

Andy Michael Thompson



Plaintiff, Pro Se

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COUNSEL/PARTIES OF RECORD	
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BY: _____	<u>MAN</u> DEPUTY

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Andy Michael Thompson, Plaintiff Pro Se,

v.

Nevada Secretary of State, Defendant.

Case No. 2:25-cv-01284-CDS-EJY

**SUPPLEMENTAL DECLARATION IN SUPPORT OF
PLAINTIFF'S RULE 72(a) OBJECTION (With Exhibits B & C)**

I, **Andy Michael Thompson**, declare under penalty of perjury as follows:

I. PURPOSE OF THIS SUPPLEMENTAL DECLARATION

1. This Supplemental Declaration preserves the factual record concerning (1) the Secretary of State's delays in responding to my Public Information Requests ("PIRs") relating to Dominion Voting

System updates, (2) the Court's finding that the Secretary is the "sole custodian" of the 2024 election records, (3) the May 1, 2025 hearing transcript establishing contemporaneous awareness of preservation risks, and (4) the implications of the subsequent 5.20 overwriting events for foreseeability, motive, obstruction, and spoliation inference.

2. This Declaration supplements the preservation and spoliation record for appellate purposes and is not submitted as argument.

II. LEGAL FRAMEWORK GOVERNING PRESERVATION

3. Federal law requires preservation of all election materials for twenty-two months following any federal election. 52 U.S.C. § 20701.
4. Nevada law imposes the same requirement. NRS 293.391(1); NRS 293.391(4); NRS 293B.1045(6).
5. When a party with notice of litigation has exclusive control of evidence, the duty to preserve attaches immediately, and FRCP

37(e) applies to any overwriting, deletion, or modification of electronically stored information.

III. “SOLE CUSTODY” FINDING IN ECF 23

6. In ECF 23, the Court found that the Secretary of State is the “sole custodian” of the election records at issue.
 7. Sole custody means the Secretary alone possesses, controls, preserves, or destroys the evidence. No county, vendor, or third party can be responsible for the condition of the records.
 8. Exclusive control during litigation creates automatic foreseeability, a heightened preservation duty, and direct responsibility for any overwriting or failure to preserve.
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IV. PIR REQUESTS AND THE TIMELINE OF DELAY

9. I submitted multiple Public Information Requests (“PIRs”) to determine the timing and nature of Dominion updates and to verify whether election records were being preserved or

overwritten. All PIR correspondence—dated April 24, 2025; September 5, 2025; and November 14, 2025—is included together in Exhibit B.

A. April 24, 2025 PIR

10. On April 24, 2025, the Secretary acknowledged my PIR and stated that records would be produced by June 27, 2025. Exhibit B.

B. May 1, 2025 Hearing Transcript (Actual Notice)

11. On May 1, 2025, during a hearing in the related state-court contest (Case No. A-24-906377-C), I informed the Court that I had submitted a PIR seeking the dates of Dominion updates and that a response was due June 27, 2025. Immediately after I raised this, the Court asked defense counsel whether any updates were planned. Counsel responded: “I’ve asked my client not to push out the updates.” Exhibit C (May 1 Transcript). This reflects real-time, express awareness by the Secretary and counsel of the preservation risk associated with updates.

C. September 5, 2025 PIR

12. On September 5, 2025, after no June production, the Secretary issued a second delay letter stating that responsive records would be produced by November 14, 2025. Exhibit B.

D. November 14, 2025 PIR

13. On November 14, 2025, the Secretary issued a third delay letter stating that records would be produced by December 19, 2025. Exhibit B.
14. These delays span April, June, September, November, and December, overlapping entirely with the period during which the statewide Dominion Democracy Suite 5.20 update was executed.

V. RELATIONSHIP BETWEEN PIR DELAYS, MAY 1 NOTICE, AND THE 5.20 OVERWRITES

15. The statewide Dominion update to Democracy Suite 5.20 was completed on September 30, 2025, overwriting logs, images,

firmware, and other records required to be preserved under federal and state law.

16. PIR delays occurred before, during, and after this overwrite window.

17. No preservation logs, backup affidavits, pre-update images, or documentation of preservation have been produced, nor has the Secretary represented that any preservation occurred.

18. The May 1, 2025 hearing establishes that Defendant and counsel were explicitly aware of the preservation risk months before authorizing the update window. Counsel's assurance that the Secretary had been instructed not to "push out the updates" directly contradicts the later statewide updates performed from July through September 2025.

VI. IMPLICATIONS: BAD FAITH, FORESEEABILITY, MOTIVE, OBSTRUCTION, SPOILIATION INFERENCE

A. Bad Faith

19. A party with sole custody cannot claim ignorance of its preservation duties. Repeated delays without producing any preservation documentation indicate evasion.

20. Bad faith is further demonstrated by the contradiction between counsel's May 1 representation that updates had been halted and the Secretary's later authorization of statewide updates during the overwriting period.

B. Foreseeability

21. The Secretary had notice of this federal action on July 15, 2025.

22. Overwriting occurred after litigation commenced.

23. PIRs provided further notice of the specific evidence at risk.

24. The May 1 transcript demonstrates not constructive foreseeability but actual, verbal, time-stamped notice to the Court, immediately acknowledged by defense counsel.

C. Motive

25. Producing update documentation would reveal overwritten logs, missing files, lack of backups, and absence of preservation.

26. Withholding these documents avoids acknowledging violations of 52 U.S.C. § 20701 and Nevada retention law.

D. Obstruction

27. The eight-month delay chain, aligned with the overwrite period, constitutes obstruction of public oversight and statutory enforcement.

28. The Secretary's silence prevents verification of preservation and impedes the public's ability to monitor the integrity of election infrastructure.

E. Spoliation Inference

29. Spoliation inference arises when: (a) evidence existed; (b) the party had sole control; (c) litigation was foreseeable; (d) evidence was destroyed; and (e) production was delayed.

30. All elements are met here. The May 1 transcript further reinforces foreseeability and intentionality.
-

VII. PUBLIC INTEREST SIGNIFICANCE

31. Public Information Requests are statutory enforcement tools enabling public oversight of election-record preservation.
32. Election systems are DHS-designated critical infrastructure, elevating the public interest in timely PIR compliance and transparent preservation practices.
-

VIII. CONCLUSION

33. This Declaration preserves the following facts for the record:
- (a) The Secretary is the sole custodian of the election records;
 - (b) PIR responses were repeatedly delayed;
 - (c) All PIR documents are contained in Exhibit B;
 - (d) Delays overlapped with the statewide 5.20 overwrite window;
 - (e) Defense counsel acknowledged the preservation risk on May 1,

2025;

(f) Updates were later authorized despite that acknowledgment;

(g) No preservation records have been produced;

(h) Destruction occurred during active litigation; and

(i) The pattern supports findings of bad faith, foreseeability, motive, obstruction, and spoliation inference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of November, 2025.

/s/ Andy Michael Thompson

Declarant

CERTIFICATE OF SERVICE

I certify that on November 17, 2025, I served this **Supplemental Declaration in Support of Plaintiff's Rule 72(a) Objection** via U.S. Mail upon:

Gregory D. Ott
Chief Deputy Attorney General
Office of the Nevada Attorney General
100 N. Carson Street
Carson City, NV 89701
gott@ag.nv.gov

/s/ Andy Michael Thompson
Plaintiff Pro Se

EXHIBIT B

RECORD OF PUBLIC INFORMATION REQUEST



101 N Carson Street, Suite 3
Carson City, NV
775.684.5708

[04/24/2025]

Re: Public Records Request

Dear Andy Thompson,

Thank you for contacting the Office of the Secretary of State ("SOS") to submit a public records request. This request seeks the following specific records:

- 2015 to present: Any and all updates performed (in person or remote), including exact dates, times and personnel involved, in all relevant counties, on Dominion Voting System equipment/components, including but not limited to, the Trusted Build update. Similarly, any updates, including Trusted Build updates scheduled to be performed.
- Similarly, any updates performed or scheduled to be performed on ES&S equipment/components.

The SOS is in the process of identifying any potentially responsive records and expects to provide a response by 06/27/2025.

Thank you for contacting the Office of the Secretary of State.

Sincerely,

The Office of the Secretary of State

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

PAUL LAXALT BUILDING
COMMERCIAL RECORDINGS
401 N. Carson Street
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE
2250 Las Vegas Blvd North, Suite 400
North Las Vegas, Nevada 89030-5873

STATE OF NEVADA CAMPUS
1 State of Nevada Way, 3rd Floor
Las Vegas, Nevada 89119-4339

nvsos.gov



101 N Carson Street, Suite 3
Carson City, NV
775.684.5708

[09/05/2025]

Re: Public Records Request

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- 2015 to present: Any and all updates performed (in person or remote), including exact dates, times and personnel involved, in all relevant counties, on Dominion Voting System equipment/components, including but not limited to, the Trusted Build update. Similarly, any updates, including Trusted Build updates scheduled to be performed.
- Similarly, any updates performed or scheduled to be performed on ES&S equipment/components.

The SOS requires additional time to compile potentially responsive records and expects to provide records by November 14th, 2025.

Thank you for contacting the Office of the Secretary of State.

Sincerely,

The Office of the Secretary of State

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

PAUL LAXALT BUILDING
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STATE OF NEVADA CAMPUS
1 State of Nevada Way, 3rd Floor
Las Vegas, Nevada 89119-4339

NVSOS.GOV



101 N Carson Street, Suite 3
Carson City, NV
775.684.5708

[11/14/2025]

Re: Public Records Request

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Thank you for contacting the Office of the Secretary of State ("SOS") to submit a public records request. This request seeks the following specific records:

- 2015 to present: Any and all updates performed (in person or remote), including exact dates, times and personnel involved, in all relevant counties, on Dominion Voting System equipment/components, including but not limited to, the Trusted Build update. Similarly, any updates, including Trusted Build updates scheduled to be performed.
- Similarly, any updates performed or scheduled to be performed on ES&S equipment/components.

The SOS is finalizing review of potentially responsive records and requires additional time. The Office expects to respond by December 19th, 2025.

Thank you for contacting the Office of the Secretary of State.

Sincerely,

The Office of the Secretary of State

NEVADA STATE CAPITOL
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

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1 State of Nevada Way, 3rd Floor
Las Vegas, Nevada 89119-4339

nvsos.gov

EXHIBIT C

EXCERPT FROM MAY 1, 2025 HEARING TRANSCRIPT, P. 31, L 9-18
(CASE NO. A-24-906377-C, EIGHTH JUDICIAL DISTRICT COURT)

The following excerpt is provided to document Defendant's contemporaneous acknowledgment of the preservation risk associated with Dominion system updates.

1 MR. THOMPSON: Would the Court understand that it's
2 already their obligation to preserve those records and they cannot
3 knowingly engage in a destructive act of those records? What I'm
4 seeking to understand is whether or not there's a spoliation issue
5 that is occurring here, that the records that I seek, and because this
6 is a contest that I do have access to, according to the Nevada
7 Constitution and NRS 293.410, I actually do have access to them in
8 these proceedings, and I need to preserve that right.

9 And that the imminent update in which I would let the
10 judge know, I did do a public records request for the dates on the
11 updates, and I was given a response that, by June 27th, I would
12 have an initial response to finding out the date for an update to the
13 system. So I am --

14 THE COURT: Just a second.

15 Ms. St. Jules, is there any immediate plans to do an
16 update on the machines?

17 MS. ST. JULES: No, Your Honor. I've asked my client not
18 to push out the updates.

19 THE COURT: Okay. So this is what's going to happen --
20 and Ms. St. Jules, am I right in assuming you are going to file a
21 motion to dismiss once the third amended complaint is filed?

22 MS. ST. JULES: [indiscernible].

23 THE COURT: Is that a yes?

24 MS. ST. JULES: Yes, Your Honor. Sorry.

25 THE COURT: All right. So this is the issue. So 60 day --