

AFFIDAVIT REGARDING LEGALITY OF DENYING PUBLIC ACCESS TO CAST VOTE RECORD REPORTS

A CVR is a text-file report generated by a county's Election Management Server or associated applications which draw data from it. It contains a line of data for each ballot cast in the order it was processed. Each line normally includes (but is not limited to):

1. A number indicating its sequence in the counting
2. A reference to the tabulator on which it was counted
3. A polling district identifier
4. A "counting group" or other designator of how the vote was cast (i.e. in person, absentee, early voting, etc.)
5. A number indicating the batch in which the ballot was processed
6. For each contest in the election, an item indicating the voter's preference on the ballot.

A CVR does not contain an image of the ballot, nor does it include any data identifying the voter who cast the ballot.

A number of counties in the United States have denied public release of the "Cast Vote Record" (CVR) of an election based upon misapplication of State statutes. In particular, some counties in Pennsylvania have used section 308 of the Pennsylvania Election Code as reason for this denial.

Section 308 of the Pennsylvania Election code states: (emphasis added)

*"Records and Documents to Be Open to Public Inspection; Proviso.--The records of each county board of elections, general and duplicate returns, tally papers, affidavits of voters and others, nomination petitions, certificates and papers, other petitions, appeals, witness lists, accounts, contracts, reports and other documents and records in its custody, **except the contents of ballot boxes and voting machines and records of assisted voters**, shall be open to public inspection, except as herein provided, and may be inspected and copied by any qualified elector of the county during ordinary business hours, at any time when they are not necessarily being used by the board, or its employes (sic) having duties to perform thereto: Provided, however, That such public inspection thereof shall only be in the presence of a member or authorized employe (sic) of the county board, and shall be subject to proper regulation for safekeeping of the records and documents, and subject to the further provisions of this act: And provided further, That general and duplicate returns, tally papers, affidavits of voters and others, and all other papers required to be returned by the election officers to the county board sealed, shall be open to public inspection only after the county board shall, in the course of the computation and canvassing of the returns, have broken such seals and finished, for the time, their use of said papers in connection with such computation and canvassing."*

The three cases cited in which public access is not permitted are as follows:

1. Contents of Ballot Boxes

A ballot box is a tangible enclosure whose purpose is to provide a repository for paper ballots and, in some cases, the envelopes containing these ballots. A "Cast Vote Record" is a digital file containing the record of the votes on the ballots, which are already publicly reported in aggregate form. The Cast Vote Record contains no image of said ballot, and no information disclosing any information disclosing the voter who cast said ballot. Simply put, the Cast Vote Record is simply the results of the election presented in an alternate way, providing a critical

ability to replay the election vote by vote to analyze trends and patterns.

2. **Voting Machines**

PA Statute § 3001 defines various terms used in election-related statutes. While the term “Voting Machine” is not itself defined, its definition can be inferred through usage. For instance:

(4) The words "irregular ballot" shall mean the paper or other material on which a vote is cast on a voting machine for persons whose names do not appear on the ballot labels;

Here it is plain that a voting machine is the machine on which a ballot is cast.

(9) The words "voting machine booth" shall mean the enclosure occupied by the voter when voting;

Here it is clear that the voting machine is the item within the voting machine booth on which voters cast their votes.

The Cast Vote Record is produced from the County Election Management Server or its associated devices, and this Server clearly does not fall under the mantle of a “voting machine”.

3. **Records of Assisted Voters**

The Cast Vote Record contains no information about specific voters at all.

Based upon the statutes and definitions, a Cast Vote record in Pennsylvania cannot be denied from public release.

Prepared this 22nd day of April, 2022.



Jeffrey O'Donnell
Chief Information Officer
Ordros Analyics, Inc.