

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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|--|---|-----------------------|
| ROBERT L. SCHULZ and JOHN P. LIGGETT, |) | |
| |) | No. 07-cv-0943 |
| Plaintiffs, |) | LEK-DRH |
| |) | |
| vs. |) | |
| |) | |
| STATE OF NEW YORK, <i>et al.</i>, |) | |
| |) | |
| Defendants, |) | |

PLAINTIFFS' REPLY TO RESPONSE TO NOTICE TO PRODUCE

To: Defendants, through their attorney of record, Paul Collins.

Plaintiffs serve this REPLY TO RESPONSE TO NOTICE TO PRODUCE

**DEFENDANTS' GENERAL OBJECTIONS
(Included with their Dec 1, 2009 letter response)**

1. Defendants object to the Requests to the extent that they seek information protected from disclosure by the attorney client privilege, work product doctrine, and/or any other legally cognizable privilege that pertains to Defendants' trial strategy or preparation. Any production by Defendants of documents containing information protected from disclosure by the attorney-client privilege, work product doctrine, or other applicable privilege, shall not constitute a waiver by Defendants of such protection.

REPLY: Given the critical importance of the State's election laws to the essence of the Constitutional Rights of the People, Defendants most likely possess a significant number of official documents and official communications involving the work of attorneys, be they advisors/staff to the Board of Elections, the office of state Attorney General, the U.S. Attorney General, the U.S. DOJ or legal counsels of other counties or other the legal

officials of other states.. To claim generally that all such documents are beyond production in this case is specious. As Defendants well know, a clear delineation exists between legal documents and communications regarding the direct, active defense of this litigation (i.e., attorney-client privileged) and other legal communications and documents related to the subject matter of the litigation: the administration of the election laws of the State of New York. The latter, even if the work of attorneys, are clearly not beyond the reach of Plaintiffs discovery demands.

2. Defendants object to the Requests to the extent that they purport to impose obligations beyond those set forth in the Federal Rules of Civil Procedure.

REPLY: Defendant’s claim as a general objection is specious. The intent of the Rules of Civil Procedure and the body of applicable law regarding discovery is clear: Defendants have a clear and unequivocal obligation to produce responsive documents in all forms however manifest. That Defendants, standing as the State, claim either directly or otherwise, that producing the official public records of the state of New York that are responsive to Plaintiffs discovery somehow impose “obligations” outside the FRCP is absurd. And despite Defendants failure to produce virtually a single responsive document to date, Defendants have failed, in any manner, to explain or argue with any specificity how such “obligations” might provide them with relief from production under the FRCP.

3. Defendants object to the Requests to the extent that they call for information that is otherwise exclusively within the possession, custody of control of third parties.

REPLY: Defendants are government officials of the state of New York with legal authority to administer, oversee and otherwise prosecute for violations of New York election law within the geographical jurisdiction, in its entirety, of the State of New York. Defendants inherently assert in their objections that they consider all election officials or other government officials not specifically named as Defendants as “third parties” not subject to discovery in this case. Parties such as county election officials, staff members, etc. would be examples of such “third parties”. Defendant’s claim is specious on its face.

4. Defendants object to the Requests to the extent that they seek information that is already within the possession, custody or control of Plaintiffs.

REPLY: Defendant’s claim is specious. Plaintiff has already provided all documents in their possession in so far as they were responsive to Defendants original discovery request/exchange. Plaintiff does however, retain a significant interest in obtaining even a miniscule amount of “redundant” documents (if any in fact exist) as such documents might help establish, “which Defendants knew what and when did they know it?” regarding the subject matter of this litigation.

5. Defendants object to the Requests to the extent that they purport to impose a duty on Defendants to produce documents or things presently in the possession of former employees, distributors, agents or representatives of Defendants.

REPLY: Collectively, Defendants constitute an arm of the government of the State of New York. The documents requested are, and/or should be, rightly recognized, maintained and controlled as official public records of the State under direct control of the

Defendants. By their general objection do Defendants claim that “former employees” have absconded with significant volumes of official public records directly related to the controversy in this case?

6. Defendants object to the Requests to the extent that they seek information relating to matters that are not raised in the Complaint on the grounds that such information is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence in this action.

REPLY: Plaintiffs have alleged numerous fundamental, unconstitutional shortcomings in the procedures, systems, and administration of the State’s election. All information requested by Plaintiffs is plainly and directly related to the examination of this subject matter. Plaintiff is under no obligation at this time to explain every nuance of our allegations or the relationship between the requested documents and our prosecution of the litigation. Defendant’s clear and unambiguous duty to produce materials pursuant to reasonably related requests under FRCP is obvious.

7. Defendants object to the Requests to the extent that they seek documents or things not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence.

REPLY: Plaintiffs have requested only documents and evidence directly related to the essence of this controversy – the constitutional integrity of the State’s elections. Although citing this general objection, Defendants fail to explain or argue at any point, how specific requests fail to be reasonably related to the electoral processes, machines or systems at controversy.

8. Defendants object to the Requests to the extent that they are vague, ambiguous, overly broad, cumulative and/or unduly burdensome.

REPLY: Defendants have not made any effort to contact Plaintiffs regarding clarification of any requested item. Certainly there are subjects where large amounts of evidence likely exist. This however does not in itself make such request vague or ambiguous, etc. As to “burdensome” – the Defendants are, in effect, an arm of the “state of New York” which has significant administrative, bureaucratic and information systems available to it – all by the way previously paid for by the People of New York – whose Constitutional interests are directly at stake in this case.

9. Defendants object to the Requests to the extent that they purport to impose a duty on Defendants to undertake a search for documents or things beyond a diligent search of its files where documents responsive to the Requests would reasonably be found.

REPLY: Defendants are, in essence, the State of New York. Under state law, officials are obligated and legally responsible for maintaining orderly files, databases, and permanent archives of official public records. Integral to such systems of records management are the means to index and search for specific content. In failing to produce nary a single responsive document to Plaintiff’s detailed production request, Defendant implies that it, the State of New York, could find NO responsive documents in its vast warehouses of offices regarding its recent administration of the state’s election laws, its experiences with state approved voting systems, or any other subject closely related to the allegations put forth against it. This objection is specious.

10. None of Defendants' Responses are an admission relative to the existence of any documents or thing, or to the relevance of admissibility of a document or thing, or to the truth or accuracy of any statement or characterization contained in the Requests.

REPLY: Clearly a convenient, self-serving response given the utter failure of Defendant's to respond to the good faith production requests of the Plaintiffs.

11. Defendants object to the Requests to the extent that they are not limited to a reasonable time period during which responsive and relevant documents or things would have been created.

REPLY: In their production request, Plaintiffs clearly limited time frames for many classes of documents to just the recent past several years. Such limitation was expressly defined by Plaintiffs specifically to minimize redundant document production which might prove of little marginal value at trial. That Defendants produced NO documents while claiming this general objection is specious.

12. Defendants object to the Requests to the extent that they seek proprietary, trade secret, commercially confidential or competitively sensitive documents.

REPLY: The public records of the state of New York are not confidential or "classified". Although there admittedly may exist small amounts of specific "trade secret" documents that have been shared under confidentiality agreements with state election officials, such restrictions, even if allowed to carry forward, cannot possibly explain Defendant's utter failure to produce a single document responsive to Plaintiffs production request. The objection is specious as a "general" objection, and at best should be invoked only against specific items requested by Plaintiff.

13. The following Responses reflect Defendants' present knowledge, information and belief and may be subject to change or modification based on Defendants' further discovery, or facts or circumstances which may come to Defendants' knowledge. Defendants specifically reserve the right to further supplement, amend or otherwise revise its Responses to the Requests.

REPLY: Defendant's response to the production request speaks for itself. Their facial intent to evade document production annoys the sensible respect for the Law that should be embraced by the servants of the People.

14. Defendants specifically object to the production of any documents as to the lever voting system previously used in New York as the November 2009 Election was the last election in New York that the old lever machines could be used under both state law and the Order of this Court (Sharpe, J). At this point in time the only relevant voting systems are the new HAVA compliant systems presently undergoing certification procedures to be completed by December 15, 2009 under the Order of Judge Sharpe and the "hand count system" so erroneously urged upon the court by Plaintiffs. Documents as to a prior voting system are not relevant and not likely to lead to the discovery of any admissible evidence.

REPLY: Defendants assert the right to alter the theory of injury put forth by Plaintiffs. Plaintiffs assert that, in fact, there is NO conceptual or practical difference between using a mechanical contrivance or its electronic equivalent to count votes, in that BOTH count the People's votes in secret. Should Plaintiffs be barred from including mechanical machines from this litigation, Defendants, even after losing this lawsuit, could theoretically, re-deploy mechanical voting systems throughout the state, resulting in the continued constitutional injuries suffered by the People and alleged in the original

Complaint. Defendants’ nefarious desire to shape, misdirect and narrowly craft the theory and domain of Plaintiffs allegations, cannot use evasion in the discovery process as means to secure this end.

**PLAINTIFFS’ GENERAL REPLY TO
DEFENDANTS’ GENERAL OBJECTIONS**

The Defendants’ (“State’s”) response is evasive, incomplete and totally non-responsive.

Instead of responsive responses to Plaintiffs’ demands, the State has abused the discovery process and its power, arbitrarily asserting that: 1) Plaintiffs must enter into a “Confidentiality Agreement” before any of the requested material can be made available to Plaintiffs due to attorney client privilege, proprietary, trade secret, commercially confidential or competitively sensitive material; and 2) regardless, the information is in the hands of the third parties such as the State’s counties and vendors and not accessible by the State, or the information requested is irrelevant, vague, ambiguous, overly broad, unduly burdensome, or too difficult to find within the time allotted.

Defendants fail to grasp that this case is about a violation of Plaintiffs’ fundamental voting rights, i.e., the Right to cast a vote and to *know* that that vote is being accurately counted. Plaintiffs seek to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available.

Plaintiffs' have filed a First Amendment Petition with the Court for Redress of these violations. The State is *obligated* to respond, responsively, under the Constitution and the federal Rules governing Discovery,

The State is obligated to secure Plaintiffs' fundamental Rights, not deny them. To deny Plaintiffs' individual Right to a Government that does everything in its power to guarantee accurate vote counting in open, honest and transparent elections of their representatives is to reduce Plaintiffs to slavery.

Defendants' responses to Plaintiffs' First Demand to Produce is reprehensible. The State has failed to provide ANY of the documents requested, covering the information with a blanket of "confidentiality" and otherwise asserting the information is "in the hands of the counties and the vendors and out of the reach of the State."

Plaintiffs fundamental Right to open and transparent elections and the most accurate vote counting system available, is not conditioned upon any requirement for any Confidential, "special knowledge" as a prerequisite to knowing their votes have been accurately counted.

If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and tally each vote then that voting system is unconstitutional, even if that "special knowledge" was not the Intellectual Property of the developer, but was available to the body politic.

Even without the enormous risk of "wholesale error and fraud" associated with all electronic voting systems, it is not possible for Plaintiffs to ever know the State is counting their votes accurately if a Confidential, "special knowledge" is required of the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and tally the votes.

The State's empty and recalcitrant response to Plaintiffs' requests begs the question, "Whose side are the defendants on, the side of the Constitution and the People's individual, unalienable, natural Rights, or the political Parties that have appointed them to their positions as overseers of the electoral process in New York State?"

Underlying this problem of the State Defendants' evasiveness based on their assertion of Confidentiality and special knowledge, is the fact that the State Defendants are people who serve at the pleasure of a political party. This may well explain the Defendants "See no evil, hear no evil, speak no evil" attitude. On information and belief, their loyalties flow to their Party, not the Constitution. Political Parties designate and fill every position in the statewide elections framework, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff. Each is positioned by their political Party. They are not elected to those positions as the result of a General Election.

Contrary to the State's assertions that Plaintiffs' requests are vague, ambiguous, overly broad, etc., Plaintiffs' demands are concise, specific and easily comprehended.

Contrary to the State's assertions that information requested by Plaintiffs is unavailable because it is in the hands of the State's counties and vendors, the State knows, or ought to know, and has the legal and constitutional authority to direct the counties and vendors to provide the requested information.

Contrary to the State's assertions that documentation related to the State's mechanical voting systems is not relevant, Plaintiffs cannot limit their constitutional challenge to electronic voting systems, running the risk of prevailing only to have the State revert back to the mechanical voting systems, necessitating a new constitutional challenge.

**PLAINTIFFS' REPLY TO DEFENDANTS' SPECIFIC
RESPONSES AND OBJECTIONS¹
(Included with their Dec 1, 2009 letter)**

Subject to and without waiver of the foregoing General Objections, DEFENDANTS respond to the Requests as follows:

- 1. The number and location of polling places in New York State where Humans were used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.**

In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

There are no records in the possession of the answering Defendants responsive to this request which is an inappropriate request in the context of a Notice to Produce under Rule 34.

Other than absentee, affidavit and emergency ballots, all votes cast in the State of New York were cast on a lever voting machine from 1990 through 2008. In 2009 some votes in the Special 23rd Congressional Election were cast on lever machines and some on electronic voting systems pursuant to an Order of Hon. Gary Sharpe, USDCJ in the related case of United States v. State of New York et al, 06-cv-0263. For a list of which counties participated in electronic

¹ Bold text in numbered paragraphs are Plaintiffs' requests, which the State Defendants failed to include in their response. They have been added by Plaintiffs as a courtesy of all concerned. Normal text (not bold) are Defendants' responses, followed by Plaintiffs' REPLIES, again in bold text.

voting in that election Plaintiffs are directed to the web site of the State Board of Elections where the Order of Judge Sharpe is posted (www.elections.state.ny.us).

Elections contains the information requested in that all counties participating the 2009 Pilot Program, other than Albany, Schenectady and Erie counties are, to the extent of their participation on a limited or county wide basis are using Dominion Voting Systems. See: <http://www.elections.state.ny.us/HAVA.html#Pilot> (2009 Pilot Plan). The location of polling sites is within the purview of the respective County Boards of Elections and each County Board maintains a web site where this information may be obtained. The extent of each county's participation in the Pilot Program is set forth on such web posting and all counties, save Schenectady and Erie, used Dominion machines.

Prior to the implementation of the state-wide voter registration data base in accordance with HAVA, the State Board of Elections did not maintain this information. With the voter look up feature, any voter can determine his/her polling place in real time by accessing the State Board's web site. Historic records are not maintained by the State Board of elections as the date base operates real time. The NYSVoter look up system went on-line in 2008 and the only records in the possession of the Defendants have been attached to Response 1.

REPLY: Objection. This response is evasive, incomplete and otherwise non-responsive. Plaintiffs' request is neither vague, ambiguous, overly broad, cumulative nor unduly burdensome. Nor would the documents contain proprietary, confidential or trade secret information. The information requested is entirely relevant to the subject matter of this litigation, which seeks to show where ballots have been read and counted by hand, either customarily or for recount. The information requested would lead to the discovery of admissible evidence, i.e., the frequency and magnitude of error in the reading and counting

of votes by hand, compared to the frequency and magnitude of error in the reading and counting of votes by machines that are the subject of this action.

The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which Counties hand counted ballots during the years in question, whether customarily or during a recount.

Absolutely no part of Defendants’ “response” is responsive to Demand number 1.

2. The number and location of polling places in New York State where Humans are expected to be used count the votes cast in federal elections in 2010 and 2012.

(NO RESPONSE FROM DEFENDANTS).

3. The number and location of polling places in New York State where lever operated Mechanical Voting Systems were used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

(NO RESPONSE FROM DEFENDANTS)

4. The number and location of polling places in New York State where lever operated Mechanical Voting Systems are expected to be used to count the votes cast in federal elections in 2010 and 2012.

(NO RESPONSE FROM DEFENDANTS).

5. The number and location of polling places in New York State where a Sequoia electronic machine was used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

(NO RESPONSE FROM DEFENDANTS).

6. The number and location of polling places in New York State where a Sequoia electronic machine is expected to be used to count the votes cast in federal elections in 2010 and 2012.

See Response 1 hereinabove as to general and specific objections. This is an inappropriate demand under Rule 34 and is more properly the subject of interrogatories. Without waiving this objection, the number of polling sites and there locations are determined by the various County Boards of Elections in the years of the elections so no documents responsive to this request could exist at this time. Additionally, at this point in time no Sequoia or Dominion machines have been certified as HAVA compliant.

REPLY: Objection. This response is evasive, incomplete and otherwise non-responsive. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which Counties have already purchased or expressed their intent to purchase the Sequoia electronic voting system for use in 2010 and 2012, and the number and location of the Counties' polling places.

7. The number and location of polling places in New York State where an ES&S electronic machine was used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. This is an inappropriate demand under Rule 34 and is more properly the subject of interrogatories. Without waiving this objection, no such documents exist.

REPLY: Objection. This response is evasive, incomplete and otherwise non-responsive. The State knows (or ought to know, and has the legal authority to easily direct the Counties, if necessary, to provide the information), which Counties have already used the ES&S electronic voting system in 2008 and 2009.

8. The number and location of polling places in New York State where an ES&S electronic device is expected to be used to count the votes cast in federal elections in 2010 and 2012.

See Response 1 hereinabove as to general and specific objections. This is an inappropriate demand under Rule 34 and is more properly the subject of interrogatories. Without waiving this objection, the number of polling sites and there locations are determined by the various County Boards of Elections in the years of the elections so no documents responsive to this request could exist at this time. Additionally, at this point in time no ES&S machines have been certified as HAVA compliant.

REPLY: Objection. This response is evasive, incomplete and otherwise non-responsive. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which counties have purchased or expressed their intent to purchase the ES&S electronic voting system for use in 2010 and 2012, and the number and location of the Counties' polling places (if different from 2008).

9. The number and location of polling places in the United States of America, other than New York State, where Humans were used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. This is an inappropriate demand under Rule 34 and is more properly the subject of interrogatories. Without waiving this objection, upon information and belief, reading the Plaintiffs' Amended Complaint (assuming same to be correct) only a portion of the State of New Hampshire used human counts and the answering Defendants have no records responsive to this demand. Pursuant to New York Election law, votes other than emergency ballots were counted by machine at all polling places within the state.

NO REPLY AT THIS TIME.

10. The number and location of polling places in the United States of America, other than New York State, where Humans are expected to be used to count the votes cast in federal elections in 2010 and 2012.

See Response 1 hereinabove as to general and specific objections. Answering Defendants have no records in their possession responsive to this demand.

NO REPLY AT THIS TIME.

11. The number and location of polling places in the United States of America, other than New York State, where lever operated Mechanical Voting Systems were used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. This is an inappropriate demand under Rule 34 and is more properly the subject of interrogatories. Without waiving this objection, Answering Defendants have no records in their possession responsive to this demand.

NO REPLY AT THIS TIME.

12. The number and location of polling places in the United States, other than New York State, where lever operated Mechanical Voting Systems are expected to be used to count the votes cast in federal elections in 2010 and 2012.

See response 11 hereinabove.

NO REPLY AT THIS TIME.

13. The number and location of polling places in the United States of America, other than New York State, where a Sequoia electronic machine was used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See response 11 hereinabove.

NO REPLY AT THIS TIME.

14. The number and location of polling places in states other than New York State where a Sequoia electronic machine is expected to be used to count the votes cast in federal elections in 2010 and 2012.

See response 11 hereinabove.

NO REPLY AT THIS TIME.

15. The number and location of polling places in states other than New York State where an ES&S electronic machine was used to count the votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See response 11 hereinabove.

NO REPLY AT THIS TIME.

16. **The number and location of polling places in states other than New York State where an ES&S electronic machine is expected to be used to count the votes cast in federal elections in 2010 and 2012.**

See response 11 hereinabove.

NO REPLY AT THIS TIME.

17. **Historical records of INCORRECT VOTE COUNTS at each and every polling place in New York State of votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which the human, mechanical and/or electronic counters reported inaccurate results).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants have no records in their possession responsive to this request.

REPLY: Objection. This response is evasive and incomplete. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which counties have experienced incorrect vote counts, as determined by a recount or malfunctioning equipment.

18. **Historical records of INCORRECT VOTE COUNTS at each and every polling place in states other than New York State of votes cast in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which the human, mechanical and/or electronic counters reported inaccurate results).**

See response 17 hereinabove.

NO REPLY AT THIS TIME

19. **Historical records of ELECTION MANAGEMENT SYSTEM MISCOUNTS of votes cast in New York State in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which the human, mechanical or electronic system that has aggregated and tallied the votes from two or more polling places reported inaccurate results).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants have no records in their possession responsive to this request.

REPLY: Objection. This response is evasive, incomplete and otherwise non-responsive. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which counties that aggregated and tally the votes from two or more polling places reported inaccurate results, as discovered by a recount.

20. **Historical records of ELECTION MANAGEMENT SYSTEM MISCOUNTS of votes cast in states other than New York State in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which the human, mechanical or electronic system that has aggregated and tallied the votes from two or more polling places reported inaccurate results).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants have no records in their possession responsive to this request.

NO REPLY AT THIS TIME.

21. Historical records of OTHER FAILURES to accurately count the votes cast in New York State in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009, other than incorrect vote counts at individual polling places and incorrect vote counts at locations that aggregated and tallied the votes from two or more polling places (instances of missing ballots, missing memory cards, machine failures, incorrect source code, fraud, etc.).

See Response 1 hereinabove as to general and specific objections. Answering Defendants have no records in their possession responsive to this request. From time to time counties forward amended certifications of vote counts but same are not segregated in a fashion responsive to this demand. Upon information and belief, the following documents, attached hereto, may be responsive to this demand: Email from Douglas A. Kellner to Commissioners of the St. Lawrence County Board of Elections as to issues with the vote count in the 23rd Congressional race of November, 2009, press release from John W. Conklin of the State Board of Elections as to the 23rd Congressional District race as reported in the Gouverneur Times, email from Douglas A. Kellner to John Conklin as to the 23rd Congressional District race issues, email from Bo Lapari dated November 20, 2009 as to the 23rd Congressional District race issues, draft email from Douglas Kellner addressing issues raised in Gouverneur Times based upon reports of Richard Hayes Phillips, PhD and retraction of claims of voting machine malfunctions by Richard Hayes Phillips, PdD by letter to Editor of Gouverneur Times dated November 30, 2009 and November 20, 2009 article in the Northern Times written by Nathan Barker. Additionally, the

State Board of Elections web site has archived broadcasts of Board Meetings at which Anna Svizzero, Director of Election Operations reported on the 2009 pilot program.

REPLY: Objection No 1. This response is evasive, incomplete and otherwise non-responsive. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which counties have amended their certifications of vote counts.

REPLY: Objection No 2. The referenced e-mails were not attached to the States Response, as alleged.

REPLY: Objection No 3. The referenced report on the 2009 pilot program should have been provided to Plaintiffs, but was not.

22. **Historical records of OTHER FAILURES to accurately count the votes cast in states other than New York State in federal elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009, other than incorrect vote counts at individual polling places and incorrect vote counts at locations that aggregated and tallied the votes from two or more polling places (instances of missing ballots, missing memory cards, incorrect source code, machine failures, fraud, etc.).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad and incomprehensible.

NO REPLY AT THIS TIME

23. **Historical records of MEMORY CARD MALFUNCTIONS in any election in New York State in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009**

(instances in which votes tabulated by scanners and stored on memory cards inside the scanners could not be retrieved, the data was incorrect, card readers malfunctioned, cards were programmed for the wrong precinct, cards were set up as test cards which didn't store vote data, the memory card became full and the scanner then rejected all ballots, etc.).

See Response 1 hereinabove as to general and specific objections. As no memory cards were used in New York prior to the 2009 Pilot Program and there were no failures during that program, there are no records in existence responsive to this demand. Defendants have not as yet received the results of the machine audits in the counties in the 23rd Congressional District which were participating in the 2009 Pilot program.

REPLY: Objection # 1. This response is evasive, incomplete and otherwise non-responsive. By now, the State should have provided Plaintiffs with the results of the audits in the 23rd Congressional District.

REPLY: Objection #2. The State knows (or ought to know, and has the legal authority to easily direct the Counties, if necessary, to provide the information), if there were any trouble calls, maintenance calls or machine audits in 2009 and the results of those calls and audits.

24. **Historical records of MEMORY CARD MALFUNCTIONS in any election in states other than New York State in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which votes tabulated by scanners and stored on memory cards inside the scanners could not be retrieved, the data was incorrect, card readers malfunctioned, cards were programmed for the wrong precinct, cards were set up as test**

cards which didn't store vote data, the memory card became full and the scanner then rejected all ballots, etc.).

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad. Without waiving that objection, Answering Defendants have no documents in their possession responsive to this demand.

NO REPLY AT THIS TIME

25. Historical records of MARK-DETECTION FAILURES in any election in New York State in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which there was a loss of sensor calibration, inadequate maintenance, and other factors which affected the reading of votes marked on paper ballots such as a failure to read certain types of ink or readings affected by light marks and pencil lead).

See Response 1 hereinabove as to general and specific objections. See Response 23 hereinabove.

REPLY: Objection # 1. This response is evasive, incomplete and non-responsive. By now, the State should have provided Plaintiffs with the results of the audits in the 23rd Congressional District.

REPLY: Objection #2. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), if there were any trouble calls, maintenance calls or machine audits in 2009 and the results of those calls and audits.

26. **Historical records of MARK-DETECTION FAILURES in any election in states other than New York State in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 (instances in which there was a loss of sensor calibration, inadequate maintenance, and other factors which affected the reading of votes marked on paper ballots such as a failure to read certain types of ink or readings affected by light marks and pencil lead).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad. Without waiving that objection, Answering Defendants have no documents in their possession responsive to this demand.

NO REPLY AT THIS TIME.

27. **Historical records of INCORRECT CODES in any election in New York State (instances of coding on the ballots that prevented the scanners from reading the ballots).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad. Without waiving that objection, Answering Defendants have no documents in their possession responsive to this demand.

REPLY: Objection. This response is evasive, incomplete and non-responsive. The State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which counties, if any, experienced the problem of scanners that could not read the ballot because the ballots were not prepared with the proper code, etc.

28. **Historical records of INCORRECT CODES in any election in states other than New York State (instances of coding on the ballots that prevented the scanners from reading the ballots).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad. Without waiving that objection, Answering Defendants have no documents in their possession responsive to this demand.

NO REPLY AT THIS TIME

29. **Historical records of MISCELLANEOUS OPERATIONAL BREAKDOWNS (instances of Human, Mechanical and Electronic failures, ballot jams, automatic-feed failures, failure to connect by modem to the central tabulator, etc.).**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad, without temporal limits and incomprehensible and decline to attempt to respond to same.

REPLY: Objection. This response is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. In addition, the State knows (or ought to know, and has the legal and constitutional authority to easily direct the Counties, if necessary, to provide the information), which counties experienced such breakdowns.

30. **The design and manufacturing schematics and other drawings for the lever operated mechanical Voting Systems used in New York State in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009, showing, in detail, how the machine registers, counts and transmits vote totals.**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as being overly broad. The design schematics of lever machines are no longer relevant as pursuant to an Order of this Court (Sharpe,J.) new electronic voting systems must be in place for the 2010 elections and thereafter. No such records as to the systems are in the possession of the Answering Defendants. If same were in the possession of the Answering Defendants they would be reviewed and objections made to the extent that trade secrets or other proprietary information might be contained in such documents. Upon the delivery of such information to the Defendants, the Defendants will only produce same upon the execution of a Confidentiality Order as same will be conditionally delivered to them.

REPLY: Objection #1. This response is evasive, incomplete and non-responsive. Plaintiffs' demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the

individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily query vendors, if necessary, to obtain, the requested information.

REPLY: Objection #2. Plaintiffs cannot limit their constitutional challenge to electronic voting systems, running the risk of prevailing only to have the State revert back to the mechanical voting systems, necessitating a new constitutional challenge.

31. Any and all detailed, written, descriptions of the lever operated mechanical Voting Systems used in New York State in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009, explaining in electrical, mechanical and electronic engineering terms how the machine registers, counts and transmits vote totals.

See Response 1 hereinabove as to general and specific objections. See response 30 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is

unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct vendors, if necessary, to obtain the information.

32. The maintenance record of each and every lever operated mechanical machine used in New York State to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. Such demand is unduly board (sic) and burdensome. Without waiving such objection, no such records are in the possession of the Answering Defendants.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the

requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the counties and vendors, if necessary, to provide the requested information.

33. The historical record of all parts ordered for each and every lever operated mechanical machine used in New York State to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. See response 32 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and

transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the Counties and vendors, if necessary, to provide the requested information.

34. The historical record of all EMERGENCY CALLS for assistance by local election officials in New York State to the manufacturer of lever operated mechanical Voting Systems used to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. See response 32 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the Counties and vendors, if necessary, to provide the requested information.

35. The historical record of all TEST PROCEDURES AND RESULTS by local and state election officials in New York State on any lever operated mechanical machine used

to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. See response 30 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct vendors, if necessary, to provide the requested information.

36. **The historical record of all TEST PROCEDURES AND RESULTS by the manufacturer of any lever operated mechanical machine used to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.**

See Response 1 hereinabove as to general and specific objections. See response 30 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the counties and vendors, if necessary, to provide the requested information.

37. The historical record of the results of all RECOUNTS of the votes registered by any and all lever operated mechanical Voting Systems in any election in New York State in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. This demand is incomprehensible and Answering Defendants are unable to respond thereto.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the

State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the counties and vendors, if necessary, to provide the requested information.

38. The design and manufacturing schematics and other drawings for Sequoia electronic Voting Systems used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those Sequoia electronic Voting Systems to be used in New York State in elections in 2010 and beyond, showing, in detail, how each machine registers, counts and transmits vote totals.

See Response 1 hereinabove as to general and specific objections. In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information. Defendants cannot produce such documents as may be in their possession without an appropriate Confidentiality Order as to same issued by the Court.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their

votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the counties and vendors, if necessary, to provide the requested information.

39. Detailed, written, descriptions of the Sequoia electronic Voting Systems used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those Sequoia electronic Voting Systems to be used in New York State in elections in 2010 and beyond, explaining in detailed electrical, mechanical and electronic engineering terms how the machine registers, counts and transmits vote totals.

In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information. Defendants will not produce any such documents without an appropriate Confidentiality Order.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the

State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct vendors, if necessary, to provide the requested information.

40. The maintenance record of each Sequoia electronic machine used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those Sequoia electronic Voting Systems to be used in New York State in elections in 2010 and beyond.

In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

Without waiving such objection, no such records are in the possession of the Answering Defendants. As to the records sought from 1990 to 2008, none exist as the Sequoia electronic machines were not used in such elections and with respect to records for “elections in 2010 and beyond”, there can be no record. As to those records for the 2009 Pilot Program, same are not in the possession of the Answering Defendants.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s

unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily direct the counties and vendors, if necessary, to provide the requested information.

41. The historical record of all parts ordered for each and every the Sequoia electronic machine used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those Sequoia electronic Voting Systems to be used in New York State in elections in 2010 and beyond

In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

See response 40 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the

State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors, if necessary, to provide the requested information.

42. The historical record of all EMERGENCY CALLS for assistance by local election officials in any state, including New York State, to the manufacturer of Sequoia electronic Voting Systems used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those Sequoia electronic Voting Systems to be used in New York State in elections in 2010 and beyond.

See Response 1 hereinabove as to general and specific objections. See response 40 hereinabove. Defendants are in possession of Dominion Election Day Summary for the 2009 Pilot Project (ImageCast Election Day Report, NYS November 3, 2009 General Election) which will be produced upon the entry of an appropriate Confidentiality Order.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used

to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority to easily query the counties and vendors to obtain any and all notes, worksheets and Reports of the results of the 2009 Pilot Project, including the referenced (ImageCast Election Day Report, NYS November 3, 2009 General Election), and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

43. The historical record of all TEST PROCEDURES AND RESULTS by local and state election officials in New York State on any Sequoia machine used to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. As to Sequoia electronic voting systems, see response 40 hereinabove. As to other Sequoia products, same are

not in the possession of the Answering Defendants. Answering Defendants direct the Plaintiffs to the following documents:

[http://www.elections.state.ny.us/HAVAVotingMachines.html#HAVAVSTD.](http://www.elections.state.ny.us/HAVAVotingMachines.html#HAVAVSTD) Defendants

decline to produce records of their acceptance testing of those units used in the 2009 Pilot Project in the absence of a Confidentiality Order as those documents would contain privileged and proprietary information.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors to provide any and all notes, worksheets and Reports of the results of their Acceptance Testing of those units used in the 2009 Pilot Project, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

REPLY: Objection #3. In addition, the State knows, or ought to know, and has the legal and constitutional authority to provide the following documents to Plaintiffs, free and clear of any Confidentiality agreement and Order.

- a. **Contract(s) between the State and SysTest Labs, Inc.**
- b. **Contracts(s) between the State and New York State Technology Enterprise Corporation (NYSTEC).**
- c. **Documents related to the selection by the State of the Sequoia and ES&S voting systems for certification testing, including but not limited to the reports by New York's Citizen' Election Modernization Advisory Committee (CEMAC).**
- d. **US Election Assistance Commission's 2005 Voluntary Voting System Guidelines and NYCRR Part 6209.**
- e. **The State's "Fully-articulated Requirements Matrix."**
- f. **The State's "26 Unique Test Cases," including their 6,730 test steps, developed for Sequoia and ES&S.**
- g. **The report on the results of the "Dry Run of Test Steps."**
- h. **The report on each "Run for the Record."**
- i. **All "Report Findings" of both SysTest Labs and NYSTEC, including all "Compensating Controls" and all "Summary Reports."**

- j. Resolutions by CEMAC relating to certification.**
- k. Copies of all other test results of the Sequoia and ES&S electronic voting systems conducted by all other public and private organizations.**
- l. Determinations by the State of whether these voting systems are in compliance with the Constitution for the United States of America.**
- m. Determinations by the State of whether these voting systems are in compliance with the New York's Constitution, Statutes and Regulations.**
- n. Documentation regarding the "handful of minor requirements [that] may require some remediation as we go forward with these systems."**
- o. Documentation regarding the "systems [that] may have issues with particular requirements."**
- p. All documentation relating to the operation, performance and results 2009 Pilot Project, machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**
- q. Documentation describing the details of the 2009 "post-election audit process."**
- r. Documentation detailing the results of the 2009 "post-election audit process," machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**
- s. All reports regarding the State's "Functional Testing" of each of these two electronic voting systems.**
- t. All reports by the State's Election Operations Unit staff regarding "on-site observations."**

- u. All “processes” and “procedures” developed by the State and provided to the County Boards, including but not necessarily limited to the testing, maintenance, security, chain-of-custody, ballot accountability and reconciliation, in-person and web based training, and “the 3% random audit of voting systems used to validate system accuracy” of the Sequoia and ES&S voting systems.

44. The historical record of all TEST PROCEDURES AND RESULTS by the manufacturer of any Sequoia machine used to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. No documents responsive to this demand are in the possession of the Answering Defendants.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most

prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the vendor to provide any and all notes, worksheets and Reports of the results of all Tests conducted on their electronic voting systems, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

45. The historical record of the results of all RECOUNTS of the votes registered by any and all Sequoia electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. No documents responsive to this demand are in the possession of the Answering Defendants.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is

required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendor to provide any and all notes, worksheets and Reports of the results of all Recounts, including Congressional District 23, conducted on their electronic voting systems, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

46. **Historical records of FAILURE TO CONFORM TO APPLICABLE STANDARDS** by any and all Sequoia electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. See response 44 hereinabove.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendor to provide the information requested and to make those documents available to Plaintiffs free and clear of any Confidentiality agreement and Order.

47. Historical records of how discovered violations to conform to applicable standards by any and all Sequoia electronic Voting Systems used to register, count and transmit vote

totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 were CORRECTED.

See Response 1 hereinabove as to general and specific objections. See response 44 hereinabove.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendor to

provide the information requested and to make those documents available to Plaintiffs free and clear of any Confidentiality agreement and Order.

48. Historical records of defects uncovered during testing performed by public agencies, independent laboratories or manufacturers to qualify or to certify any and all Sequoia electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008, 2009, 2010 and 2012 (Records include any electronic record, emails or other correspondences regarding the discovery of defects, the description of the problem, the repairs of the defect, the methods used to test the defect repair, and the test results record).

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as overly broad, calling for, at least in part, proprietary information of not only the testing laboratory but also Dominion Voting Systems. Taken literally, there were no Sequoia electronic Voting Systems used in 2009 other than in the previously referenced Pilot Program and such systems and going forward there may be no such systems used as certification has not been completed. Answering Defendants are not in the possession of records of such testing in states other than New York. Without waiving any objections to this demand, Answering Defendants direct Plaintiffs to the following documents: http://www.elections.state.ny.us/NYSBOE/news/2009_Voting%20System%20Certification%20Testing%20September%202009.pdf. Answering Defendants decline to produce any testing documents without a Confidentiality Order issued upon a demonstration that such documents will lead to the discovery of relevant evidence.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors to provide any and all notes, worksheets and Reports of the results of their Acceptance Testing of those units used in the 2009 Pilot Project, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

REPLY: Objection #3. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to provide the following documents to Plaintiffs, free and clear of any Confidentiality agreement and Order.

- a. **Contract(s) between the State and SysTest Labs, Inc.**
- b. **Contracts(s) between the State and New York State Technology Enterprise Corporation (NYSTEC).**
- c. **Documents related to the selection by the State of the Sequoia and ES&S voting systems for certification testing, including but not limited to the reports by New York’s Citizen’ Election Modernization Advisory Committee (CEMAC).**
- d. **US Election Assistance Commission’s 2005 Voluntary Voting System Guidelines and NYCRR Part 6209.**
- e. **The State’s “Fully-articulated Requirements Matrix.”**
- f. **The State’s “26 Unique Test Cases,” including their 6,730 test steps, developed for Sequoia and ES&S.**
- g. **The report on the results of the “Dry Run of Test Steps.”**
- h. **The report on each “Run for the Record.”**
- i. **All “Report Findings” of both SysTest Labs and NYSTEC, including all “Compensating Controls” and all “Summary Reports.”**
- j. **Resolutions by CEMAC relating to certification.**
- k. **Copies of all other test results of the Sequoia and ES&S electronic voting systems conducted by all other public and private organizations.**
- l. **Determinations by the State of whether these voting systems are in compliance with the Constitution for the United States of America.**

- m. Determinations by the State of whether these voting systems are in compliance with the New York’s Constitution, Statutes and Regulations.**
- n. Documentation regarding the “handful of minor requirements [that] may require some remediation as we go forward with these systems.”**
- o. Documentation regarding the “systems [that] may have issues with particular requirements.”**
- p. All documentation relating to the operation, performance and results 2009 Pilot Project, machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**
- q. Documentation describing the details of the 2009 “post-election audit process.”**
- r. Documentation detailing the results of the 2009 “post-election audit process,” machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**
- s. All reports regarding the State’s “Functional Testing” of each of these two electronic voting systems.**
- t. All reports by the State’s Election Operations Unit staff regarding “on-site observations.”**
- u. All “processes” and “procedures” developed by the State and provided to the County Boards, including but not necessarily limited to the testing, maintenance, security, chain-of-custody, ballot accountability and reconciliation, in-person and web based training, and “the 3% random audit of voting systems used to validate system accuracy” of the Sequoia and ES&S voting systems.**

49. **The design and manufacturing schematics and other drawings for ES&S electronic Voting Systems used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those ES&S electronic Voting Systems to be used in New York State in elections in 2010 and beyond, showing how each machine registers, counts and transmits vote totals.**

See Response 1 hereinabove as to general and specific objections. In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

No such records are in the possession of the Answering Defendants. If same were in the possession of the Answering Defendants they would be reviewed and objections made to the extent that trade secrets or other proprietary information might be contained in such documents and same would not be produce in the absence of a Confidentiality Order.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used

to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. . It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors, if necessary, to provide, the requested information.

50. Detailed, written, descriptions of the ES&S electronic Voting Systems used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those ES&S electronic Voting Systems to be used in New York State in elections in 2010 and beyond, explaining in electrical, mechanical and electronic engineering terms how the machine registers, counts and transmits vote totals.

See Response 1 hereinabove as to general and specific objections. See response 49 hereinabove. In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or

not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

Further there were no ES&S electronic voting systems used in any federal elections in New York and there may not be any in the future as the certification process is not completed.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY. Objection # 2. On information and belief, the State certified the ES&S voting system on December 15, 2009.

In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct vendors, if necessary, to provide the requested information.

51. The maintenance record of each ES&S electronic machine used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those ES&S electronic Voting Systems to be used in New York State in elections in 2010 and beyond.

See Response 1 hereinabove as to general and specific objections. Such demand is unduly board(sic) and burdensome. In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

Without waiving such objection, no such records are in the possession of the Answering Defendants. As to the records sought from 1990 to 2008, none exist as the ES&S electronic machines were not used in such elections and with respect to records for “elections in 2010 and beyond”, there can be no record.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their

votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors, if necessary, to provide the requested information.

52. The historical record of all parts ordered for each and every the ES&S electronic machine used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those ES&S electronic Voting Systems to be used in New York State in elections in 2010 and beyond.

See Response 1 hereinabove as to general and specific objections. In addition to the General Objections set forth above, which Defendants specifically incorporates into its Response

to this Request, Defendants objects to this Request on the grounds that it is vague, ambiguous, overly broad, cumulative and/or unduly burdensome, and seeks the production of documents not relevant to the subject matter of this litigation and/or not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object on the grounds that this request seeks documents that contain proprietary, confidential and/or trade secret information.

See response 51 hereinabove.

REPLY: Objection. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors, if necessary, to provide the requested information.

53. The historical record of all EMERGENCY CALLS for assistance by local election officials in any state, including New York State, to the manufacturer of ES&S electronic Voting Systems used in any federal election in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 and those ES&S electronic Voting Systems to be used in New York State in elections in 2010 and beyond.

See Response 1 hereinabove as to general and specific objections. See response 51 hereinabove.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most

prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors to provide any and all notes, worksheets and Reports of the results of the 2009 Pilot Project, including the referenced (ImageCast Election Day Report, NYS November 3, 2009 General Election), and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

54. The historical record of all TEST PROCEDURES AND RESULTS by local and state election officials in New York State on any ES&S machine used to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. As to ES&S electronic voting systems, see response 51 hereinabove. Answering Defendants direct the Plaintiffs to the following documents:

<http://www.elections.state.ny.us/HAVAVotingMachines.html#HAVAVSTD>.

Defendants decline to produce records of their acceptance testing of those units used in the 2009 Pilot Project in the absence of a Confidentiality Order as those documents would contain privileged and proprietary information.

As to other ES&S products, same are not in the possession of the Answering Defendants.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s unconstitutional act of counting votes in secret, denying Plaintiffs’ their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any “special knowledge” as a prerequisite. If a “special knowledge” is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors to provide any and all notes, worksheets and Reports of the results of their Acceptance Testing of those units used in the 2009 Pilot Project, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

REPLY: Objection #3. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to provide the following documents to Plaintiffs, free and clear of any Confidentiality agreement and Order.

- a. **Contract(s) between the State and SysTest Labs, Inc.**
- b. **Contracts(s) between the State and New York State Technology Enterprise Corporation (NYSTEC).**
- c. **Documents related to the selection by the State of the Sequoia and ES&S voting systems for certification testing, including but not limited to the reports by New York’s Citizen’ Election Modernization Advisory Committee (CEMAC).**
- d. **US Election Assistance Commission’s 2005 Voluntary Voting System Guidelines and NYCRR Part 6209.**
- e. **The State’s “Fully-articulated Requirements Matrix.”**
- f. **The State’s “26 Unique Test Cases,” including their 6,730 test steps, developed for Sequoia and ES&S.**
- g. **The report on the results of the “Dry Run of Test Steps.”**
- h. **The report on each “Run for the Record.”**
- i. **All “Report Findings” of both SysTest Labs and NYSTEC, including all “Compensating Controls” and all “Summary Reports.”**
- j. **Resolutions by CEMAC relating to certification.**
- k. **Copies of all other test results of the Sequoia and ES&S electronic voting systems conducted by all other public and private organizations.**
- l. **Determinations by the State of whether these voting systems are in compliance with the Constitution for the United States of America.**

- m. Determinations by the State of whether these voting systems are in compliance with the New York’s Constitution, Statutes and Regulations.**
- n. Documentation regarding the “handful of minor requirements [that] may require some remediation as we go forward with these systems.”**
- o. Documentation regarding the “systems [that] may have issues with particular requirements.”**
- p. All documentation relating to the operation, performance and results 2009 Pilot Project, machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**
- q. Documentation describing the details of the 2009 “post-election audit process.”**
- r. Documentation detailing the results of the 2009 “post-election audit process,” machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**
- s. All reports regarding the State’s “Functional Testing” of each of these two electronic voting systems.**
- t. All reports by the State’s Election Operations Unit staff regarding “on-site observations.”**
- u. All “processes” and “procedures” developed by the State and provided to the County Boards, including but not necessarily limited to the testing, maintenance, security, chain-of-custody, ballot accountability and reconciliation, in-person and web based training, and “the 3% random audit of voting systems used to validate system accuracy” of the Sequoia and ES&S voting systems.**

55. The historical record of all TEST PROCEDURES AND RESULTS by the manufacturer of any ES&S machine used to register, count and transmit vote totals in elections in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. No documents responsive to this demand are in the possession of the Answering Defendants.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the vendor to provide any

and all notes, worksheets and Reports of the results of all Tests conducted on their electronic voting systems, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

56. The historical record of the results of all RECOUNTS of the votes registered by any and all ES&S electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.

See Response 1 hereinabove as to general and specific objections. No documents responsive to this demand are in the possession of the Answering Defendants.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the

elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendor to provide any and all notes, worksheets and Reports of the results of all Recounts, including Congressional District 23, conducted on their electronic voting systems, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

57. **Historical records of FAILURE TO CONFORM TO APPLICABLE STANDARDS by any and all ES&S electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009.**

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as overly broad and burdensome. Without waiving that objection, no documents responsive to this demand are in the possession of the Answering Defendants.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is

required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendor to provide the information requested and to make those documents available to Plaintiffs free and clear of any Confidentiality agreement and Order.

58. **Historical records of how discovered violations to conform to applicable standards by any and all ES&S electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002, 2004, 2006, 2008 and 2009 were CORRECTED.**

See Response 1 hereinabove as to general and specific objections. See response 57 hereinabove.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State’s

unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a "special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendor to provide the information requested and to make those documents available to Plaintiffs free and clear of any Confidentiality agreement and Order.

59. Historical records of defects uncovered during testing performed by public agencies, independent laboratories or manufacturers to qualify or to certify any and all ES&S electronic Voting Systems used to register, count and transmit vote totals in any federal election in any state, including New York State, in 1990, 1992, 1994, 1996, 1998, 2000, 2002,

2004, 2006, 2008, 2009, 2010 and 2012 (Records include any electronic record, emails or other correspondences regarding the discovery of defects, the description of the problem, the repairs of the defect, the methods used to test the defect repair, and the test results record).

See Response 1 hereinabove as to general and specific objections. Answering Defendants object to this demand as overly broad, calling for, at least in part, proprietary information of not only the testing laboratory but also ES&S. Taken literally, there were no ES&S electronic Voting Systems used prior to the limited Pilot program in 2009. As certification has not yet been completed it is impossible to identify any ES&S electronic voting systems which might be used in the future in New York State. Answering Defendants are not in the possession of records of such testing in states other than New York. Without waiving any objections to this demand, Answering Defendants direct Plaintiffs to the following documents: http://www.elections.state.ny.us/NYSBOE/news/2009_Voting%20System%20Certification%20Testing%20September%202009.pdf. Defendants decline to produce such documents as may come into their possession in the absence of a Confidentiality Order entered upon a showing that such records might lead to the discovery of relevant evidence in this litigation.

REPLY: Objection #1. This is evasive, incomplete and non-responsive. This demand is concise, specific and easily comprehended. Plaintiffs are seeking to enjoin the State's unconstitutional act of counting votes in secret, denying Plaintiffs' their right to *know* their votes are being counted accurately. Plaintiffs have a fundamental right to open and transparent elections and the most accurate vote counting system available, without the requirement for any "special knowledge" as a prerequisite. If a "special knowledge" is required regarding the mechanical, electrical and electronic systems and subsystems used

to record, count, transmit, aggregate and count each vote then that voting system is unconstitutional, even if that special knowledge was not the Intellectual Property of the developer and in the public domain. It is not possible for Plaintiffs to ever know the State is counting their votes accurately if a “special knowledge is required. Compounding this problem is the fact that those counting the votes – that is, the State is, in fact, the two most prominent political parties in New York State, who designate and fill every position in the elections process, without a vote by the general public, from the individual members of the State Board of Elections, down through the ranks of the County Elections Commissioners and their office staff.

REPLY: Objection #2. In addition, the State knows, or ought to know, and has the legal and constitutional authority and mandate to easily direct the counties and vendors to provide any and all notes, worksheets and Reports of the results of their Acceptance Testing of those units used in the 2009 Pilot Project, and to make those reports available to Plaintiffs free and clear of any Confidentiality agreement and Order.

REPLY: Objection #3. In addition, the State knows, or ought to know, and has the legal and constitutional authority to provide the following documents to Plaintiffs, free and clear of any Confidentiality agreement and Order.

- a. Contract(s) between the State and SysTest Labs, Inc.
- b. Contracts(s) between the State and New York State Technology Enterprise Corporation (NYSTEC).
- c. Documents related to the selection by the State of the Sequoia and ES&S voting systems for certification testing, including but not limited to the reports by New York’s Citizen’ Election Modernization Advisory Committee (CEMAC).

- d. US Election Assistance Commission’s 2005 Voluntary Voting System Guidelines and NYCRR Part 6209.**
- e. The State’s “Fully-articulated Requirements Matrix.”**
- f. The State’s “26 Unique Test Cases,” including their 6,730 test steps, developed for Sequoia and ES&S.**
- g. The report on the results of the “Dry Run of Test Steps.”**
- h. The report on each “Run for the Record.”**
- i. All “Report Findings” of both SysTest Labs and NYSTEC, including all “Compensating Controls” and all “Summary Reports.”**
- j. Resolutions by CEMAC relating to certification.**
- k. Copies of all other test results of the Sequoia and ES&S electronic voting systems conducted by all other public and private organizations.**
- l. Determinations by the State of whether these voting systems are in compliance with the Constitution for the United States of America.**
- m. Determinations by the State of whether these voting systems are in compliance with the New York’s Constitution, Statutes and Regulations.**
- n. Documentation regarding the “handful of minor requirements [that] may require some remediation as we go forward with these systems.”**
- o. Documentation regarding the “systems [that] may have issues with particular requirements.”**
- p. All documentation relating to the operation, performance and results 2009 Pilot Project, machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.**

- q. Documentation describing the details of the 2009 “post-election audit process.”
- r. Documentation detailing the results of the 2009 “post-election audit process,” machine-by-machine, precinct-by-precinct, town-by-town, city-by-city, county-by-county.
- s. All reports regarding the State’s “Functional Testing” of each of these two electronic voting systems.
- t. All reports by the State’s Election Operations Unit staff regarding “on-site observations.”
- u. All “processes” and “procedures” developed by the State and provided to the County Boards, including but not necessarily limited to the testing, maintenance, security, chain-of-custody, ballot accountability and reconciliation, in-person and web based training, and “the 3% random audit of voting systems used to validate system accuracy” of the Sequoia and ES&S voting systems.

60. Historical records of PERFORMANCE COMPARISONS (instances of analyses of accuracy of electronic vote counts of paper ballots compared to a human count of those same paper ballots).

See Response 1 hereinabove as to general and specific objections. Answering Defendants are not in possession of any documents responsive to this demand.

REPLY: Objection. This response is evasive and incomplete. On information and belief, the State has the results of the recount of all the paper ballots initially recorded and tallied by electronic voting systems in 2009 in the 23rd Congressional District, and the

results of the random audit of 3% of the paper ballots recorded and tallied in dozens of precincts in 2009 that were using electronic voting systems.

61. A duplicate of the Sequoia electronic machine chosen by Washington County, New York to register, count and transmit votes in federal elections in 2010, including all parts and accessories, and operating and maintenance instructions.

See Response 1 hereinabove as to general and specific objections. The answering defendants are not in the possession of any such machine and direct the Plaintiffs to the Washington County Board of Elections in this regard.

REPLY: Objection. This response is evasive, incomplete and otherwise unresponsive. The State has the legal and constitutional authority and mandate to direct Washington County to provide one of its Sequoia voting systems to Plaintiffs for their use leading up to and for the duration of the trial in this case.

62. A duplicate of the ES&S electronic machine chosen by New York County, New York to register, count and transmit votes in federal elections in 2010, including all parts and accessories, and operating and maintenance instructions.

See Response 1 hereinabove as to general and specific objections. New York City Board of Elections has not as yet chosen which electronic voting system it will employ in 2010. Upon the New York City Board of Elections making such choice, Plaintiffs are directed to that Board which will have possession of the units.

REPLY: Objection. This response is evasive, incomplete and otherwise unresponsive. The State has the legal and constitutional authority and mandate to direct

New York County to provide one of its ES&S voting systems to Plaintiffs for their use leading up to and for the duration of the trial in this case.

63. A duplicate of the lever operated mechanical machine used by Washington County, New York to register, count and transmit votes in the federal election in 2008, including all parts and accessories, and operating and maintenance instructions.

See Response 1 hereinabove as to general and specific objections. The answering defendants are not in the possession of any such machine and direct the Plaintiffs to the Washington County Board of Elections in this regard.

REPLY: Objection. This response is evasive, incomplete and otherwise unresponsive. The State has the legal and constitutional authority and mandate to direct Washington County to provide one of its mechanical voting systems to Plaintiffs for their use leading up to and for the duration of the trial in this case.

64. A duplicate of the lever operated mechanical machine used by New York County, New York to register, count and transmit votes in the federal election in 2008, including all parts and accessories, and operating and maintenance instructions.

See Response 1 hereinabove as to general and specific objections. The answering defendants are not in the possession of any such machine and direct the Plaintiffs to the New York City Board of Elections in this regard.

REPLY: Objection. This response is evasive, incomplete and otherwise unresponsive. The State has the legal and constitutional authority and mandate to direct

New York County to provide one of its mechanical voting systems to Plaintiffs for their use leading up to and for the duration of the trial in this case.

Dated: February 3, 2010



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