

**UNITED STATES DISTRICT COURT**  
**FOR DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**JENNIFER RAE GUNTER, an Oregon Elector; and  
CHRISTINA LYNN MILCAREK, an Oregon Elector;  
and CHELSEA ANNE WEBER, an Oregon Elector**

Plaintiff(s),

v.

**Case No.: 3:22-cv-01252-MO  
MOTION FOR TEMPORARY  
RESTRANING ORDER**

**SHEMIA FAGAN, in her individual capacity  
and as Secretary of State for the State of Oregon**

Defendant(s).

**MOTION FOR TEMPORARY RESTRANING ORDER**

LR 7-2 CERTIFICATION The undersigned hereby certifies that this Complaint complies with the applicable word count limitation because it contains 2,821 words including headings, footnotes, and quotations, but excluding the caption, and signature block.

**PARTIES**

1. Jennifer Rae Gunter is a legal resident of Wasco County, Christina Lynn Milcarek is a legal resident of Marion County and Chelsea Anne Weber is a legal resident of Clackamas County in the State of Oregon and all were registered voters in the state of Oregon during

the November 3, 2020 elections, and voted, and plans to vote in future Oregon elections, including the upcoming November 8, 2022 election.

2. Defendant Shemia Fagan is an Oregon resident and was elected on November 3, 2020 as OREGON SECRETARY OF STATE (“SOS”). In this capacity, she is the chief elections officer and is responsible to obtain and maintain uniformity in the application, operation, and interpretation of the election laws under ORS 246.110<sup>1</sup>.

### **BASIS FOR JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over Plaintiffs’ claims under 28 U.S.C. §1331, 42 U.S.C §1983, as this action seeks to protect civil rights under the 14<sup>th</sup> and 10<sup>th</sup> amendments of the US Constitution.
  - a. “The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.”
4. This court has jurisdiction to grant injunctive relief based on 28 U.S.C. §§1343(a)(3) authority to do so under federal rule of civil procedure 65.
5. This Court has authority to grant declaratory relief based on 28 U.S.C. §§ 2201, 2202, and Rule 57 of the FRCP.
6. This court has jurisdiction to award nominal income compensatory damages under 28 U.S.C. §§1343(a)(4).
7. Venue is proper for supplemental jurisdiction under 28 U.S.C. §1367.
8. Venue is proper generally under 28 U.S.C 1391.

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<sup>1</sup> [https://oregon.public.law/statutes/ors\\_246.110](https://oregon.public.law/statutes/ors_246.110)

9. Venue is proper because Defendant performs her official duties in the State of Oregon, affecting every county therein. As well as the SOS's conduct in Oregon directly impacts the outcome of federal elections held collectively in all states.

### **OVERVIEW AND FACTS**

10. The right to vote is protected by the Equal Protection Clause and the Due Process Clause.

U.S. CONST. amend. XIV, § 1, cl. 3-4. Because “the right to vote is personal,” Reynolds, 377 U.S. at 561-62. “[e]very voter in a federal ... election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted.” Anderson v. United States, 417 U.S. 211, 227 (1974); Baker v. Carr, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes debase or dilute the weight of each validly cast vote. Bush II, 531 U.S. at 105. The unequal treatment of votes within a state, and unequal standards for processing votes raise equal protection concerns.

11. Under 18 U.S. Code § 242 Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both;

12. Under Article 1 Section 1 of the Oregon Constitution, Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted

for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

13. Likewise, Article 1 Section 33 of the Oregon Constitution, Enumeration of rights not exclusive. This enumeration of rights, and privileges shall not be construed to impair or deny others retained by the people. Plaintiff's rights have been impaired and denied a free, fair, and equal voting process.
14. The 10<sup>th</sup> Amendment the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
  - a. Plaintiffs do not consent or agree to destruction of their vested property interest based on federal retention guidelines and interference.
15. The 14<sup>th</sup> Amendment extends citizenship to all natural born or naturalized Americans regardless of race and guaranteed that rights of citizenship like voting cannot be restricted by the states.
  - a. The secretary of state with such high authority position over our elections has restricted voters with improper accredited systems and machines disenfranchising all counties. One County affects the other which affects the entire state. If one System is not properly certified by an accredited voting system test laboratory (VSTL) therefore it negates all other votes cast. 'fraud vitiate everything' in U.S. v. Throckmorton, 98 U.S. 61 (1878). Therefore further not allowing a fair and equal voting process.
16. The 26<sup>th</sup> Amendment extends the right to vote to everyone 18 years of age and older.
17. Plaintiffs are woman and have a right to suffrage, as well as are being underserved and are underprivileged.

18. Plaintiff Gunter resides in Wasco County, plaintiff Gunter County used the Clear Ballot election voting system which was purportedly tested by voting system test laboratory (VSTL) Pro V&V and used during the 2020 elections and currently in 2022 elections. Plaintiff Gunter is underrepresented, misrepresented, and disenfranchised through fraudulent, negligent machine certification and false voting system test laboratory accreditation. Furthermore, Plaintiffs Milcarek and Weber are also underserved, disenfranchised, and misrepresented by the fraudulent and negligent machine certification and false voting system test laboratory accreditation of the VSTL, SLI Compliance. There are 15 counties in the state of Oregon that use the same Clear Ballot Group Clear Vote Voting System<sup>2</sup> who also relied on VSTL Pro V&V during the 2020 election and upcoming 2022 elections. Clear Ballot Group and Pro V&V represent almost half of the counties in Oregon.

19. **Due to the extreme urgency of this motion to halt destruction of records as of September 3<sup>rd</sup>, 2020** and the lack of accreditation or proof thereof, we are attaching several screenshots with links for the courts:

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
<sup>2</sup> <https://sos.oregon.gov/elections/Documents/Tally-Systems-By-County.pdf>

**Voting System Test Laboratory Program Manual, Version 2.0**

3.6.1. Certificate of Accreditation. A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission and state:

3.6.1.1. The name of the VSTL;

3.6.1.2. The scope of accreditation, by stating the Federal standard or standards to which the VSTL is competent to test;

 3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years; and

3.6.1.4. The technical standards to which the laboratory was accredited.

3.6.2. Post Information on Web Site. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):

3.6.2.1. NIST's Recommendation Letter;

3.6.2.2. The VSTL's Letter of Agreement;

3.6.2.3. The VSTL's Certification of Conditions and Practices;

3.6.2.4. The Commissioner's Decision on Accreditation; and

3.6.2.5. The Certificate of Accreditation.

a.

i. Screenshot above from the EAC VSTL Manual<sup>3</sup>.

<sup>3</sup> [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf)



b.

- i. According to the EAC website<sup>4</sup>, the last available EAC accreditation prior to 2021 for VSTL Pro V&V was signed on 2/24/2015 and was only effective through February 24, 2017. It was also signed by the Acting Executive Director and **not** by the EAC Chair as **required** per VSTL Program Manual ver. 2.0 effective May 31, 2015, Sec 3.6.1.

<sup>4</sup> <https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>

### Pro V&V

Pro V&V was accredited by the EAC on February 24, 2015. Federal law provides that EAC accreditation of a voting system test laboratory cannot be revoked unless the EAC Commissioners vote to revoke the accreditation: "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission." 52 U.S. Code § 20971(c)(2). The EAC has never voted to revoke the accreditation of Pro V&V. Pro V&V has undergone continuing accreditation assessments and had new accreditation certificate issued on February 1, 2021.

6705 Odyssey Dr NW Suite C,  
Huntsville, Alabama 35806  
Status: Accredited  
Program Manager: President  
Phone: 256-713-1111  
Lab Contact: Jack Cobb

*Revocation and lapse/expiration in accreditation are not the same thing. There is no documentation that Pro V&V was accredited between 2017 & 2021*

### Related Documents

*2015 Certificate expired in 2017 per the Document and Program Rules. No further Accreditation Certificate was issued until 2021 leaving a gap in accreditation between 2017 & 2021*

- 7/22/21 - VSTL Certificates and Accreditation
- 3/10/21 - Pro V&V Letter of Agreement
- 3/10/21 - Pro V&V Certification of Conditions and Practices
- 2/1/2021 - Pro V&V Certificate of Accreditation
- 01/27/2021 - Pro V&V Accreditation Renewal Memo
- 02/24/2015 - Certificate of Accreditation
- 08/02/2015 - Pro V&V Letter of Agreement
- 08/02/2012 - NIST Recommendation Letter - Pro V&V
- 08/02/2012 - Pro V&V Certification of Conditions and Practices

c.

- i. According to the rules, the EAC is also **required** to "Post Information on the Website" per section 3.6.2. None of these documents are listed for this time frame<sup>5</sup> nor can plaintiffs obtain copies of any such documents via Public Record Request or FOIA's. However, the Secretary of State noted in their Certificate of Approval<sup>6</sup> in February of 2020 that Pro V&V is an EAC Certified tester, even though their accreditation was only good through February 2017.

<sup>5</sup> <https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>

<sup>6</sup> <https://sos.oregon.gov/elections/Documents/vote-systems/Clear-Ballot-2-1-Certification.pdf>



OFFICE OF THE SECRETARY OF STATE

BEV CLARNO  
SECRETARY OF STATE



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## CERTIFICATE OF APPROVAL

### Clear Ballot Group

#### Clear Vote Voting System (Clear Count 2.1 and Clear Design 2.1)

Clear Ballot has made upgrades to their ClearVote Voting System. Specifically they have submitted ClearCount version 2.1 and ClearDesign version 2.1 along with their test lab report by EAC Certified tester Pro V&V. The test report documents that the systems meet all of the Oregon requirements and are conformant with the federal Voluntary Voting System Guidelines (VVSG), Version 1.0 (2005). Clear Ballot has requested approval of this change for use in Oregon elections.

The Secretary of State partnered with Benton, Washington, Linn, Yamhill, Marion and Multnomah counties and Pro V&V. We have determined that the upgraded system complies with the statutory requirements of Oregon Revised Statutes 246.550 and 246.560, specifically ORS 246.550(4) and Oregon Administrative Rule 165-007-0350 in that these changes do not impair the accuracy, efficiency, or capacity of the machine or system.

Accordingly, the ClearVote Voting System consisting of ClearCount version 2.1 and ClearDesign version 2.1 is certified for sale, lease or use in all elections in Oregon. The system must be used in compliance with the provisions of applicable Oregon statutes and all Secretary of State, Election Division rules and directives.

Dated this 18 day of February 2020.

Stephen N. Trout

Exhibit D

- d.
- e. According to OAR 165-007-0350, All voting systems used in Oregon **must** be certified by the EAC **or** by a federally accredited voting system test laboratory (VSTL)<sup>7</sup>

<sup>7</sup> [https://oregon.public.law/rules/oar\\_165-007-0350](https://oregon.public.law/rules/oar_165-007-0350)

## Oregon Secretary of State, Elections Division

**Rule 165-007-0350**

## Oregon Voting System Certification

- (1) All voting systems submitted for certification pursuant to ORS 246.550 (Examination and approval of equipment by Secretary of State) must be certified by the Elections Assistance Commission (EAC) or be examined by a federally accredited voting systems testing laboratory (VSTL).

i.

- f. According the EAC Website, the EAC did NOT certify ClearVote 2.1 so it had to be examined by a federally accredited voting systems testing laboratory (VSTL).<sup>8</sup>

Voting System (Name/Version)	Manufacturer	Testing Standard	Date Certified
Assure 1.3 Modification	Dominion Voting Systems Corp	VSS 2002	2012-06-29
ClearVote 1.4	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2018-02-08
ClearVote 1.5	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2019-03-19
ClearVote 2.0	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2019-10-21
ClearVote 2.2	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2021-12-23

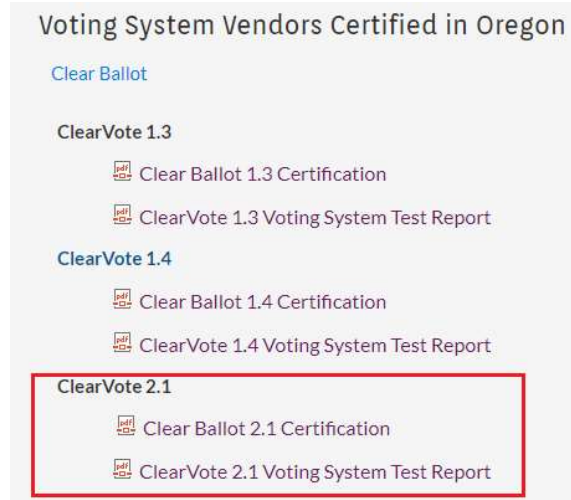
i.

- g. According to the SOS of Oregon Website, ClearVote 2.1 was tested by Pro V & V<sup>9</sup> and approved by the SOS for use in 2020<sup>10</sup>, how could this be, when their VSTL accreditation expired in 2017?

<sup>8</sup> <https://www.eac.gov/voting-equipment/certified-voting-systems>

<sup>9</sup> <https://sos.oregon.gov/elections/Documents/vote-systems/CBG-ClearVote-2-1-Test%20Report-00-FINAL.pdf>

<sup>10</sup> <https://sos.oregon.gov/elections/Pages/voting-systems.aspx>



i.



Test Report for State Certification Testing  
Clear Ballot Group ClearVote 2.1 Voting System

Version: 00 (Initial Release)

Date: 02/05/2020

ii.

- h. Circling back to the EAC Rules<sup>11</sup>, the accreditation is valid for a period **NOT TO EXCEED two years** and they are required to file a renewal application package between 30-60 days prior to February 24, 2017. Given the lack of documentation on the EAC website, documentation requested from the EAC and SOS, we cannot confirm that Pro V&V was accredited to test ClearVote 2.1 in 2020 and ultimately approved by the SOS for use in the 2020 and 2022 Elections in Oregon.

<sup>11</sup> [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf)

**3.8. Expiration and Renewal of Accreditation.** A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

i.

- i. By utilizing voting machines tested by a VSTL with improper Election Assistance Commission accreditation at the time of certification and with the potential for the Trapdoor mechanism as described in Terpeschore Maras Affidavit (See Verified Complaint Exhibit A<sup>12</sup>) that was filed in Case #2:20-cv-01771-PP in the 2nd Judicial District of the Denver District Court in Denver, Colorado. Oregon has deprived its voters of the capability of knowing that their vote was accurately fairly counted.

20. Plaintiffs are aware that in January 2017, shortly before President Donald Trump took office, Jeh Johnson, the Department of Homeland Security ("DHS") Advisor who served under former President Barak Hussein Obama, designated election infrastructure as part of the nation's critical infrastructure as a subsector under the Government Facilities sector<sup>13</sup>.
21. This designation purportedly allowed DHS, through its Cybersecurity and Infrastructure Security Agency ("CISA") with the assistance of the Election Assistance Commission ("EAC"), to provide services on a prioritized basis at the request of state and local election officials; however, it effectively resulted in the federal government improperly usurping the authority of the respective states to manage their own elections in violation of the Tenth Amendment to the United States Constitution.

<sup>12</sup> <https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.13.pdf>

<sup>13</sup> <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>

22. In addition, pursuant to Article I, Section 4 of the United States Constitution, state governments have the primary responsibility to administer elections and enforce election law, with the role of the federal government traditionally being limited to the enforcement of the protections of the Voting Rights Act and the prosecution of individuals who have committed federal election crimes.
23. Moreover, plaintiffs are aware that federal and state election officials across the United States have taken to the process of classifying certain election-related documents as confidential, thus preventing the public from viewing the documents and diminishing the transparency of the election process. While some election officials may argue that such actions are necessary to ensure the safe operation of electronic voting machines, no safety concerns could possibly outweigh the importance of citizens being able to evaluate the integrity and impartiality of the election process by having access to all election-related information and documentation.
24. Plaintiffs do not, have not, nor ever implied consent to our state delegating its authority to manage and conduct elections to the federal government. The involvement of federal entities, such as DHS and CISA, in state elections is repugnant to both Article I, Section 4 and the 10<sup>th</sup> Amendment to the United States Constitution.
25. If our state's election officials insist that the involvement of federal agencies in our state's elections is necessary to ensure the integrity of electronic voting machines, then our state's election officials should cease the use of such machines in the election process.
26. The 19<sup>th</sup> amendment granted women the right to vote, Plaintiffs are women, and we have a right to vote which was passed by Congress June 4, 1919, and ratified August 18, 1920. The voting system test laboratory accreditation that is required through federal and state law that the secretary of state used for Oregon elections shown purportedly to not be properly

accredited and voting systems not properly certified are depriving our right as women to cast our vote, leaving us underserved and under privileged.

27. Plaintiffs are citizens and taxpayers of the State of Oregon, we are entitled to our fundamental vested interests in elected positions of our state official's fiduciary duties. Our rights are being denied and disenfranchised by the secretary of state very own failure of properly following state and federal guidelines. Plaintiffs have been underserved and are underprivileged.
28. Defendant has caused plaintiffs irreparable injury and will continue further devastation in actions that are not repairable if a stay and a restraint is not granted by this Court and such injury infinite, you simply cannot get back what is destroyed.
29. Plaintiffs have herein demonstrated the likelihood of success on the merits in their underlying matter of their suffrage and their vested property interest that they are entitled to being preserved and not being destroyed. These Protected constitutional rights that have been damaged are deemed irreparable.
30. Plaintiffs are exerting their right to preserve their vested property interest as it is being trespassed upon, mismanaged, and set to be destroyed by the invasion of destruction.
31. It is also in the best interest of all parties (Plaintiffs, Oregonians, and Defendants) to protect the 2020 Election records until this matter is fully settled by the courts. Destruction/deletion based on ORS 254.535<sup>14</sup> and federal law 52 USC 20701 will remove evidence needed by both the Plaintiff and Defendant to prove their case.
32. This motion is in the public's best interest of all men, women, of the underprivileged plaintiffs, of the underrepresented plaintiffs, encompassing all cultures and races of all those

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<sup>14</sup> [https://oregon.public.law/statutes/ors\\_254.535](https://oregon.public.law/statutes/ors_254.535)



deemed legal to vote like plaintiffs, as well as those just be coming of age legally to cast their ballot.

### **PRAYER FOR RELIEF**

33. WHEREFORE, Plaintiffs pray for judgement against Defendant as follows:

34. That this Court assume jurisdiction of this Action;

35. GRANT a Temporary Restraining Order

- a. and consider allowing an appeal of our emergency injunction on the defendants from destruction/deletion of any election records created by law in all 36 counties, to include all paper ballots created by voting systems, USB devices, memory cards, electronic storage devices, ballots, tabulation tapes, USB final counts from precinct and all other election records not specifically stated from the 2020 elections.
- b. Order Defendant to preserve in their current state with Oregon counties, all voting machines, correspondence, software, peripherals, and other data, paperwork, and equipment used to cast, examine, count, tabulate, modify, store, or transmit votes or voting data, personal or company computer, network, smartphone, compact disc or DVD, jump drive, or any other electronic storage media; e-mails; voicemails; and text messages. This listing is not intended to be an exclusive listing of potential sources needing to be preserved in the November 2020 elections held in Oregon.
- c. Order the retention of records surrounding any, custody or control that is pertinent to the claims described above: paper files maintained by Secretary of State and Oregon counties whether in the office or elsewhere; personal notes, calendars or diaries; information maintained (or stored) electronically.

36. Order the retention of records and enjoin all 36 Oregon counties and the Secretary of State to retain all information and documents pertaining to temporary hires, including hires from any public or private entity, for the purpose of elections; solicitation letters to qualified electors to participate voluntarily or for payment to work during the election; any and all contracts signed by authorities vested in you with federal or state entities, including but not limited to the U.S. Department of Homeland Security, Federal Bureau of Investigation and other public or private entities (including but not limited to Craig Newmark Philanthropies and Facebook that have contracted, are currently contracting or otherwise engaging in any transactions or business with any federal or state entity to provide services, which may include but are not limited to cybersecurity, training, monitoring, transportation paper shredding, and other services ostensibly for the purpose of ensuring election integrity. This request also encompasses any and all communications, documents, e-mails, text messages, voice recordings, and other information or tangible evidence in your possession transmitted between or among public and private entities, including but not limited to the U.S. Department of Homeland Security, the Cybersecurity and Infrastructure Security Agency, and/or the Center for Internet Security, Inc. (CIS Security), including its subsidiary such as Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC), relating to post-2019 federal and state elections.

37. Plaintiffs also pray for relief and to halt the use of election machines until plaintiffs' motion for Declaratory Judgement can be heard and expedited by this Court in timely manner.

Respectfully submitted this 2<sup>nd</sup> day of September, 2022.



/s/ Jennifer Rae Gunter

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The Dalles, OR 97058

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/s/ Christina Lynn Milcarek

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