack paper and the great People of this state can be trusted and are smart enough to hand count paper. This would save the taxpayers millions of dollars currently spent on these hackable voting systems . . . ." [*Id.*] That is a policy choice; the Kentucky General Assembly has chosen otherwise, and with good reason.

History has shown that hand-counted paper ballots are both more costly and more prone to fraud than electronic tabulators. *See*, *e.g.*, *The Machine Proves Its Superiority*, THE COURIER-JOURNAL, Nov. 5, 1942 (comparing results of voting machines with results with "the slow, expensive and often quarrelsome hand-counting" and stating that "the machines have more than proved themselves as time-savers and as outwitters of the more obvious types of fraud"); Allan M.

Trout, *Kentuckians Don't Fire At Voting Machines*, THE COURIER-JOURNAL, Nov. 8, 1942 (noting how Kentucky's first use of voting machines marked the first election year in which no shootings were reported at polling places).[9]

[redacted] requested relief would only exacerbate the difficulty of running an election. The public's interest is not served by allowing lone plaintiffs like [redacted] to choose the voting systems and to impose his policy preferences on all Kentucky voters. Kentucky has elected constitutional officers and appointed State Board of Elections members from the two major political parties. Defendants have been entrusted by the Legislature with the authority to gather the necessary facts and make appropriate decisions about election mechanics and ultimately be held accountable to the voters. The equities therefore weigh against granting an injunction.

CONCLUSION

For the above-stated reasons, the Court should dismiss this action in its entirety, with prejudice, and deny [redacted] Motion for a Preliminary Injunction.

[9] *See also, Advocates Voting Machines*, THE COURIER-JOURNAL, Aug. 20, 1931 (advocating for the use of voting machines over hand-counted paper ballots); J. Howard Henderson, *The Voting Machine Amendment Is Too Detailed*, THE COURIER-JOURNAL, Aug. 25, 1941 (stating that the "ideal system" for counting votes would be voting machines); *Voting Machines To Get a Partial Test*, THE COURIER-JOURNAL, July 29, 1942 (stating that voting machines "contribute to accuracy in registering the popular will" and "provide safeguards against corruption of the ballot and falsification of returns"); *Here Are the Answers to Questions About Mechanical Ballot Boxes*, THE COURIER-JOURNAL, Oct. 31, 1942 (stating that voting machines "can't be beaten") (collectively attached as **Exhibit 2**).

Respectfully Submitted,

Counsel for Michael Adams, in his official capacity as the Secretary of State of Kentucky

Counsel for State Board of Elections

CERTIFICATE OF SERVICE

It is hereby certified by undersigned counsel that the foregoing was filed on this 11th day of November 2022, through the federal Case Management Electronic Case Filing (CM/ECF) system, which will generate a notice of electronic filing (NEF) to all users who have registered in this action and a true and correct copy was mailed via U.S.P.S. to the following:

[redacted]

[redacted]

Counsel for Michael Adams, in his official capacity as the Secretary of State of Kentucky

[redacted]

Counsel for State Board of Elections

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
DIVISION OF FRANKFORT

[redacted], Plaintiff, V. MICHAEL ADAMS, in his official Capacity as the Secretary of State of Kentucky; et al., Defendants.	Civil Action No. 3:22-CV-45-REW

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' SECOND MTD

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW the Plaintiff, [redacted] who hereby submits his Response in Opposition to Defendants' second Motion to Dismiss and states as follows:

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U.S. CONSTITUTION

INTRODUCTION

With each reply, the Defendants and Council have made it clear they do not care about the evidence brought forth in this complaint regarding the vulnerabilities of our voting machines. Their continued ignorance is a blatant violation of my 1st amendment right to redress. My voice is being silenced and I have no standing because no caselaw in support exists. The original 10 amendments of the US Constitution are the last line of defense between my government and myself, and it's time to uphold it. Our elected officials serve the People, not the other way around. It is time the Defendants' listen to the People and take the concerns of one individual, representing many, seriously. Defendants and Council still fail to understand that the machines were never certified properly, which means fraud vitiates everything as decided in *United States v. Throckmorton*. Uncertified machines equal fraud. The State Board of Elections is responsible for our elections, therefore, securing my vote by securing the voting process is a must. Unfortunately, machines are vulnerable to manipulation as they require either internal Wi-Fi capabilities or a physical connection via ethernet cable to tabulate. Defendants have also admitted that DHS, via EI-ISAC memberships, helps to monitor our systems which is a violation of the10th amendment. However, Defendants have pointed to an added article, of the same document, as reason for the federal government's infringement on my state's sovereignty. Once again, there is no need for cybersecurity help from the federal government due to national security concerns with the use of anti-counterfeit paper and pen. The counting of said votes can be done accurately by hand and by the People who are affected the most by these elections.

PLAINTIFF'S RESPONSE IN OPPOSTION OF DEFENDANTS' SECOND MTD

I. Claim Plaintiff has not suffered any cognizable injury.

Counsel for the Defendants claim others share my concerns about the security of our elections and because of this, my claim is general and not specific to me thus establishing no personal, cognizable injury. What is more specific to me than my own voice? There is nothing more personal or concrete to me than my voice being silenced by the continued use of uncertified, hackable machines. Furthermore, if many in the public share my concerns about our elections being insecure, then would it not be in the best interest of this court to investigate these matters?

II. Claim Plaintiff misunderstands the Certification process.

No evidence has been presented by the Defense yet that proves the voting machines purchased by Kentucky were initially certified properly. The Defendants still misunderstand that their approved list of machines for purchase were never certified properly as the manufacturers' initial testing and certifications were done by labs whose accreditation to do so, had lapsed. As explained in my original complaint, Senator Wyden sent a letter alerting Pro V&V in 2017 of their lapsed accreditations. The EAC later released a statement in early 2020 blaming COVID-19 as the reason for lack of accreditation, however, this excuse was bogus as mandates regarding COVID had yet to take effect. This resulted in the EAC releasing another statement admitting an administrative error. Apparently, a mistake was made. The renewal certification process had been completed as required but was just not published (please see paragraph #14 of Complaint). This excuse also falls short since the published certificate is still invalid, per their VSTL Manual 3.0 guideline 3.6.1, which states the Certification of Accreditation must be signed by the chairman of the EAC. Testing and certification are crucial because voting machines are riddled

with security vulnerabilities[1]. This means these uncertified machines are vulnerable to hackers, who for example, could install malware designed to override the algorithm programmed to count votes. Anyone with the hacking capabilities can change how these machines are counting votes[2].

Hacking

There are many forms of computer hacking. In this analysis of voting machines we focus on the alteration of voting machine software so that it miscounts votes or mismarks ballots to alter election outcomes. There are many ways to alter the software of a voting machine: a person with physical access to the computer can open it and directly access the memory; one can plug in a special USB thumbdrive that exploits bugs and vulnerabilities in the computer's USB drivers; one can connect to its WiFi port or Bluetooth port or telephone modem (if any) and exploit bugs in those drivers, or in the operating system.

"Air-gapping" a system (i.e., never connecting it to the Internet nor to any other network) does not automatically protect it. Before each election, election administrators must transfer a *ballot definition* into the voting machine by inserting a *ballot definition cartridge* that was programmed on election-administration computers that may have been connected previously to various networks; it has been demonstrated that vote-changing viruses can propagate via these ballot-definition cartridges [17].

Hackers might be corrupt insiders with access to a voting-machine warehouse; corrupt insiders with access to a county's election-administration computers; outsiders who can gain remote access to election-administration computers; outsiders who can

[9]Some voting machines, such as the ES&S ExpressVote, can be configured as either a BMD or a BMD+Scanner all-in-one. Others, such as the ExpressVoteXL, work only as all-in-one machines.
[10]More precisely, the ICP320 optical scanner and the BMD audio+buttons interface are in the same cabinet, but the printer is a separate box.

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gain remote access to voting-machine manufacturers' computers (and "hack" the firmware installed in new machines, or the firmware updates supplied for existing machines), and so on. Supply-chain hacks are also possible: the hardware installed by a voting system vendor may have malware pre-installed by the vendor's component suppliers.[11]

Computer systems (including voting machines) have so many layers of software that it is impossible to make them perfectly secure [23, pp. 89–91]. When manufacturers of voting machines use the best known security practices, adversaries may find it more difficult to hack a BMD or optical scanner—but not impossible. Every computer in every critical system is vulnerable to compromise through hacking, insider attacks or exploiting design flaws.

To inspect this counting process, the machines would have to be opened to allow a qualified software expert to analyze the algorithm. Seeing this source code would allow the expert to see how it is programmed to count votes. Defendants have yet to provide a remedy for the issue of

[1] https://1819news.com/news/item/black-box-voting-confessions-of-an-elections-hacker-part-2
[2]https://www.supremecourt.gov/DocketPDF/20/20-859/164740/20201224101037520_WI%20Appendix.pdf

whether my vote, NOT ballot, was and is counted correctly. Ballots are just sheets of paper or cards used to cast or register a vote, especially a secret one. Therefore, securing my ballot is not the same thing as securing my vote. How can I know my vote is counted correctly if voters are prevented from seeing this part of the election process due to black box voting and possible national security concerns? Instead, the Defendants submitted newspaper clippings from 90 years ago, before the era of internet connections, as evidence the machines are secure and the best option for Kentuckians.

III. Defendants' claim of Cybersecurity of Kentucky Elections.

A. Claim that EI-ISAC has no control over Kentucky's elections.

As pointed out in my reply to Defendants' Motion to Dismiss, having a membership with EI-ISAC is not simply for receiving "informative bulletins" as the Defendants claim. Below is a snapshot of the benefits of being a member:

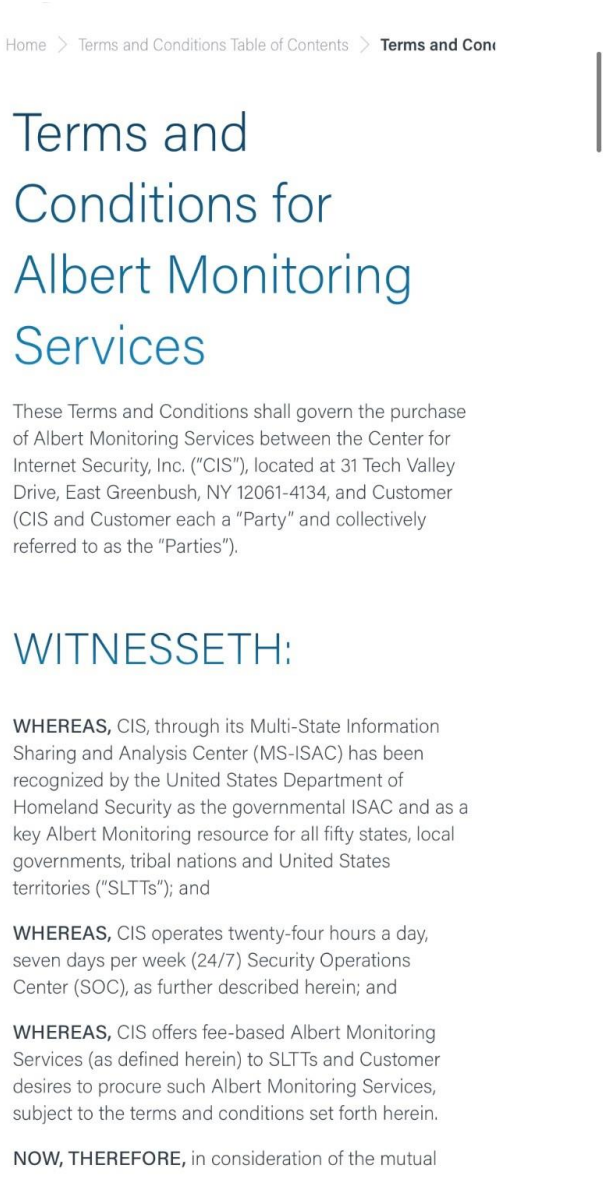
EI-ISAC Services and Benefits Provided to Members:

- 24/7 Security Operations Center
- Incident response and remediation
- Weekly Elections Security News Alerts
- Elections Sector Quarterly Report
- Election-specific threat intelligence
- Threat and vulnerability monitoring
- Training sessions and webinars
- Promote security best practices
- Automated Indicator Sharing
- Access to a Members-Only Discussion Board
- Malicious Code Analysis Platform (MCAP)
- Digital forensics and log analysis

Individuals who do not support the Elections Critical Infrastructure of the United States but are employees of any other public non-federal entity are eligible and strongly encouraged to take full advantage of the services and benefits offered through the Multi-State Information Sharing Analysis Center by enrolling here.

Employees of for-profit companies or non-profits, consultants, or private citizens that are unaffiliated with an eligible entity are strongly encouraged to take advantage of our free advisories on known vulnerabilities, national webcasts, and end-user focused cybersecurity newsletters by enrolling here.

Having a membership means they must also sign a Memorandum of Agreement (MOA) with the Center for Internet Security (CIS), as stated in the terms and services for monitoring[3]:



Home > Terms and Conditions Table of Contents > Terms and Con

Terms and Conditions for Albert Monitoring Services

These Terms and Conditions shall govern the purchase of Albert Monitoring Services between the Center for Internet Security, Inc. ("CIS"), located at 31 Tech Valley Drive, East Greenbush, NY 12061-4134, and Customer (CIS and Customer each a "Party" and collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, CIS, through its Multi-State Information Sharing and Analysis Center (MS-ISAC) has been recognized by the United States Department of Homeland Security as the governmental ISAC and as a key Albert Monitoring resource for all fifty states, local governments, tribal nations and United States territories ("SLTTs"); and

WHEREAS, CIS operates twenty-four hours a day, seven days per week (24/7) Security Operations Center (SOC), as further described herein; and

WHEREAS, CIS offers fee-based Albert Monitoring Services (as defined herein) to SLTTs and Customer desires to procure such Albert Monitoring Services, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual

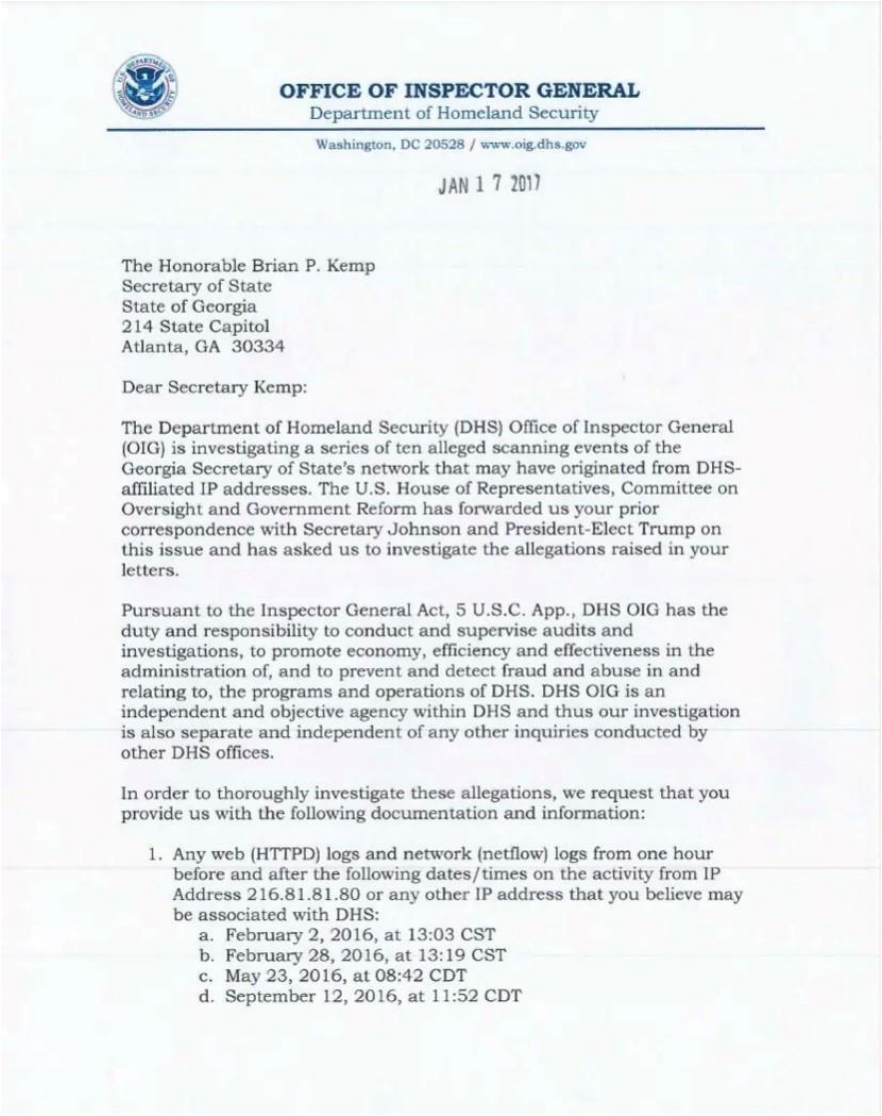
[3] https://www.cisecurity.org/terms-and-conditions-table-of-contents/terms-and-conditions-for-albert-monitoring-services

CIS, through its MS-ISAC, is a key Albert Monitoring resource for all 50 states. One important note to make, is that becoming a member of EI-ISAC automatically makes you a member[4] of MI-ISAC:

I also showed an example of the CIS MOA which says monitoring will be done by Department of Homeland Security (DHS) 24/7. Once again, if our election systems were not connected to an internet network, then why sign a contract with DHS via the Center for INTERNET Security

[4]https://www.cisecurity.org/ei-isac

(CIS)? Cybersecurity is needed because all our systems are online and in need of monitoring. DHS was caught monitoring Georgia's election systems in 2016, when then SOS Brian Kemp discovered the breach.[5] A DHS Inspector General investigation ensued. Below you will find the letter sent by DHS' IG to Kemp explaining the breach came from IP addresses that were affiliated with DHS:



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security
Washington, DC 20528 / www.oig.dhs.gov

JAN 17 2017

The Honorable Brian P. Kemp
Secretary of State
State of Georgia
214 State Capitol
Atlanta, GA 30334

Dear Secretary Kemp:

The Department of Homeland Security (DHS) Office of Inspector General (OIG) is investigating a series of ten alleged scanning events of the Georgia Secretary of State's network that may have originated from DHS-affiliated IP addresses. The U.S. House of Representatives, Committee on Oversight and Government Reform has forwarded us your prior correspondence with Secretary Johnson and President-Elect Trump on this issue and has asked us to investigate the allegations raised in your letters.

Pursuant to the Inspector General Act, 5 U.S.C. App., DHS OIG has the duty and responsibility to conduct and supervise audits and investigations, to promote economy, efficiency and effectiveness in the administration of, and to prevent and detect fraud and abuse in and relating to, the programs and operations of DHS. DHS OIG is an independent and objective agency within DHS and thus our investigation is also separate and independent of any other inquiries conducted by other DHS offices.

In order to thoroughly investigate these allegations, we request that you provide us with the following documentation and information:

1. Any web (HTTPD) logs and network (netflow) logs from one hour before and after the following dates/times on the activity from IP Address 216.81.81.80 or any other IP address that you believe may be associated with DHS:
   a. February 2, 2016, at 13:03 CST
   b. February 28, 2016, at 13:19 CST
   c. May 23, 2016, at 08:42 CDT
   d. September 12, 2016, at 11:52 CDT

[5] https://www.wsbtv.com/news/local/atlanta/secretary-of-state-wants-answers-from-dhs-after-apparent-breach-attempt/474347363/

IP stands for Internet Protocol and this explains how DHS hacked Georgia's election systems. Shortly after this breach and just before leaving office, former President Obama declared[6] our election systems critical infrastructure effectively giving control of our elections to the Cybersecurity and Infrastructure Security Agency. The image below shows the connection between CIS (DHS) and CISA:

[6]https://thehill.com/policy/national-security/313132-dhs-designates-election-systems-as-critical-infrastructure/

B. Claim Kentucky's voting machines are never connected to the internet.

Please refer to section III (A) of this response for the need of 24/7 monitoring of our election systems via a contract between SOS and State Board of Elections and the Center for INTERNET Security, CIS. Showing that our systems are scanned by foreign actors was proof that our systems are connected to an internet network and in need of monitoring, just as DHS provides through CIS. Defendants claim we failed to prove this because Mr. Dearing was referring to our voter registration logs not election systems, as systems that were being routinely scanned. Considering they are managed on the internet by ERIC[7], it is no surprise foreign countries were scanning our voter registration data. Anything connected to a network is vulnerable to being scanned by anyone with the expertise to do so. When voting in the Kentucky's most recent election, November 8th, 2022, I was not found on the voter rolls at check in. I made a call to the county clerk who was also unable to locate my information on the NEW system, so the OLD was checked. Instantly, from another location, I was added on the voter roll. If there are no internet connections, then how was I added and why was I not in the NEW system. Seems the voter rolls are not being kept up to date and are vulnerable to manipulation in real time. But Defendants still claim our tabulators are not connected to any internet networks. To maintain our voter rolls at check-in, an internet connection is necessary at voting locations. Please refer to the patent in my original complaint showing the technology behind smart device interconnectivity. Once again, for the tabulators to "communicate" to other tabulators when tallying votes, it must connect (via cable or Wi-Fi capabilities) to a network to do so. While scanning my ballot in the last election, I also noticed the tabulator was connected by a yellow cat 5 Ethernet cable. These cables are used to connect devices to area networks such as LANs,

[7] https://elect.ky.gov/Resources/Pages/List-Maintenance.aspx

MANs, or WANs[8]. The evidence showing the presence of internet networks is growing and according to election hacker Clay Parikh, ES&S voting systems are not connected through cables but rather have built-in Wi-Fi capabilities where hacking can occur with or without an internet connection.[9]

IV. Claim the 10th amendment argument has failed.

Defendants are still arguing protection under Article I and using it against one of original amendment of the US Constitution, the 10th. Once again, the Constitution was not written for our government to use against its people, but rather to protect the People from its' government. Article I states that Congress has final say over federal elections, not the People. Is Congress not part of our federal government? Does this mean representatives in our federal government are deciding it is they who have final say? Whether caselaw exists or not, there is contradiction in arguing one right has more weight than another. This is exactly what our Founding Fathers were protecting the People from, and the very reason for the 9th amendment. It does not allow for a specific right to violate any of my general rights not explicitly written. Please refer to Section III A of this response for evidence of the overreach by our federal government, facilitated by SOS Michael Adams and the State Board of Elections by the signing of a Memorandum of Agreement with DHS through CIS to monitor our elections systems.

V. Relief is not in the best interest of the public

Defendants' claim that relief is not in the best interest of the public because I am a lone plaintiff. I have 30 plus affidavits in support of this complaint and according to the State Board Elections in their August 30th meeting, clerks cannot do their job of preparing for elections due to the amount of requests sent from constituents inquiring about our elections process. Would

[8] https://www.vssmonitoring.com/what-is-an-ethernet-cable/
[9] https://1819news.com/news/item/black-box-voting-confessions-of-an-elections-hacker-part-1

everyone have to file a complaint such as this for it to be considered in the public's best interest? Pro Se individuals from South Carolina (3:22-CV-2872-SAL-PJG), Oregon (3:22-CV-01252-MO), Louisiana (3:22-CV-00516-SDD-EWD, 1:22-CV-02315-EEF-JPM), and Missouri (4:22-CV-00682-SEP) have all filed complaints in federal court along with Terpsehore Maras (No. 22-420) in SCOTUS, to seek remedy in this matter. A county in Arizona is delaying the certification of their last election on grounds that the machines are uncertified.[10] Ignoring these security vulnerabilities with our voting machines and continuing to conduct elections with them, is not in the public's best interest.

Defendants use another newspaper clipping from 1942 as evidence that hand counting is slow, expensive, and riddled with errors. To say hand counting is more expensive than millions of dollars in voting systems is laughable. It is also ridiculous to use time as a factor IF accuracy is your goal. Our elected officials must think the public are stupid and cannot count pieces of paper. France even thinks their people are capable as they use paper ballots and hand counting rather than the voting systems.[11] In fact, the people of Georgia were perfectly capable of counting when a candidate discovered that votes were being stolen[12] in a local election and was awarded a hand recount. In fact, the hand recount which done in only 8 days, showed the voting systems had inaccurately counted the votes. The hackable machines stole votes from two of the candidates then gave them to the 3rd. I would consider 8 days to be an efficient amount of time to accurately count votes, especially since election results could take weeks to certify.[13] It is acceptable to take weeks to accurately certify the winner yet not when counting our votes.

[10] https://news.azpm.org/p/newsheadlines/2022/11/18/213858-cochise-county-delays-election-certification/
[11] https://gulfnews.com/world/europe/voting-in-france-paper-ballots-in-person-hand-counted-1.87097854
[12] https://www.georgiarecord.com/dekalb-county-recount-shows-massive-difference-between-machine-count-and-hand-count-from-may-24th-primary-election-results-changed-electronic-database-suspected/
[13]https://apps.legislature.ky.gov/CommitteeDocuments/33/20759/Overview%20of%20Election%20Security%20July%2019%202022%20presentation.pdf

According to the Defendants, we must instead get the results efficiently, within hours, and regardless of accuracy. These arguments do not make sense.

Again, is it best to ignore the mounting evidence because caselaw says so? Our elected officials serve the People and are voted into office by the People. But instead of serving us, they are labeling me an "election denier" for demanding truth and transparency. Even Brazil[14] is taking steps to investigate the blatant fraud in their runoff election on October 30th, caused by the same hackable voting machines as here in the U.S. Brazil's concern is that an audit of the machines would not show any manipulation of the votes and the was also something included in my original complaint as reason why the machines need to be removed. What more can an individual, who is supposedly free on paper, do to get relief? We are the only country with a constitution that says its government serves the People, not the other way around. When will the People have standing? It is time elected officials stop controlling the People and start upholding the US Constitution.

CONCLUSION

Technology has provided us a lot of benefits but when it comes to something as sacred as my vote, the simplest form is best. Pen and paper may be archaic but can't be hacked unlike our voting systems. Elections since 2015 have been fraudulently certified due to the use of these uncertified, hackable voting machines. They have been proven to inaccurately count votes and are a major infringement on my 1st amendment right to express my voice freely. Through contracts, our states have relinquished monitoring of our election systems to the federal government, violating the 10th amendment and leaving the People helpless. It is time to end the use of these machines. Considering fraud vitiates everything, a special election must be

[14]https://creativedestructionmedia.com/news/politics/2022/11/22/breaking-brazils-bolsonaro-files-for-annulment-of-election/

conducted with paper, pen, and the hand counting of votes. The People, as a county in Georgia recently displayed, are capable of hand counting without error and in a reasonable amount of time. It is time for truth and transparency in our election process. Most importantly, it is time for relief and redress. More than enough evidence has been presented to warrant discovery. The public deserves the truth about the security vulnerabilities of these machines and why the Department of Homeland Security is controlling Kentucky's elections via the Center for INTERNET Security.

RESPECTFULLY submitted this ___ day of _____, 2022.

_____

[redacted]

CERTIFICATION OF SERVICE

I, [redacted] certify that on this 28th day of November 2022, I sent a complete and accurate copy of this Response to Defendants' Reply by U.S. mail to every other party, or their attorneys listed below:

[redacted]

Counsel for Michael G. Adams in his official capacity of Secretary of State of Kentucky

[redacted]

Counsel for State Board of Elections

Signature_____ Date_____