

HAVA Complaint Saguache County Election November 2012

This complaint is filed under the Colorado procedures for a HAVA Complaint.

Co-complainants: Citizen Center, Marilyn Marks, Lisa Cyriacks

General description of complaint—Saguache used ES&S M100 scanners and Accu-Vote DRE's in combination with manual notes and Microsoft Excel worksheets to accumulate, tabulate and report certified election results. This combination of system components is in violation of Colorado law and SOS Rules concerning certified systems, and created errors in excess of the error rate acceptable under HAVA Title III and SOS Rules. The errors created were likely a result of the failure to comply with Title 1 requirements for certified systems. Saguache's known lack of compliance was reported to the Secretary of State numerous times prior to the June 2012 primary election.

Additionally, HAVA is violated as the audit capability required by Title III (2) is not created or available.

Example of tabulation errors—The attached certified abstract (Exhibit A) reports CD-3 candidate Sal Pace receiving only 239 votes from Precinct 5, less than 50% of other Democratic Party candidates on the ballot. The opposing candidates' vote totals did not include an unusually high number of votes. Therefore, it appears that the system tabulated totals are inaccurate. (Note that the system definition in HAVA includes all counting and reporting functions.) It seems clear that the error rate allowed in HAVA Title III (5) was greatly exceeded. Without further investigation, it is impossible to know the additional errors that may be embedded in the certified results.

--Unusual looking results also appear in Precinct 7. Votes for CU Regent (569) exceeded votes for President (501) and U.S. Congressman (489).

--Tapes from Election night show BOCC Candidate Kenny Anderson with 1,737 votes while the certified abstract total fell to 1,685, although numerous provisional and signature cure ballots were added after election night.

Inquiry with Clerk Gomez—Inquiry was made to Clerk Gomez for the audit trail that supported the certified results in Exhibit A. She stated that there is no Excel worksheet, GEMS report, or Unity report and effectively no audit trail to support the certified data. (See Exhibit B). The Saguache system lacks the HAVA required audit capacity and audit trail.

Violation of SOS Rules— (a) In addition to HAVA violations noted above, by using two different manufacturers' system components (ES&S M100s' and Accu-Vote DRE's) the County violated Rule 45.2.1.1 stating that single components are not certified systems.

45.2.1.1 The definition of a voting system for the purposes of this rule shall be as the term is defined in HAVA Section 301(b). For Colorado purposes, no single component of a voting system, or device, meets the definition of a voting system except that nothing in this rule shall be interpreted to require the testing of an entire modified system if the Secretary of State determines Colorado Secretary of State Election Rules [8 CCR 1505-1] pursuant to section 1-5-618, C.R.S., that a modification to any certified voting system requires testing for security and accuracy. only the modification shall be required to be tested to ensure compliance with this Rule 45.

45.2.1.2 Sufficient components shall be assembled to create a configuration that allows the system or modification as a whole to meet the requirements as described for a voting system in this rule.

(b). The County violated SOS Rule 45.3.1 requiring certification of a system as a unit, with all components to be tested simultaneously. (M100's have not been tested with Accu-vote DRE's and Excel worksheets as a system, and are inherently and by design, incompatible.)

45.3.1 The voting system shall be considered as a unit, and all components of such system shall be tested at once, unless the circumstances necessitate otherwise. Any change made to individual components of a voting system shall require the entire voting system be recertified in accordance with this rule unless the change is a modification that can be approved under the provisions of section 1-5-618(1.5), C.R.S.

(c). The "system" does not comply with SOS Rule 45.5.2.1.11 requiring accuracy in reporting to 2002 standards.

45.5.2.1.11 The voting system shall ensure that all tabulated results will be accurately captured, interpreted, and reported to the level of accuracy required in the 2002 Voting System Standards.

(d). Privacy requirements of HAVA Title III were violated by using Accu-Vote DRE's with V-VPAT's and no upload capability for the memory cards. DRE voters votes can be traced back to the voters through the review of the V-VPATS as the only method of counting the DRE votes when the certified system with electronic tabulation is not used.

Impact on Cyriacks' vote—Complaint Lisa Cyriacks is a registered elector in Precinct 5 of Saguache County and a public supporter of candidate Sal Pace. It appears likely that Cyriacks' vote and others in her precinct were not counted. Other members of Citizen Center vote in this precinct as well as other precincts in Saguache County.

Marilyn Marks is a voter in CD3, whose votes may be impacted and offset by inaccurate results reported in Saguache County.

Requested resolution--

1. CDOS to investigate reported errors, and determine through audit whether other similar errors exist and the cause of such errors.
2. CDOS to require that all future Saguache elections use a certified system employing only certified components that have been tested as a system until Rule 45.
3. CDOS to stop the use of stand-alone DRE's (without certified server) due to violations of voter privacy requirements of HAVA, Title 1 and the Colorado Constitution.
4. CDOS to consider the importance of the role of the canvass board which should be comparing these numbers to supporting documents for accuracy, and investigating issues such as the above obvious anomalies. When canvass board is asked to be a "rubber stamp," without the ability to verify the abstracts, there is no way to ensure the reliability of the results.

Specific Citations Regarding Violation of HAVA Title III—

(2) AUDIT CAPACITY.—

(A) IN GENERAL.—The voting system shall produce a record with an audit capacity for such system.

(5) ERROR RATES.—The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

(b) VOTING SYSTEM DEFINED.—In this section, the term "voting system" means—

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information; and

(2) the practices and associated documentation used—

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system;

and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

The complainants request a public hearing.

Marilyn Marks is filing this notarized complaint on behalf of herself, Citizen Center, and Lisa Cyriacks. If Lisa Cyriacks' separately notarized statement is required, please so inform us and a notarized statement will be separately executed by Cyriacks.

For Citizen Center by Marilyn Marks 
Digitally signed by
marilyn@aspenoffice.com
DN: cn=marilyn@aspenoffice.com
Date: 2012.12.19 13:26:22 -0700

Marilyn@TheCitizenCenter.org 1520 Homestake Drive, Aspen, CO 81611

Marilyn Marks in her individual capacity 
Digitally signed by
marilyn@aspenoffice.com
DN: cn=marilyn@aspenoffice.com
Date: 2012.12.19 13:26:41 -0700

Marilyn@AspenOffice.com 1520 Homestake Drive, Aspen, CO 81611 (970 429 7535)

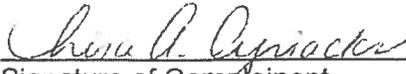
Lisa Cyriacks__ (signature to be separately submitted) _____

lcyriacks@rocketmail.com P.O. Box 754 Crestone, CO 81131 (719-256-4140)

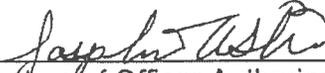
CERTIFICATE OF ATTESTATION
STATE OF COLORADO
COUNTY OF SAGUACHE

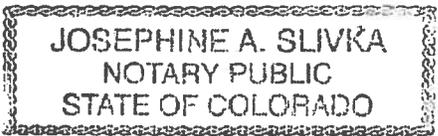
Will be mailed.

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.


Signature of Complainant

Sworn to and subscribed before me this 26 day of December, 2012.


Signature of Officer Authorized to Administer Oaths or Notary Public



(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known or Produced Identification
Type of Identification Produced Co. DRIVER LICENSE 98-195-0755

Exhibit A									
CANDIDATE	PARTY	PRE 1	PRE 2	PRE 3	PRE 4	PRE 5	PRE 6	PRE 7	County Total
PRESIDENTIAL ELECTORS						Crestone			
Virgil H Goode Jr. / Jim Clymer	American Constitution	1	2	3	1	2	0	1	10
Barack Obama / Joe Biden	Democratic	386	22	159	49	606	329	313	1864
Mitt Romney / Paul Ryan	Republican	368	61	30	109	36	183	177	964
Gary Johnson / James P Gray	Libertarian	15	1	6	5	12	7	6	52
Jill Stein / Cheri Honkala	Green	1	0	2	0	12	2	1	18
Stewart Alexander / Alex Mendoza	Socialist, USA	1	0	0	0	0	0	0	1
Rocky C "Rocky" Anderson / Luis Rodriguez	Justice	3	0	0	1	2	0	0	6
Roseanne Barr / Cindy Lee Sheehan	Peace and Freedom	2	0	0	0	2	0	2	6
James Harris / Alyson Kennedy	Socialist Workers	0	0	0	0	0	0	0	0
Tom Hoefling / Jonathan D Ellis	America's	0	0	0	0	0	0	0	0
Gloria La Riva / Filberto Ramirez Jr	Socialism and Liberation	0	0	0	0	0	0	0	0
Merlin Miller / Harry V Bertram	American Third Position	0	0	0	1	0	0	0	1
Jill Reed / Tom Cary	Unaffiliated	6	0	0	0	0	0	1	7
Thomas Robert Stevens / Aiden Link	Objectivist	0	0	0	0	0	0	0	0
Sheila "Samm" Tittle / Matthew a Turner	We The People	0	0	0	0	1	0	0	1
Jerry White / Phyllis Scherrer	Socialist Equality	0	0	0	0	0	0	0	0
Write in Randall Terry / Missy Reilly Smith	Independent/Republican	0	0	0	0	0	0	0	0
REPRESENTATIVE TO THE 113TH UNITED STATES CONGRESS DISTRICT 3						Sal Pace gets only 239 votes when all other Dems get 500+?	Less votes than CU Regent?		
Sal Pace	Democratic	316	24	135	34	239	284	269	1301
Scott R Tipton	Republican	386	54	33	116	40	191	200	1020
Gregory Gilman	Libertarian	26	3	11	7	42	8	9	106
Tisha T Casida	Unaffiliated	28	3	7	11	35	16	11	111
Write In Morgan West	Unaffiliated	0	0	0	0	0	0	0	0
Write In Jaime McMillan	Unaffiliated	0	0	0	0	0	0	0	0
REGENT OF THE UNIVERSITY OF COLORADO AT LARGE									
Stephen C Ludwig	Democratic	311	22	131	40	492	293	385	1674
Tyler Belmont	American Constitution	35	6	6	10	20	22	12	111
Brian Davidson	Republican	318	47	27	92	33	138	165	820
Daniel Ong	Libertarian	39	5	21	15	75	14	7	176
REGENT OF THE UNIVERSITY OF COLORADO CONGRESSIONAL DISTRICT 3									
Jessica Garrow	Democratic	358	26	153	55	561	291	284	1728
Glenn Gallegos	Republican	345	51	29	97	44	175	185	926
STATE SENATE DISTRICT 35									
Larry W Crowder	Republican	365	53	32	102	35	187	189	963
Crestina Martinez	Democratic	357	26	146	57	578	313	297	1774
William Stuart Bartley	Libertarian	41	5	16	8	45	12	17	144

CANDIDATE	PARTY	PRE 1	PRE 2	PRE 3	PRE 4	PRE 5	PRE 6	PRE 7	County Total
STATE REPRESENTATIVE DISTRICT 62									
Edward Vigil	Democratic	367	28	154	52	588	338	327	1854
Tim Walters	Republican	380	52	35	114	45	163	163	952
DISTRICT ATTORNEY 12TH JUDICIAL DISTRICT									
David Mahonee	Democratic	326	31	143	60	567	305	268	1700
Peter L Comar	Republican	411	51	43	104	57	183	218	1067
SAGUACHE COUNTY COMMISSIONER DISTRICT 1									
Jason Anderson	Democratic	312	33	146	56	526	259	215	1547
Joe Cisneros	Republican	228	34	15	60	7	167	172	683
Lisa Cyriacks	Unaffiliated	232	18	37	52	135	74	105	653
SAGUACHE COUNTY COMMISSIONER DISTRICT 2									
Rock Finley	Republican	347	53	33	90	51	193	217	984
Kenny Anderson	Democratic	411	30	11	71	582	313	267	1685
JUSTICE OF THE COLORADO SUPREME COURT									
	VOTE YES OR NO								
Nathan B Coats	Yes	422	44	100	69	308	272	276	1491
	No	220	28	38	68	113	128	139	734
COURT OF APPEALS									
Laurie A Booras	Yes	411	43	103	68	352	266	270	1513
	No	229	27	37	65	66	130	139	693
James S Casebolt	Yes	405	49	97	70	320	255	269	1465
	No	220	21	39	62	85	134	136	697
Dennis A Graham	Yes	395	40	96	75	301	260	261	1428
	No	231	31	38	59	103	126	149	737
Gale T Miller	Yes	410	43	101	72	341	272	285	1524
	No	221	28	37	64	70	135	133	688
COURT OF APPEALS									
Daniel Marc Taubman	Yes	393	48	100	66	330	258	267	1462
	No	235	23	36	69	74	137	135	709
John R Webb	Yes	413	42	99	72	315	259	279	1479
	No	219	30	38	63	88	135	131	704
DISTRICT JUDGE 12TH JUDICIAL DISTRICT									
Pattie P Swift	Yes	464	47	115	97	364	308	304	1699
	No	212	24	32	56	64	129	145	662
SAGUACHE COUNTY JUDGE									
Amanda Kay Pearson	Yes	467	52	150	95	482	293	296	1835
	No	253	25	29	70	59	166	167	769

less than election night totals.

Marilyn Marks

From: Carla Gomez <cgomez@saguachecounty-co.gov>
Sent: Wednesday, November 28, 2012 12:26 PM
To: Marilyn Marks
Subject: Re: public records request
Attachments: 2012 General Election abstract.pdf

Marilyn,
Attached is a copy of the official abstract submitted to the State.

As for the native electronic format. etc, you request, we don't have any such worksheet. We just fill out a form with information required by statute and rules of the SOS from the tapes generated by the tabulating machines and reports generated from SCORE, sum totals are then automatically filled in. We have no formulas and I don't know what you mean by metadata.

Carla Gomez

On Sun, Nov 25, 2012 at 1:29 PM, Marilyn Marks <marilyn@aspensoffice.com> wrote:

Carla,

I would like to get a copy of the official abstract of the Saguache County 2012 General election. I would like to have the version that includes all of the following items of information from the SOS rules.

If the schedule was created in excel I would like to have a copy in the native electronic format that includes the metadata and formulas of the excel worksheet.

SOS Rule 41.8.3 The official abstract must include, by precinct/ballot style or vote center, where applicable:

- (a) The statement of votes counted by race and ballot question or issue;
- (b) The total active registered electors in the precinct and the total for the jurisdiction holding the election;
- (c) The total number of electors voting in each precinct and the total for the jurisdiction holding the election;
- (d) The number of voters who voted early;
- (e) The number of emergency registrations;
- (f) The number of mail-in or mail ballots counted and the number rejected;

(g) The number of provisional ballots counted and the number rejected listed by each rejection code; and

(h) The number of damaged and spoiled ballots.

Please let me know if you have questions. Thank you for your assistance.

Marilyn Marks

Marilyn@AspenOffice.com

Saguache County HAVA Complaint-- Amendment 1

(Marks, Citizen Center, Cyriacks HAVA Complaint filed 12.23.12)

The additional information included in this amendment should be considered as support for and in addition to the recently filed HAVA complaint.

The enclosed documentation demonstrates that the CDOS approved the non-compliant use of separate non-compatible components that together helped create the violations of HAVA Title III due to the high error rate and violations of DRE voter privacy.

The Saguache errors and loss of voter privacy likely would not have occurred if a compliant certified system had been used. The errors demonstrate the necessity of the long standing SOS Rule that single components do not meet the requirements of a voting system.

In addition to the violations noted in the first submission of the HAVA complaint, the use of the leased M100's violate SOS Rule 45.12. The contract (attached) does not include the required provision that the system has been certified. (It has not.) Also, the contract does not meet (c) as all required components are not included in the contract

SOS Rule 45.12 Purchases and Contracts

45.12.1 Any voting system that has been certified under the procedures of this Rule 45 are eligible for purchase, lease, or rent for use by jurisdictions within the State of Colorado providing the contract contains the following items:

- (a) The voting system is certified for use within the state;*
- (b) Contract contains training and maintenance costs for jurisdiction; and*
- (c) Contract identifies components contained in the certified voting system and appears complete with all accessories necessary for successfully conducting an election within the laws and rules of the State of Colorado.*

"Mix and match" use of incompatible components of voting systems is not permitted by statute or rule. The CDOS's unauthorized informal relaxing of such standards has a negative impact on the accuracy, security and reliability of the election results as demonstrated by the Saguache 2012 experience.

Request for Investigation:

1. Perform manual count audit and reconciliation of errors to determine the source of errors and impact on results.
2. Determine the cause for repeated violations of SOS contract rules by ES&S.


Digitally signed by
marilyn@aspenoffice.com
DN:
cn=marilyn@aspenoffice.com
Date: 2012.12.26 01:27:26 -07'00'

Marilyn Marks

From: Carla Gomez <cgomez@saguachecounty-co.gov>
Sent: Friday, December 21, 2012 4:02 PM
To: Marilyn Marks
Cc: Renee Hazard <rhazard@saguachecounty-co.gov> (rhazard@saguachecounty-co.gov); Suzanne Staiert
Subject: Re: open records request
Attachments: ES&S contract 2012 gen.pdf; Security Plan - Fillable 5-31-12.doc
Categories: CitizenCenter

Marilyn,

In response to this CORA request, I have attached herewith a copy of the Contract with ES&S for the rental of two (2) M100 tabulating machines for the 2012 General Election. I have also enclosed a copy of the Security Plan submitted to and approved by the SOS for this election. I believe that questions on pages 13 & 14 of this Plan address the concerns you note.

Please note that this office will be closed on December 24th and 25th. I will be taking a few days off and will return to the office on Jan. 2, 2013.

Happy holidays,

Carla

On Tue, Dec 18, 2012 at 11:51 AM, Marilyn Marks <marilyn@aspennoffice.com> wrote:

Carla,

As you know, I believe that the M100 is not certified for use as a voting system on a standalone basis. I have provided that documentation in the past with my objection. I note that the M100 was apparently used again without the Unity software and server and with incompatible Premier equipment.

Given that the M100's were leased, please provide the contract language in the lease that addresses the following SOS rule (below) requiring that the lease contract state that the voting system leased is certified for use within Colorado.

Citizen Center makes this request under Colorado Open Records Act.

SOS Rule 45.12 Purchases and Contracts

45.12.1 Any voting system that has been certified under the procedures of this Rule 45 are

eligible for purchase, lease, or rent for use by jurisdictions within the State of Colorado

providing the contract contains the following items:

- (a) The voting system is certified for use within the state;
- (b) Contract contains training and maintenance costs for jurisdiction; and
- (c) Contract identifies components contained in the certified voting system and appears complete with all accessories necessary for successfully conducting an election within the laws and rules of the State of Colorado.

Thank you for your help.

Marilyn Marks

CitizenCenterCO@gmail.com

www.TheCitizenCenter.org

970-404-2225

ELECTION SYSTEMS & SOFTWARE, LLC
ONE-TIME RENTAL OF EQUIPMENT, SALE OF SERVICES AND LICENSE OF SOFTWARE

This Agreement is made as of the date it is executed by the last of the parties named below on the signature page (the "Effective Date"),

BETWEEN: Election Systems & Software, LLC, a Delaware Limited Liability Company ("ES&S")

AND: Saguache County Clerk & Recorder, Colorado ("Customer").

RECITALS:

A. Customer has agreed to rent, license and purchase, as applicable, voter tabulation equipment and related software and services from ES&S for use in Saguache County, Colorado (the "Jurisdiction"). The terms and conditions under which the equipment, software and services shall be provided are set forth in the GENERAL TERMS attached hereto and incorporated herein by reference.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the parties hereto:

- Agrees to the GENERAL TERMS and the terms and conditions set forth in the Agreement and Amendments.
- Agrees that at all times, this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- Represents and warrants to the other party that as of its signature date indicated below it has full power and authority to enter into and perform this Agreement, and that the person signing below on its behalf has been properly authorized to execute this Agreement
- Acknowledges that it has read this Agreement, understands it and intends to be bound by it.

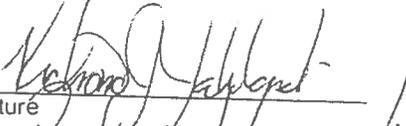
ELECTION SYSTEMS & SOFTWARE, LLC
11208 John Galt Blvd.
Omaha, NE 68137
Fax No.: (402)-970-1291

Signature

Name (Printed or Typed)

Title

Date


Richard J. Beck
VP of Finance
8/30/2012

SAGUACHE COUNTY CLERK & RECORDER, CO
P.O. Box 176
Saguache, CO 81149
Fax No.: (719) 655-2730

Signature

Name (Printed or Typed)

Saguache County Clerk & Recorder
Title

August 22, 2012
Date

Date

**RENTAL OF EQUIPMENT, SALE OF SERVICES AND LICENSE OF SOFTWARE
GENERAL TERMS**

1. Description of Rental Equipment, Software and Services. The following constitutes all Rental Equipment, Software and Services to be provided by ES&S to Customer under this Agreement:

QUANTITY	MODEL	RENTAL EQUIPMENT DESCRIPTION	PRICE
Covered Election: November 6, 2012 General Election			
ES&S Equipment:			
2	M100	(USED) Model 100 Precinct Scanner with Steel Ballot Box, with Diverter, and PCMCIA Card (EQUIPMENT IS ON-SITE)	\$1,900.00
2		PCMCIA Cards (Additional)	\$20.00
2		Paper Rolls	\$3.50
ES&S Services:			
1		Project Management Day	\$1,575.00
1		Ballot Layout	\$30.00
1		Coding	\$681.00
Total Rental Fees:			\$4,209.50

Payment Terms:

Invoicing will occur as follows:

\$4,209.50 due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of Corresponding ES&S Invoice.

Payments of invoices are due no later than 30 days after Customer's receipt of corresponding invoice.

Delays in payment due to no fault of ES&S will be subject to interest charges in the maximum amount permitted by Applicable law.

In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Any applicable state and local taxes are not included, and are the responsibility of Customer.

Service Day and Installation rates include travel and per diem expenses.

2. Description of Services.

- a. Installation. Section 1 specifies the items of Rental Equipment or Software, if any, which ES&S' employees, agents or authorized representatives ("Representatives") will install at Customer's designated site. Customer shall pay ES&S a fee for such installation services, as set forth in Section 1. Customer will provide, at its own expense, a site adequate in space and design for installation and operation of the Rental Equipment and Software. Customer shall be responsible for providing a site that is temperature and humidity controlled, has all necessary electric current outlets, circuits, and wiring for the Rental Equipment and Software, and has electric current of sufficient quality and quantity to operate the Rental Equipment and Software, all as specified in the Rental Equipment Documentation or the Software Documentation (as each is defined below) (collectively the "Documentation"). ES&S may, but shall not be required to, inspect the site and advise on its acceptability before any Rental Equipment or Software is installed. Customer shall be responsible for installing all items of Rental Equipment or Software not installed by ES&S, in accordance with the instructions furnished in the Documentation. ES&S shall have no liability for actual site preparation or for any costs, damages or claims arising out of the installation of any Rental Equipment or Software by Customer.

- b. Additional Professional Services. If requested in writing by Customer, ES&S will provide additional Professional Services support to Customer at ES&S's then-applicable rates for such services.

TERMS AND CONDITIONS RELATING TO RENTAL EQUIPMENT

3. Items Included in Rental Equipment. In addition to the Rental Equipment, ES&S will also provide Customer with copies of operating instructions, user manuals and training materials for the Rental Equipment ("Rental Equipment Documentation"). Certain items included in the Rental Equipment may have been manufactured by parties other than ES&S; any such items are separately identified in Section 1 and are collectively known as "Non-ES&S Rental Equipment". Customer acknowledges and agrees that, except for the payment to ES&S of the amount dues under Section 1 which is attributable to the Non-ES&S Rental Equipment, all of its rights and obligations with respect to the Non-ES&S Rental Equipment flow from and to the manufacturers, lessors or other vendors of the Non-ES&S Rental Equipment (collectively the "Third Party Rental Equipment Vendors"). Customer further acknowledges that it has received copies of all applicable Third Party Rental Equipment Vendor Documentation, warranties and other applicable information regarding its rights and obligations with respect to the Non-ES&S Rental Equipment.
4. Warranty. ES&S warrants that any ES&S-manufactured scanning equipment included in the Rental Equipment ("Scanning Equipment") will perform in accordance with the specifications set forth in the Rental Equipment Documentation and will be free from defects in material and workmanship under normal use and service for the Rental Term (the "Warranty Period"). ES&S' sole obligation under this Section 4 shall be to repair or replace the Scanning Equipment or the applicable parts thereof, at its sole expense, at Customer's location or at ES&S's facilities, as determined by ES&S in its sole discretion. Any repaired or replaced Scanning Equipment or parts thereof shall be warranted only for the unexpired term of the original Warranty Period. All replaced Scanning Equipment or parts thereof will become the property of ES&S on an exchange basis. The warranty provided by ES&S under this Section 4 does not apply to and shall not require ES&S to repair or replace any item (i) which requires repair or replacement due to normal wear and tear caused solely by Customer use, (ii) which has been repaired, altered or transported by persons other than ES&S authorized Representatives, (iii) from which any serial number has been removed, defaced or changed, (iv) which is damaged due to accident, disaster, theft, vandalism, neglect, abuse, use for a purpose other than the purpose for which such item is designed or use which is not in accordance with instructions furnished by ES&S, (v) which has been subjected to physical, mechanical or electrical design alterations or any conversion by persons other than ES&S personnel, (vi) which has been used by any person other than Customer's employees or persons under Customer's direct supervision; (vii) which has been used in a site not meeting the specifications set forth in Section 2(a) above; (viii) has been used with ballots other than ES&S copyrighted ballots; or (ix) have been used with ballot code stock other than ballot code stock supplied or approved by ES&S.
5. Rental Payments. The rental payment for each item included in the Rental Equipment for the Rental Term (defined below) is set forth in Section 1 above, and the total amount thereof shall be paid in accordance with the terms of Section 1. Customer shall notify ES&S if it desires to rent additional items of Rental Equipment. If ES&S agrees to rent such items to Customer, the parties shall amend Section 1 of this Agreement to include such items within the definition of "Rental Equipment" and Customer shall pay to ES&S rental payments for each such item at ES&S's then-current rental rates.
6. Rental Term. The period during which Customer shall rent the Rental Equipment from ES&S shall be in effect from the Date of Contract Execution through December 15, 2012, unless earlier terminated pursuant to this Agreement (the "Rental Term"). The Rental Term shall terminate upon the first to occur of (i) a breach of any provision herein applicable to the Rental Equipment which has not been cured by the breaching party within thirty (30) days after it receives written notice of the breach from the non-breaching party (except a breach as provided in (iii) below which will require no notice); (ii) either party's providing thirty (30) days' prior written notice to the other party hereto of its desire to terminate the Rental Term; or (iii) Customer's failure to make any rental payment due hereunder within sixty (60) days after it is due. In the event of early termination by ES&S due to (a) a breach of this Agreement by Customer, (b) Customer's failure to pay any amounts owed under this Agreement or (c) the failure of Customer's Board of Supervisors to appropriate funds to make the payments due under this Agreement, Customer shall pay ES&S liquidated damages equal to the present value of the remaining monthly amounts owing hereunder, discounted at the rate of 8% per annum. Further, in the event of a termination by the Customer in accordance with Section 6(ii) above, Customer hereby agrees to promptly pay ES&S for all costs incurred and deliverables provided by ES&S through the effective date of such termination, including, but not limited to, any equipment and software delivered, shipping costs incurred, and services performed. No later than ten (10) calendar days following the termination of the Rental Term, Customer shall release the Rental Equipment to ES&S at its own expense and in the same operation, order, repair, condition and appearance as when received, subject to normal wear and tear. In the event Customer fails to release the Rental Equipment to ES&S no later than ten (10) calendar days following the termination of the Rental Term, Customer shall pay to ES&S a late return charge in the amount of \$500.00 per calendar day until the Rental Equipment is returned to ES&S in accordance herewith.

TERMS AND CONDITIONS RELATING TO SOFTWARE

7. Grant of License.
- a. In General. ES&S hereby grants to Customer a nonexclusive and nontransferable license during the Rental Term for its bona fide full-time employees to Use (defined below) the Software designated in Section 1.
 - b. Third Party Software. Customer acknowledges that ES&S does not own the Software designated in Section 1 as "Third Party Software" or the accompanying operating instructions, user manuals and training materials relating thereto (the "Third Party Software Documentation") (the ES&S Software Documentation and the Third Party Software Documentation sometimes collectively the "Software Documentation"). Customer further acknowledges that, except for the payment of license fees attributable to the Third Party Software and the Third Party Software Documentation (collectively the "Non-ES&S Software Items"), which shall be paid directly to ES&S pursuant to Section 1 above, all of its rights and obligations with respect to the Non-ES&S Software Items flow from and to the vendors of the Non-ES&S Software Items (the "Third Party Vendors"). Customer further acknowledges that it has received copies of all applicable license agreements for the Non-ES&S Software Items from the Third Party Vendors. None of the Non-ES&S Software Items has been independently authenticated in whole or in part by ES&S, and none of ES&S' representations, warranties, covenants or agreements set forth herein apply with respect to the Non-ES&S Software Items unless otherwise specifically stated herein.
 - c. Definition of Use. For purposes of this Agreement, the term "Use" shall mean the right to copy or utilize all or any portion of the instructions or data of the ES&S Software from tangible media supplied by ES&S ("Tangible Media"). The ES&S Software may be used only for internal purposes and shall not be used by, for, or on behalf of, third parties. "Use" shall also mean the right to retain and consult the ES&S Software Documentation. Customer's right to Use the ES&S Software and the ES&S Software Documentation shall not include the right to do any of the following:
 - i. Copy, in whole or in part, any ES&S Software (except for backup and archive purposes and provided that no more than one copy may be in existence at any one time for such purposes), any Tangible Media or any ES&S Software Documentation;
 - ii. Reverse engineer, decompile, disassemble, re-engineer or otherwise create or attempt to create or permit, allow or assist others to create the source code of the ES&S Software or the structural framework of the ES&S Software;
 - iii. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or the ES&S Software Documentation, in whole or in part, to or by any third party without Licensor's prior written consent;
 - iv. Modify, enhance or otherwise change the ES&S Software;
 - v. Use the ES&S Software except as specified in the ES&S Software Documentation or as otherwise authorized by ES&S in writing; or
 - vi. Use the ES&S Software on more items of Designated Equipment unless authorized in writing by ES&S.
8. Fees. The license fees for the ES&S Software, the ES&S Software Documentation, the Third Party Software and the Third Party Documentation (collectively the "Licensed Items") for the Rental Term are set forth in Section 1 above and shall be paid in accordance with the terms of Section 1.
9. Term: Termination. The license granted herein shall become effective on the date the ES&S Software is installed by Customer (the "Start Date") and shall remain in force during the Rental Term. Upon termination of the license, Customer shall immediately return the ES&S Software and any other Confidential Information in its possession or under its control (including any and all copies) to ES&S. Termination of the license pursuant to this provision is in addition to any other remedies available to ES&S at law or in equity.
10. Title: Copyright Notice. Customer acknowledges and agrees that: (a) all right, title and interest in and to the ES&S Software, the ES&S Software Documentation and the Tangible Media is owned by ES&S, and Customer has only a limited license to Use such items during the Software License Term. Customer agrees not to challenge ES&S's right, title and interest in and to the ES&S Software, the ES&S Software Documentation or the Tangible Media and to notify ES&S immediately if it becomes

aware of any such challenge. Customer shall include the copyright and proprietary rights notices which are set forth on each item of Tangible Media on any copies of the Software which are made from such item of Tangible Media. Likewise, Customer shall include the copyright and proprietary rights notices which are set forth on each item of Documentation on any copies thereof.

11. Export. Customer acknowledges that the laws and regulations of the United States may restrict the export of certain commodities and technical data of United States origin, including the Software, in any medium. Customer agrees that it shall not export the Software or the Documentation in any form without the appropriate United States and foreign government licenses. Licensee further agrees that its obligations pursuant to this Section 11 shall survive and continue after the termination of this Agreement.

TERMS AND CONDITIONS RELATING TO RENTAL EQUIPMENT AND SOFTWARE

12. Limitation on Liability. ES&S' total liability to Customer for any losses, damages, costs or expenses of any nature, whether direct or indirect, arising from or relating to ES&S' performance of this Agreement or the products or services provided by ES&S hereunder, shall be limited to the aggregate amount paid by Customer to ES&S for the product(s) or services(s) that caused the losses or damages or are the subject matter of the claim or cause of action. By entering into this Agreement, Customer agrees to accept responsibility for (i) the selection of the Rental Equipment and Software to achieve Customer's intended results; (ii) the use (Use) of the Rental Equipment and Software; (c) the results obtained from the use of the Rental Equipment and Software; and (d) the selection of, use of and results obtained from any equipment, software or services not provided by ES&S and used with the Rental Equipment or Software.
13. Shipment; Title and Risk of Loss. ES&S will ship the Rental Equipment and Software by common carrier to Customer on a date mutually agreed upon by ES&S and Customer, and risk of loss with respect to the Rental Equipment and Software shall pass to Customer when such items are delivered to Customer's place of business. Title to the Rental Equipment shall remain in ES&S. ES&S shall also bear the risk of loss with respect to the Rental Equipment (except that Customer shall bear the risk of loss with respect to, or damage to, the Rental Equipment which is caused by fire, the elements, theft, vandalism, negligent or intentional acts of Customer's employees or other events which are within the control of Customer). During the period in which this Agreement is in effect, Customer shall, at its sole expense, maintain the Rental Equipment in good operating condition and repair and protect the Rental Equipment from deterioration other than normal wear and tear and shall procure and maintain insurance on the Rental Equipment to adequately insure the risks of loss for which Customer is responsible hereunder. Upon request, Customer shall provide ES&S with copies of any and all policies procured and maintained by Customer insuring Customer's risks of loss hereunder. Customer shall not use the Rental Equipment for any purpose other than those for which it was designed and shall not, without the prior written consent of ES&S, alter the Rental Equipment or affix to or install on the Rental Equipment any accessory, equipment or device which was not supplied to it by ES&S. Customer shall not move the Rental Equipment from the place where it was originally installed without ES&S' prior written consent and shall make the Rental Equipment and any records pertaining thereto available to ES&S during regular business hours for inspection. Customer will not, without the prior written consent of ES&S and subject to such conditions as ES&S may impose for its protection, affix any item of Rental Equipment to any real property if, as a result thereof, such item of Rental Equipment will become a fixture under applicable state law.

STATE OF COLORADO

Department of State

1700 Broadway Suite 200

Denver, CO 80290

Phone: 303-894-2200

Fax: 303-869-4861



Scott Gessler
Secretary of State

Judd Choate
Director, Elections Division

SECURITY AND CONTINGENCY PLAN

INTRODUCTION

Pursuant to section 1-5-615(5) of the Colorado Revised Statutes and the Colorado Secretary of State's Election Rule 43, each county shall file a security plan with the Secretary of State which meets or exceeds the requirements of the rule.

This security plan must be submitted no later than sixty (60) days prior to the first election in which the procedures will be used. If no changes have occurred since the last security plan filed, the county need only affirm in this template that this is the case (see #5).

The following standard fillable form is designed to aid you in your completion and submission of the required security plan. This form may be completed online and then saved to your computer. Once you have saved the form to your computer, you will be able to submit the entire plan to the Secretary of State's office. Please refer to the instruction section below for more complete guidance.

INSTRUCTIONS

Spaces and check boxes are provided below for each required aspect of the security plan. Please fill out the form in its entirety, making sure to check all boxes where applicable. Additional pages may be attached to the end of the security plan as necessary.

Please review the "Attachments" section at the end of this document and provide the required samples, procedures and report as separate documents. Also, please ensure that the county's name is affixed to all additional pages and attachment pages to assist in identifying them in case the pages become separated from the plan.

When you have checked each applicable box and supplied all required information, please save the form to your computer. Once the form is saved, you may choose your method of submittal (email, regular mail, or fax). The Secretary of State's office requests that you email your plan as an attachment to voting.systems@sos.state.co.us.

Please contact Jerome Lovato via phone at 303-894-2200 ext. 6355 or via email at jerome.lovato@sos.state.co.us with any questions you may have.

State of Colorado Security and Contingency Plan

County: Saguache

Name of person submitting plan: Carla Gomez

Address: PO Box 176, 501 4th St, Saguache, CO 81149

Email: Cgomez@Saguachecounty-Co.Gov

1. **Date of the election for which this plan will be followed:** 11/06/ 2012
2. **Election (Coordinated, General, Primary, Recall):**
General
3. **Type of Election (Mail Ballot, Polling Place, Vote Center):**
Polling Place
4. **Voting System Vendor (Check all that apply):**
 - ES&S
 - Hart
 - Premier
 - Sequoia
5. **Have there been any changes since the filing of the last security plan with the Secretary of State? [Rule 43.4]**
 - Yes (Continue to Question 4)
 - No (Please stop here and send this page)

State of Colorado Security and Contingency Plan

Physical Locking Mechanisms and Seals [Rule 43.2.2]

Note: Two employees or election judges must verify, and indicate by signing and dating the chain-of-custody log, that all serial numbers match the logged serial numbers.

6. Direct Record Electronic Devices:

- The county will place a seal over any removable card or cartridge inserted into the unit, or over the slot or door covering an inserted card or cartridge.
- The county will place a seal over any removable card slot or cartridge slot when no card or cartridge is inserted into the unit.
- The county will place a seal over each flash card slot, door, or access panel.

Check one of the following:

- The county will place seals at the seams of the case, or at key entry points such as screw access points.
- Seals are not required because the HASH values can be verified.

7. Judge's Booth Controller (JBC):

- The county will place a seal over any removable card or cartridge inserted into the unit, or over the slot or door covering an inserted card or cartridge.
- The county will place a seal over any removable card slot or cartridge slot when no card or cartridge is inserted into the unit.

Check one of the following:

- The county will place seals at the seams of the case, or at key entry points such as screw access points.
- Seals are not required because the HASH values can be verified.

8. V-VPAT Units:

- The county will verify that no votes have been cast on the paper record prior to the V-VPAT being attached to a specific voting device.
- V-VPAT records will remain in the V-VPAT canister, or will be sealed and secured in a suitable device for protecting privacy.

9. Optical Scanners:

- The county will place a seal over each card or cartridge inserted into the unit, or over any door or slot containing the card or cartridge.
- The county will place a seal over each empty card or cartridge slot or door covering the area where the card or cartridge is inserted.

State of Colorado Security and Contingency Plan

10. Memory Cards or Cartridges:

- The county will assign and securely affix a permanent serial number to each removable card or cartridge.
- The county will transfer and store any removable card or cartridge that is not sealed in a voting machine in a secure container with at least one seal.
- The county clerk and recorder will maintain a written or electronic log to record card or cartridge seal serial numbers and track seals for each voting unit. The county clerk and recorder will be notified if control of a card or cartridge or door or slot for a card or cartridge is breached before an election, and will follow the procedures specific to the incident outlined in Rule 43.2.11.

Individuals with Access to Keys, Door Codes, and Vault Combinations [Rule 43.2.3]

11. Provide titles and dates of CBI background check for employees with access to areas with election equipment, ballots, or computer systems:

We will have this completed by October 10
, 2012.

12. Secure Area and Equipment Access:

- The county will change keypad door codes or locks, vault combinations, computer and server passwords, encryption key codes, and administrator passwords at least once this year prior to the first election of the year.

13. Employee Access:

- Access to the code, combination, password, or encryption key for the storage area for voting equipment and the mail-in ballot counting areas is restricted to employees as defined in Rule 43.1.3.
- Access to the code, combination, password, or encryption key for the mail-in ballot storage area and counting room or tabulation workstations is restricted to 10 employees as defined in Rule 43.1.3.
- Each individual who has access to the central election management system or central tabulator has their own unique username and password. No individual will use any other individual's username or password.
- The county will maintain a log of each person who enters the ballot storage room, including the person's name, signature, and date and time of entry.
- Computer room access is limited to authorized employees and election judges only, and the delivery of ballots between the preparation room and computer room will be performed by messengers or runners wearing distinguishing identification.

State of Colorado Security and Contingency Plan

Temperature-controlled Storage [43.2.4]

14. Storage of equipment and records

- Servers and workstations will be stored at a maximum temperature of 90 degrees Fahrenheit.
- DREs will be stored between 50 degrees Fahrenheit and 90 degrees Fahrenheit.
- Optical Scanners will be stored between 50 degrees Fahrenheit and 90 degrees Fahrenheit.
- V-VPAT records will be stored between 50 degrees Fahrenheit and 90 degrees Fahrenheit; in less than 80% humidity; and at least four inches off the floor.
- Paper ballots will be stored in less than 80% humidity and at least four inches off the floor.
- Video Data Records will be stored between 50 degrees Fahrenheit and 90 degrees Fahrenheit; in less than 80% humidity; and at least four inches off the floor.

Security Cameras or Other Surveillance [43.2.5]

15. Video security surveillance recording for 60 days prior to an election and continuing through 30 days following the election is required. If a recount ensues, recording will continue through completion of the recount.

- The video surveillance system meets the requirements as outlined in Rule 43.2.5(A).
- The county will adequately and continuously light the area(s) subject to video surveillance to provide visibility for video recording.

If the county has 50,000 or more registered voters, then the county will make video security surveillance recordings of the following areas, excluding voting booths:

- All areas in which election management software is used, including but not limited to programming, downloading memory cards, uploading memory cards, tallying results, and results reporting.
- All areas used for processing mail-in ballots, including but not limited to areas used for Signature Verification, tabulation, or storage of voted ballots beginning at least 35 days prior to the election and continuing through at least 30 days after the election, unless there is a recount or contest. If a recount or contest occurs, the recording will continue through the conclusion of all such activity.
- The storage area for all voting equipment.

If the county has fewer than 50,000 registered voters then the county will make video security surveillance recordings of:

- All areas, excluding voting booths, in which election management software is used, including but not limited to programming, downloading memory cards, uploading memory cards, tallying results, and results reporting.

State of Colorado Security and Contingency Plan

Equipment Maintenance Procedures [Rule 43.2.6]

16. Additional requirements to Rule 11.

- The county will store all equipment throughout the year with seals over the memory card slots for each device. The county will maintain a log of the seals used for each device consistent to the logs used for tracking Election Day seals.
- For equipment being sent to the vendor for offsite repairs/replacements, the county will keep a maintenance log for the device that will contain the following: the model number, serial number, and the type of device; the firmware version; the software version (as applicable); the printed name and signature of the person sending the equipment; and the date of submission to the vendor.
- When a vendor provides on-site maintenance of equipment, vendor personnel will annually provide to the county a CBI or equivalent background check for all vendor personnel that will have access to any component of the voting system. The county will keep current CBI or equivalent background check information on file. Additionally, an employee will escort the vendor's representative at all times while on-site. At no time will the voting system vendor have access to any component of the voting system without supervision by an employee.
- Upon completion of any maintenance, the county will verify or reinstate the trusted build and conduct a full acceptance test of equipment that will, at a minimum, include the Hardware Diagnostics test, as indicated in Rule 11, and conduct a mock election in which an employee(s) will cast a minimum of five ballots on the device to ensure tabulation of votes is working correctly. The county will maintain all documentation of the results of the acceptance testing on file with the specific device.

Transportation of Equipment, Memory Cards, Ballot Boxes, and Ballots [43.2.7]

Note: Two employees or election judges must verify, and indicate by signing and dating the chain-of-custody log, that all serial numbers match the logged serial numbers.

17. Describe the method for transporting equipment and ballots both to remote voting sites and back to the central elections office or storage facility.

Either a clerk's employee or an election judge will drop off the equipment and ballots to the polling location. Two judges representing different parties will return all of the supplies, equipment and ballots to clerk's office after the election

18. Transportation of equipment and ballots both to remote voting sites and back to the central elections office or storage facility. Check all that apply.

Transportation by County Personnel

- County personnel delivering equipment and ballots will wear identification provided by the county.
- The integrity and serial number of each seal will be verified by election judges or county personnel at both the shipping and receiving locations.

State of Colorado Security and Contingency Plan

- If evidence of tampering exists or serial numbers do not agree, the remedies under Rule 43.2.11 will be followed.

Transportation by Election Judges

- Election judges receiving equipment and/or ballots from county personnel will verify seal tracking log for each device and/or ballots.
- Receiving election judge will have two election judges at drop-off location verify seal-tracking log for each device and/or ballots.
- If evidence of tampering exists or serial numbers do not agree, the remedies under Rule 43.2.11 will be followed.

Transportation by Contract

- County will perform CBI background checks on the specific individuals who will be delivering the equipment.
- The integrity and serial number of each seal will be verified by election judges or county personnel at both the shipping and receiving locations.
- If evidence of tampering exists or serial numbers do not agree, the remedies under Rule 43.2.11 will be followed.

19. Transportation of voting equipment to and from the voting location. Check all that apply.

If memory cards or cartridges are removed from voting devices at remote voting locations:

- Before removing a memory card or cartridge, two election judges will inspect and verify that all seals on the device are intact and that the serial numbers on the seals match those listed on the chain-of-custody log. Both election judges will sign and date the chain-of-custody log prior to breaking the seal. The elections judges will contact the county clerk if there is any evidence of possible tampering with a seal, or if the serial numbers do not match those listed in the chain-of-custody log.
- Election judges will place the memory cards or cartridges in a sealable transfer case that will be sealed with at least one seal. Additional seal logs will be maintained for the transfer case of the memory cards or cartridges.
- Election judges will place new seals over the empty memory card/cartridge slot and/or door and document the seal numbers used.
- At least two county personnel or election judges will accompany the transfer case containing the memory card/cartridge to the drop off location. Seal integrity and serial numbers will be verified, and logs will be signed and dated by election judges receiving the equipment. The elections judges will contact the county clerk if there is any evidence of possible tampering with a seal, or if the serial numbers do not match those listed in the chain-of-custody log.

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- County personnel or election judges transporting secured voting equipment will maintain chain-of-custody logs. The elections judges will contact the county clerk if there is any evidence of possible tampering with a seal, or if the serial numbers do not match those listed in the chain-of-custody log.

If voting devices are delivered with memory cards or cartridges intact:

- Two county personnel or election judges will verify that all seals are intact at the close of polls. Election judges will sign and date the chain-of-custody log with such indication. The elections judges will contact the county clerk if there is any evidence of possible tampering with a seal, or if the serial numbers do not match those listed in the chain-of-custody log.
- At least two county personnel or election judges will accompany the secured equipment to the drop-off location. Seals will be verified, and logs will be signed and dated by the county election official receiving the equipment. The elections judges will contact the county clerk if there is any evidence of possible tampering with a seal, or if the serial numbers do not match those listed in the chain-of-custody log.
- Upon confirmation that the seals are intact and bear the correct numbers, the memory card or cartridge will be removed and uploaded into the central count system.
- Election judges will secure the equipment by placing a tamper-evident seal over the memory card slot and by updating the documentation to reflect the new seal number(s).

20. Transportation of ballot boxes:

- All ballot boxes that contain voted ballots will be sealed so that no person can access the ballots without breaking a seal. The election judges will record all seals in the chain-of-custody log and two election judges will verify, and indicate by signing and dating the log, that the required seals are intact.
- Two county personnel or election judges will accompany all ballot boxes that contain voted ballots at all times, except when the ballot box is located in a vault or secure physical location.
- The ballot box exchange requirements of section 1-7-305, C.R.S., are met if a chain-in-custody log is completed for each ballot box.

Contingency Plans [43.2.8]

21. Emergency Contingency Plans for Voting Equipment and Voting Locations:

- All remote devices used in an election will have sufficient battery backup for at least two hours of use.
- In the event of a serious or catastrophic equipment failure or equipment being removed from service at one or more polling locations, or there is not adequate backup equipment to meet the requirements of Section 1-5-501, C.R.S., the county clerk and recorder will notify the Secretary of State that provisional ballots or mail-in ballots are being used as an emergency voting method.

22. A section entitled "Contingency Plan" must be filed with the security plan and must include the following:

State of Colorado Security and Contingency Plan

- Evacuation procedures for emergency situations including fire, bomb threat, civil unrest, and any other emergency situations identified by the designated election official
- Back up plans for emergency situations including fire, severe weather, bomb threat, civil unrest, electrical blackout, equipment failure, and any other emergency situations identified by the designated election official
- An emergency checklist for election judges
- A list of emergency contact numbers provided to election judges
- The county will submit any additional physical security procedures not discussed in this rule to the Secretary of State for approval prior to the election.

Internal Controls for the Voting System [43.2.9]

23. The county will change all passwords and limit access to the following areas:

- Software. The county will change all software passwords once per calendar year prior to the first election. This includes any boot or startup passwords in use, as well as any administrator and user passwords and remote device passwords.
- Hardware. The county will change all hardware passwords once per calendar year prior to the first election. This includes any encryption keys, key card tools, supervisor codes, poll worker passwords on smart cards, USB keys, tokens, and voting devices themselves as it applies to the specific system.
- Password Management. The county will limit access to the administrative passwords to the election management software to two employees. The county will limit access to passwords for all components of the election software and hardware to two employees. The county may provide an additional 10 employees with access to the administrative passwords for the software components, and an additional 10 employees with access to the administrative passwords for the hardware components of the voting system.
- Internet Access. The county will not connect or allow a connection of any voting system component to the Internet.
- Modem Transmission. The county will not connect any component of the voting system to another device by modem except for the vote tally software as allowable by the certification of the specific device.
- Storage Facility. The county will maintain a storage facility access log that details employee name, date, and time of access to the storage facility in which the software, hardware, or components of any voting system are maintained.

24. A county using modem devices to transmit unofficial results shall meet the following requirements:

- The county will use a modem device only to transmit test data or unofficial results only after all steps to close the polls are complete and summary tapes have been printed

State of Colorado Security and Contingency Plan

- The county will not use a modem for any programming, setup, or individual ballot-casting transmissions.
- The county will change the receiving telephone number for the modem transmission at least once per calendar year prior to the first election.
- A maximum of six employees will have access to the telephone number of the modem receiving the transmission. The county will not publish or print the receiving modem telephone number for any election judge. To the extent possible, the county will program the telephone number into the device and use the device in a way that hides the display of the number from the view of election judges and voters.

25. Security Training for Election Judges [Rule 43.2.10]

Anticipated time of training: 10/17/2012

Location of training: Saguache County Road and Bridge office 301 3rd St., Saguache, CO 81149

Number of election judges/field technicians receiving the security training: 13

- The county will conduct a separate training module for field technicians and election judges responsible for overseeing the transportation and use of the voting systems, picking up supplies, and troubleshooting device problems throughout the Election Day.

The following topics shall also be addressed in the training:

- Proper application and verification of seals and chain-of-custody logs
- How to detect tampering with voting equipment, memory cards or cartridges, or election data on the part of anyone coming in contact with voting equipment, including employees, other election judges, vendor personnel, or voters;
- Ensuring privacy in voting booths
- The nature of and reasons for the steps taken to mitigate the security vulnerabilities of voting systems
- V-VPAT requirements
- Chain-of-custody requirements for voting equipment, memory cards or cartridges, and other election materials
- Ballot security
- Voter anonymity
- Recognition and reporting of security incidents

State of Colorado Security and Contingency Plan

Remedies [Rule 43.2.11]

26. The following procedures will be followed if a seal is broken or if there is a discrepancy in a chain-of-custody log:

- Election judges will immediately notify the county clerk and recorder, who will investigate, complete and submit to the Secretary of State an internal incident report, and follow the appropriate remedy as indicated in this rule or as directed by the Secretary of State.

27. The following procedures will be followed if the county clerk and recorder conducts an investigation in accordance with Rule 43.2.11(a) and is unable to determine why a seal was broken or why a discrepancy exists in a chain-of-custody log:

- The county clerk and recorder will file an incident report with the Secretary of State as soon as practicable, but no later than the close of the canvass period for the election. Any unit involved will undergo the reinstatement or verification of the trusted build.

28. The following remedial actions are required if a device was tampered with (the county clerk and recorder may determine additional requirements based on the details of the incident report):

For instances where the county can display, verify, or print the trusted build hash value (MD5 or SHA-1) of the firmware or software:

- The county clerk and recorder election official will document and verify that the hash value matches the documented number associated with the Trusted Build for the software or firmware of that device.

If the evidence indicates that the tampering occurred prior to the start of voting:

- The election judges will seal the device and securely deliver it to the county clerk and recorder.
- The county clerk and recorder, or his or her designee, will remove and secure the memory card following the procedures in Rule 43.2.2(D). The county clerk and recorder, or his or her designee, will follow the State instructions for installing/verifying the trusted build for the specific device. The county clerk and recorder, or his or her designee, will install a new, secure memory card into the device, conduct a hardware diagnostics test as prescribed in Rule 11, and proceed to conduct a logic and accuracy test on the machine in full election mode, casting at least 25 ballots on the device. The county will maintain on file all documentation of testing and chain-of-custody for each specific device.
- The county will complete the necessary seal process and documentation to re-establish the chain of custody for the device and new memory card.
- The county will set the machine to election mode ready for a zero report.

State of Colorado Security and Contingency Plan

If the evidence indicates that the tampering occurred after votes were cast on the device but before the close of polls:

- The election judges will seal the device and securely deliver it to the county clerk and recorder.
- The county clerk and recorder, or his or her designee, will close the election on that device, and perform a complete manual verification of the paper ballots (or V-VPAT records) to the summary tape printed on the device that represents the record of votes on the memory card.
- If the totals do not match then only the paper record will be accepted as the official results for that device. The county clerk and recorder will re-seal and secure the device and immediately report the discrepancy to the Secretary of State. The county will not use the device for the remainder of the election unless the trusted build is reinstalled.
- If the totals match, the county may upload the memory card into the tally software at the close of polls.
- After verifying the totals, the county will secure the paper records and memory card with seals and a chain-of-custody log.
- The county will place a new and secured memory card in the device. The county clerk and recorder, or his or her designee, will verify or reinstall the trusted build for the device. The county clerk and recorder, or his or her designee, will conduct a hardware diagnostics test as prescribed in Rule 11. The county will maintain on file all documentation of testing and chain-of-custody for the device.
- The county will complete the necessary seal process and documentation to establish the chain-of-custody for the device and memory card.
- At the conclusion of the election, the county will conduct a full (all races) post-election audit on the device and results reported to the Secretary of State as required by Rule 11. This requirement is in addition to the random selection conducted by the Secretary of State.

If the evidence indicates that the tampering occurred is after the close of polls:

- The election judges will seal the device and securely deliver it to the county clerk and recorder
- The county clerk and recorder, or his or her designee, will perform a complete manual verification of the paper ballots (or V-VPAT records) to the summary tape printed on the device that represents the record of votes on the memory card.
- If the totals do not match then only the paper record will be accepted as the official results for that device. The county clerk and recorder will re-seal and secure the device and immediately report the discrepancy to the Secretary of Stat. The county will not use the device for the remainder of the election unless trusted build is reinstalled.

State of Colorado Security and Contingency Plan

- If the totals match, the county may upload the memory card into the tally software at the close of polls.
- After verifying the totals, the county will secure with seals and properly document the paper records and memory card.
- The county clerk and recorder, or his or he designee, will follow the State instructions for installing/verifying the trusted build for the specific device and complete the necessary seal process and documentation to establish the chain of custody for the device.
- During the canvass process, the county will conduct a full (all races) post-election audit on the device and report the results to the Secretary of State as required by Rule 11. This requirement is in addition to the random selection conducted by the Secretary of State.

29. Attachments.

- The county will submit with the security plan sample copies of all referenced forms, schedules, logs, and checklists.

Conditions for Use

Please complete the sections applicable to your county.

ES&S Voting Equipment Additional Requirements:

- The voting system will only be used on a closed network or in a stand-alone fashion.

Counties shall indicate the physical environment and/or procedural changes made to secure the database and/or network as required (Software Condition #1a).

Saguache County will not be using Unity software for this election. Official results will be tabulated from the paper record generated by the machine..

Counties shall indicate the manner of achieving additional logging requirements for the voting system software (Software Condition #3b).

Saguache County will not be using Unity software for this election. Official results will be tabulated from the paper record generated by the machine..

Hart Voting Equipment Additional Requirements:

- The voting system will only be used on a closed network or in a stand-alone fashion.

Election Programming

- The county will program the equipment.
- The county will contract with the vendor or third party to program the equipment.

Counties shall indicate the physical environment and/or procedural changes made to secure the database and/or network as required (Software Condition #1a).

State of Colorado Security and Contingency Plan

Counties shall indicate the method for maintaining the integrity of the master Tally database, and describe the associated details for submitting additional filings to the Secretary of State (Software Condition #1b).

Counties shall indicate the manner of achieving additional logging requirements for the voting system software (Software Condition #3b).

Premier Voting Equipment Additional Requirements:

The voting system will only be used on a closed network or in a stand-alone fashion.

Counties shall indicate the physical environment and/or procedural changes made to secure the database and/or network as required (Software Condition #1a).

Saguache County will not be using software for this election. Official results will be tabulated from the paper record generated by the machine.

Sequoia Voting Equipment Additional Requirements:

The voting system will only be used on a closed network or in a stand-alone fashion.

Counties shall indicate the physical environment and/or procedural changes made to secure the database and/or network as required (Software Condition #1a).

Counties shall indicate the method for maintaining the integrity of the master WinEDS database, and describe the associated details for submitting additional filings to the Secretary of State (Software Condition #1b).

Counties shall indicate the manner of achieving additional logging requirements for the voting system software (Software Condition #2b).

Counties shall indicate the physical environment and/or procedural changes made to secure the database and/or network as required (Central Count Condition #2).

Stefanie Mann

From: Marilyn Marks <marilyn@aspenoffice.com>
Sent: Friday, January 04, 2013 12:27 PM
To: Stefanie Mann
Cc: Suzanne Staiert; Lisa Cyriacks
Subject: Amendment 2 to Saguache HAVA complaint
Attachments: 20110622-HAVA-55-11-0001Dismissal.pdf - Adobe Acrobat.pdf

Stefanie,

Please see the attached correspondence from the CDOS related to my prior HAVA complaint, which is the subject of active litigation.

Please note on page 4 that the department committed to ensure compliance with the Conditions for Use of the Unity System Software in the next election.

That commitment speaks to the need for the Unity System software. That commitment was not honored for the November 2011 statewide election, nor the primary and general elections of 2012. Please consider in your analysis of our current complaint that the problem with the lack of Unity system software has been acknowledged by the department but actions committed by the department were not taken.

Please let me know if you have questions.

Marilyn Marks
CitizenCenterCO@gmail.com
www.TheCitizenCenter.org
970-404-2225



June 22, 2011

Ms. Marilyn Marks
1520 Homestake Drive
Aspen, CO 81611

Re: *Complaint # SOS-HAVA-55-11-0001 – Dismissal of Complaint*

Dear Ms. Marks:

On April 4, 2011, the Secretary of State received your complaint, in which you allege that several violations of Title III of the Help America Vote Act of 2002, 42 U.S.C. section 15301 et seq. (HAVA), occurred during the 2010 General Election in Saguache County. Our office has completed a preliminary review of your complaint in accordance with section 1-1.5-105(2)(k), C.R.S. After careful consideration, the Secretary of State has concluded that you lack standing to file a HAVA administrative complaint. Therefore, your complaint is dismissed. In addition, the Secretary of State has concluded that, because each alleged violation in your complaint either was previously identified and remedied by the Secretary of State or does not constitute a violation of Title III of HAVA, your complaint would be dismissed even if you had standing to file a complaint.

Standing to file a HAVA complaint under Colorado law

Under section 1-1.5-105(2)(b), C.R.S., only a "person who has either been personally aggrieved by or has personally witnessed a violation of Title III of HAVA" may file a HAVA complaint. You lack either element of section 1-1.5-105(2)(b), C.R.S. and thus have not established standing to file a complaint.

1. Personally witness violation of Title III of HAVA

You do not allege to have personally witnessed a violation of Title III of HAVA. While you allege to have personally witnessed video surveillance and personal video records that purport to show violations, such after-the-fact observation does not satisfy the "personally witnessed" requirement in section 1-1.5-105(2)(b), C.R.S. In order to satisfy this standing requirement, you must have been present when the alleged violation of Title III of HAVA occurred. *See Oxford American College Dictionary 1018 (2002) (defining "personally" as "with the personal presence or action of the individual specified; in person.")*.

2. Personally aggrieved by a violation of Title III of HAVA

You claim to have been personally aggrieved by alleged violations of Title III of HAVA during the 2010 General Election in Saguache County based on the following:

- You are a Colorado resident and a registered elector;
- You have a personal interest in accurate reporting of county results for statewide races and ballot questions;
- You have a personal interest in accurate reporting of county results for all races to which you have contributed money or volunteered time;
- You have a personal interest in local issue elections where state funds are at stake; and
- You have a general public policy interest in the fair and accurate conduct of elections in Colorado.

The phrase “personally aggrieved” is not defined in Article 1.5 of Title 1, C.R.S. However, the term “aggrieved” is defined for the purpose of establishing standing under Colorado’s State Administrative Procedures Act (APA), which similarly limits standing to “parties adversely affected or aggrieved by agency actions.” Section 24-4-106(1), C.R.S. Because a HAVA complaint implicates a state administrative process, the Secretary of State adheres to the standing requirements established under the APA.

Under the APA, “aggrieved” means “having suffered actual loss or injury or being exposed to potential loss or injury to legitimate interests including, but not limited to, business, economic, aesthetic, governmental, recreational, or conservational interests.” Section 24-4-102(3.5), C.R.S. Colorado Courts have interpreted this definition to require “an injury in fact to an interest that, as a matter of law, is protected under the relevant statutory scheme” *Hawes v. Colorado Div. of Ins.*, 32 P.3d 571, 573 (Colo. Ct. App. 2001) (citing *Cloverleaf Kennel Club, Inc. v. Colorado Racing Com.*, 620 P.2d 1051, 1054 (Colo. 1980)).

Consistent with the APA standard, a complainant must have suffered actual personal loss or injury or potential personal loss or injury to legitimate interests protected under Title III of HAVA in order to satisfy standing under Colorado’s HAVA administrative complaint procedure. Your complaint implies that you and all Colorado residents and voters have an indirect interest in the 2010 General Election in Saguache County. This expands “aggrieved” beyond the applicable definition because you have failed to allege actual personal loss or injury or potential personal loss or injury to legitimate interests protected under Title III of HAVA.

You argue that you have a personal interest in the election as a donor of time and money to statewide candidates who were on the ballot in the County. However, you have identified no loss or injury or potential loss or injury to yourself as a result of this interest, but rather assert “any meaningful negative impact on the reported results of those candidates has implications for public policy and on [the candidates’] future candidacy for office.” Moreover, your asserted interest is not protected under any provision of Title III of HAVA.

You further assert standing based on potential negative fiscal impact to the state that could result if the Center School District bond measure, which implicated \$20 million in state BEST funds, was improperly decided. Again, your potential interest here (presumably as a taxpayer) is not personal in the sense that you have claimed no loss or injury or potential loss or injury to yourself. Indeed, the general interest you assert could be asserted by any person in Colorado and thus cannot not be considered “personal” as required under section 1-1.5-105(2)(b), C.R.S. Furthermore, you have not asserted an interest that is protected under any provision of Title III of HAVA.

In sum, you have not identified any actual personal loss or injury to yourself, nor have you asserted an interest that is specifically protected under the provisions of Title III of HAVA that you claim were violated during the 2010 General Election in Saguache County. Therefore, you have not been personally aggrieved for the purposes of section 1-1.5-105(2)(b), C.R.S. Because you do not meet Colorado's requirements for standing to file a HAVA complaint, the Secretary of State is statutorily bound to dismiss your complaint.

No alleged violations of Title III of HAVA that require further investigation or remedy by the Secretary of State

Although your complaint must be dismissed for lack of standing, the Secretary of State takes seriously the allegations in your complaint. As such, we have reviewed each alleged violation of Title III of HAVA. After review, we have determined that, because the violations alleged in your complaint either were previously identified and remedied by the Secretary of State or do not constitute violations of Title III of HAVA, your complaint would be dismissed even if you did meet the standing requirements under section 1-1.5-105(2)(b), C.R.S. An explanation regarding each alleged violation follows.

Alleged violation of section 301(a)(1)(A)(i) - This provision requires that voting systems permit voters to verify or change their vote choices in private before ballots are counted. You have alleged that Saguache County violated the provision because of the general lack of privacy offered to voters at polling places in the County. This does not appear to be a violation of section 301(a)(1)(A)(i), because this provision is not a general privacy requirement, but rather a voting system standard.¹ Therefore, any violation of this provision would require evidence of a noncompliant voting system, which you have not provided.

While it does not appear that Saguache County violated section 301(a)(1)(A)(i), the County did not provide sufficient privacy for voters as required by state law.² As you note in your complaint, our office identified these violations while observing the 2010 General Election in Saguache County. Specifically, you cite as evidence in your complaint a November 5, 2010 memo from Secretary of State Training Coordinator Amy Wilson to me, which details Ms. Wilson's observations during the 2010 Election. Ms. Wilson identified several instances where voters were not provided ample opportunity to vote their paper ballots in private due to insufficient numbers of voting booths at some polling locations.

Whether this matter concerns HAVA or state law, the Secretary of State has committed to ensuring that the privacy issues identified by our office during the 2010 General Election in Saguache County do not occur in the future. In her memo, Ms. Wilson recommended a number of practices Saguache County should implement in order to provide adequate voter privacy. The Secretary of State will train and assist Saguache County before and during the next election in order to implement these and other best practices. (See "Report in Response to Election Complaints #55-10-0014 and #55-10-0017," available at <http://www.sos.state.co.us/pubs/elections/HAVA/HAVAhome.html>).

¹ Section 301(a)(1)(A) limits its requirements to the "voting system (including any lever voting system, optical scanning voting system, or direct electronic system)" (emphasis added).

² See sections 1-5-501; 1-5-503; and 1-7-110(2), C.R.S., which require adequate voting booths for paper ballot elections and set forth privacy standards for polling places.

Alleged violation of section 301(a)(1)(B)(i) - This provision requires voter education on the effect of casting multiple votes for an office, and requires instructions on how to correct a ballot (including instructions on casting a replacement ballot) before the ballot is cast and counted. You allege, and the Secretary of State agrees, that Saguache County did not comply with the voter education requirements of section 301(a)(1)(B)(i). As you are aware, Ms. Wilson identified this issue in her memo to me. Having previously identified the violation, the Secretary of State has determined that the appropriate remedy is further training and assistance before and during the next election to ensure Saguache County complies with section 301(a)(1)(B)(i).

Alleged violation of section 301(a)(5) - This provision addresses acceptable error rates for voting systems. It requires that voting systems meet the error rate threshold established under section 3.2.1 of the Voting System Standards issued by the Federal Election Commission. You allege Saguache County violated section 301(a)(5), however there is no evidence to support this claim. Saguache County used the ES&S M650 central count optical scanner, a model that meets the Federal Election Commission's error rate standards. Under the Federal Election Commission's regulations, the maximum acceptable error rate for a voting system during the testing process is one in 500,000 ballot positions. The M650 system was tested in January, 2005 by an independent testing authority and was found to be in compliance with section 3.2.1. Therefore, the Secretary of State concludes that no violation of section 301(a)(5) has occurred.

In support of your allegation, you provide a list of issues that occurred or are alleged to have occurred during the operation of the M650 voting system before, during, and after the 2010 General Election in Saguache County. The Secretary of State speaks to many of these issues in its "Report in Response to Election Complaints #55-10-0014 and #55-10-0017" and is committed to assisting Saguache County in implementing the Conditions for Use of the M650 voting system and meeting the state's Logic and Accuracy Testing requirements prior to the next election.

Alleged violation of section 301(a)(2) - On June 6, 2011 you submitted an addendum to your complaint alleging a violation of section 301(a)(2), which requires that voting systems produce a paper record with a manual audit capacity. According to the Election Assistance Commission, the requirements of section 301(a)(2) are met "if the voting system conforms and complies with Sections 2.2.5.2.1 and 2.5.3.1 of the [Federal Election Commission's Voting System Standards]."³ The M650 system was found to comply with both sections during the 2005 test conducted by the independent testing authority. In addition, the ES&S Unity Voting System software was tested by an independent testing authority and found to comply with the Federal Election Commission's Voting System Standards. Therefore, the Secretary of State concludes that no violation of section 301(a)(2) has occurred.

You reference, as evidence of a violation of section 301(a)(2), Secretary of State documents showing that the Unity Voting System software failed certain audit capacity tests conducted by our office, which led to Conditions for Use of the Unity software. The Secretary of State conducted these tests to determine compliance with State Election Rule 45, not HAVA. Therefore, the issues identified during testing do not implicate Title III of HAVA. However, as with the M650 voting system, the Secretary of State will work with Saguache County prior to

³ *How to determine if a voting system is compliant with Section 301(a) – a gap analysis between 2002 Voting System Standards and the requirements of Section 301(a)*, EAC Advisory 2005-004 (July 20, 2005).

and during the next election to ensure compliance with the Conditions for Use of the Unity Voting System software.

Alleged violation of section 302(a)(4) - This provision requires that all eligible votes cast by provisional ballot be counted in accordance with state law. In support of your allegation that Saguache County violated section 302(a)(4), you have included with your complaint a copy of a report of provisional ballot statistics for the 2010 General Election in Saguache County. You specifically point to eleven provisional ballots that were accepted only for federal and state races. You state that the voters who cast these ballots “likely should have been allowed to vote in county-wide elections,” however you have not provided a basis for this claim. In Colorado, each accepted provisional ballot is assigned a code by the county, which identifies the reason for acceptance. The eleven ballots in question were assigned the acceptance code “AFS,” which, according to Election Rule 26.5.3, means each voter was either registered in the county but voted in the wrong precinct or moved less than thirty days before the election from another county in which he or she was registered and voted in the new county. Under either circumstance, sections 1-8.5-108(2) and (3), C.R.S., require that the county accept each voter’s provisional ballot but only count the votes for federal and statewide races for which the voter is eligible to vote. The Secretary of State has no reason to believe these provisional ballots were improperly counted based on the evidence you submitted, and you have provided no evidence to indicate that the county incorrectly coded these ballots.

Voter eligibility in special districts - no HAVA violation cited - You further allege Saguache County failed to properly determine voter eligibility for special district contests in the County, however, you have not cited a violation of Title III of HAVA as part of your allegation. The Secretary of State has nonetheless reviewed your allegation and concluded that, based on the information you have provided, no violation occurred.

You allege ballot stubs were removed from mail ballots by Saguache County staff prior to mailing, and as a result, voter eligibility “could not be determined [when mail ballots were returned] without compromising the privacy of the voter.” Your concern that this compromises the privacy of the voter is incorrect. The removal of ballot stubs does not compromise voter privacy nor does it alter the processes for determining voter eligibility.

Ballot stubs are not used to determine voters’ eligibility to vote in particular races or on particular issues. Nothing in statute contemplates or requires the use of ballot stubs to determine voter eligibility. There are differing approaches across counties as to how ballot stubs are used, and in some cases, ballot stubs are not even required.⁴ Counties adhere to specific processes and safeguards before ballots are mailed to ensure each voter receives the proper ballot style. Because this process occurs before ballots are mailed, counties do not check voters’ eligibility to vote in particular races and on particular issues when ballots are returned.

Moreover, while counties are required by law to ensure that each mail ballot is returned by the proper voter,⁵ ballot stubs are not used in this determination. Rather, counties use signature verification, the process of comparing the voter’s signature on file in the statewide voter registration database with the signature on the back of the return envelope, to safeguard against voter fraud. Once this process is complete, the ballot is separated from the return envelope, at

⁴ See section 1-5-407(1.6), C.R.S. (“No ballot stub is required for a ballot produced on demand . . .”).

⁵ Section 1-8-114, C.R.S. (requiring the voter to complete a self-affirmation on the return envelope); Section 1-8-114.5, C.R.S. (requiring verification of each voter’s signature on the self-affirmation).

which point, whether a ballot stub is attached to the ballot or not, the ballot and the envelope remain separated in order to ensure voter privacy. If a ballot stub is attached to the ballot, it is removed after the ballot has been separated from the envelope. Neither the ballot nor ballot stub are ever reconciled with the return envelope. Because ballot stubs are not a part of the post-return verification process, Saguache County's alleged removal of ballot stubs prior to mailing would not have jeopardized voter privacy.

Because you have not alleged deficiencies in Saguache County's signature verification process or its processes for determining voter eligibility before ballots are mailed, the Secretary of State concludes that no violation of Title III of HAVA or Colorado law has occurred.

Conclusion

You lack standing to file a HAVA administrative complaint under Colorado law because you have not met the requirements of section 1-1.5-105(2)(b), C.R.S., that you either personally witnessed or have been or will be personally aggrieved by a violation of Title III of HAVA. Furthermore, even if you could establish standing, your complaint would be dismissed because the violations alleged in your complaint either were previously identified and remedied by the Secretary of State or do not constitute violations of Title III of HAVA.

Under section 1-1.5-105(4), C.R.S., you may appeal the Secretary of State's decision to dismiss your complaint to the district court in and for the City and County of Denver within thirty days of this decision.

Sincerely,



Judd Choate
Director, Elections Division

cc: Hon. Melinda Myers, Saguache County Clerk and Recorder

Marilyn R. Marks
930 W. Francis Street
Aspen, CO 81611
(Pitkin County)
970 429 7535 or Marilyn@AspenOffice.com

April 3, 2011

Mr. Scott Gessler
Colorado Secretary of State
1700 Broadway, Ste 250
Denver, CO 80290

RECEIVED

APR 04 2011

ELECTIONS
SECRETARY OF STATE

Dear Mr. Gessler:

Please accept this HAVA complaint filed in accordance with CRS 1.1.5.105, SOS Rule 31 and Public Law 107-252 Title IV C402, regarding the Saguache County general election of November 2, 2010,.

Public Law 107-252 Title IV, C 402.(a) (2) (B) requires that HAVA complaints be accepted from "any person who believes that there is a violation of any provision of title III." CRS 1- 1.5-105 (2) (b) curiously limits complainants to those who have been "personally aggrieved" or personal witnesses to violations of Title III of HAVA. While federal statute would undoubtedly not require proof of standing to file a HAVA complaint, as a Colorado resident I was personally aggrieved in the Saguache County violations of Title III of HAVA, as the election law violations may have impacted statewide contests and Colorado fiscal matters, particularly in the passage of the Center School Special District tax and bond measure where over \$20,000,000 of Colorado BEST funds are required upon passage of the measure.

I am aware that various election complaints have been filed with your office regarding the Saguache County general election. This complaint does not attempt to address the broad range of issues that may have already been included in other complaints, outside the context of a HAVA complaint. I encourage and request intensive reviews to cover all the areas in those complaints such as the attached canvass board complaint, and the complaint attached from Allen Jones. To the extent those complaints can be investigated with this HAVA complaint under the HAVA requirements for review, I would encourage their consolidation.

I have carefully reviewed the 2003 HAVA complaint and investigation in Garfield County, (HAVA 23-03-0001), and referenced the breadth of that investigation to assist in structuring my request for similar thorough investigation in Saguache.

Voting System Not Compliant with State and Federal Voting Systems Standards and Error Rate Limitations

Your office has been made aware of a number of unresolved complaints regarding the ES&S M650 and Unity system used for the official tabulation, "re-tabulation," and recount of the election. The Saguache Voting System cannot be viewed as a HAVA compliant "system" given that the requisite controls were not in place for the operation of the system within the allowed error rate parameters. (Section 301 (a) 5 -HAVA)

Reference is also made to HAVA Section 301 (a) 6 (b) where Voting Systems are broadly defined with the concept of a comprehensive "system" including the "total combination" of elements, practices and documentation incorporating those elements used to make election materials available to the voter, and for auditing and system testing.

Accordingly, an abbreviated list of the failures of the voting system includes:

- The system was not tested under statutory and SOS Rule LAT requirements.
- There was no SOS required security plan for the system.
- The SOS Conditions for Use of the ES&S system were not addressed, nor was there substantial compliance.
- The system and all of its components were not secured prior to and during the election as required.
- Trusted build was not re-installed after security incidents.
- The M650 machine was prone to unresolved errors on time, date and tabulation reporting, --all of which are intended to be important system audit controls.
- The system was employed improperly given the unreported security incidents, which should have required a full manual count.
- Post-election audit procedures for the voting system failed, and unresolved discrepancies were reported.
- Recount tabulations did not match previous tabulations, and discrepancies could not be resolved. (Clerk Myers noted that the machine could not be relied on for consistent results.)
- Required system audit logs were not maintained, despite the requirements of the Conditions for Use.
- Required video security records were not created in some cases, and not preserved in others.
- See also the system issues referenced on the attached canvass board complaint.

In short, Saguache County's implementation of the M650 and related system components cannot be considered a "voting system" meeting state or federal guidelines for acceptable error rates, as defined by HAVA's reference to federal voting systems standards. There was no substantial compliance with the state's Voting System requirements, rendering the "system" a non-compliant system, with an unacceptable error rate at times, and other elements which may have negatively impacted the error rate.

No Voter Education on Effect of Over-votes

HAVA Section 301 (B) (i) requires voter education programs for central count operations and mail in voting to explain the effects of over-votes. Clerk Myers failed to do this. A copy of the voter instructions included in the 1700+ mail ballot packages is attached to this complaint, and includes no such education or information for the voter. At least 24 over-votes were recorded by the first report from the M650. Judges report that many more over-votes were altered with "white-out" and white "sticky dots" covering the over-votes before they were processed by the voting system. Amy Wilson of the Elections Division also witnessed this as stated in her attached report. Such alterations to the ballot may have obscured the original voter intent.

There was no required signage informing voters of the effects of such over-votes at the polling places according to the reports of voters and Amy Wilson in her attached report.

The impact of this non-compliance should be investigated by a review of the original ballots, to determine how many over-votes appear to have been recorded by the voters and the potential impact on the outcome attributable to the lack of the HAVA required information and education on the effects of over-voting and how to correct the over-votes. The over-votes and their non-compliant alteration may have been significant enough to change the outcome in the close contests, including the Ambulance District vote.

The review should also include an examination of ballots which were duplicated by election judges.

HAVA Signs and Accessible Machines

SOS representative Amy Wilson visited numerous precincts and noted some HAVA violations. Those are also included in her report which is attached.

Ms. Wilson's report details the incidents of failure to post HAVA signs, lack of sample ballots for precincts, failure to have accessible equipment in all locations, and polling place information as to how to correct over-votes. (violations of HAVA Section 302)

Lack of Privacy for Voters

HAVA requires that the voter be able to verify (in a private and independent manner) that the votes selected by a voter on the ballot, and the opportunity to privately change or correct errors. (section 301) There were numerous violations of this policy which are documented in Amy Wilson's attached trip report and included in the Secretary of State's December 10, 2010 report.

-I have heard numerous first hand complaints of the "Family Style" voting taking place in the Courthouse with no privacy for checking votes or correcting them, as required by Title III, section 301 of HAVA. This was also documented in Teresa Benn's articles in the Center Post Dispatch and published pictures.

-Teresa Benns has reported that the La Garita voting place was so dark and so crowded and no working lights on voting booths. Voters had to vote with others so close and looking on, with no privacy shields.

-Provisional ballots cast at the Center School Library were not anonymous nor were privacy envelopes provided, according to Ms. Wilson's report.

There are other examples in Ms. Wilson's report of numerous HAVA violations which I request that the SOS investigation consider.

Voter Eligibility in Special District Contests

Despite clear law to the contrary and previous complaints, ballot stubs were removed from mail in ballots prior to them being mailed to the voter. In Saguache County approximately 58% of the vote was via absentee ballot. The clerk had been admonished by voters at documented meetings in August, 2010 about the inappropriate removal of mail ballot stubs prior to mailing. However, the same process was repeated for the general election. This practice had the following impacts:

1. Voter eligibility for Colorado House District 60 and 62 seats as well as all four special district contests could not be determined without compromising the privacy of the voter. To check for eligibility, the ballot itself, with voter markings visible would have to be compared to the voter mailing envelope for proper style number. In doing so, guaranteed voter privacy is compromised.
2. The alternative is no check for eligibility for voting in such contests. This many have **disenfranchised** voters who may have been mailed the incorrect ballot style, and allowed ineligible voters to vote outside their House District or Special Taxing Districts.

It is my understanding that **no district eligibility check was performed** for mail in ballots, bringing into question the results for all special districts.

Were the results impacted by the failure to properly determine eligibility?

Person Responsible

In all cases mentioned above, the responsibility for the non-compliance results from neglect and violation of duty is Clerk Melinda Myers. Polling place judges were not given required HAVA materials or a reasonable level of training.

Request for Review

I request that the Elections Division immediately undertake an investigation of this complaint under the HAVA complaint process. **I request a public hearing of the complaint under SOS Rule 31.1 (g)**

I request that the Elections Division review specifically investigate:

- Whether voters likely voted mail in ballots in districts for which they were ineligible.
- Whether some eligible special district voters were disenfranchised by failure to mail the proper ballot to them, and the judges' control check of the mail ballot stub removed.
- A careful inspection and accounting of ballots which were altered by individuals other than the voter, and the possible impact on the results, including potentially disqualifying an eligible voter's vote. (Particular focus should be on over-votes.)
- Whether the results were impacted by the use of the non-compliant M650/Unity voting system.
- A reconciliation of ballot inventory.
- A review of voter intent for over-votes not altered or duplicated by election judges.
- A manual recount of all local special district issues and the Commissioner and Clerk's races, given the error-prone M650 and the security issues.

- An inquiry into whether out-of-district ballots were mailed to voters ineligible to vote in those special districts.
- A manual count reconciliation of the ballots counted and allegedly miscounted on November 2.
- An inspection of mail in ballot envelopes which reconciles the count to the number of voted ballots by ballot style, and voter credits in the SCORE system.
- A careful examination of the security history of the voted ballots, with a determination as to whether the election results can be verified with a manual recount.
- A review of provisional ballot applications for eligibility. 21 ballots of 84 provisionals, an unusually high percentage, were rejected.
- Whether the election has been certified.
- Whether election judges were given a reasonable level of training. Reports indicate that judges' training may have been for as little as 2 hours, although judges were compensated for 4 hours.
- Other inquiries as may be warranted as facts unfold during the review process.

Thank you for your attention to this important, and timely concern. Please contact me with your questions and responses.

Sincerely,

Marilyn Marks

**CERTIFICATE OF ATTESTATION STATE OF COLORADO
COUNTY OF PITKIN**

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

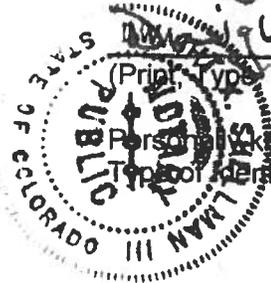

Signature of Complainant

Sworn to and subscribed before me this 3rd day of April, 2011.


Signature of Officer Authorized to Administer Oaths or Notary Public

Douglas K. Shellman III
(Print, Type, or Stamp Commissioned Name of Notary Public)

Person Known or Produced Identification
Type of Identification Produced COHO DL



RECORDED

HAVA Complaint 55-11-001 Amendment 1
Marilyn Marks
970 429 7535

APR 07 2011

ELECTIONS
SECRETARY OF STATE

Title III Section 302 (a) 4 requires that eligible voters' provisional ballots be counted. It appears that 11 ballots that should be eligible to vote in all county races at a minimum were precluded from having the ballots counted for those county races as well as appropriate special district races. According to the abstract filed with the SOS, 11 voters' ballots were counted in federal and state races only although they likely should have been allowed to vote in county-wide elections.

The county races were the close races where 11 votes can make a difference. Also it should be noted that in the recount, 10 ballots were "lost" in the recount process. That creates least 21 ballots unaccounted for in local races. This, combined with other irregularities could easily have impacted the outcomes of the election.

The amendment to my HAVA complaint addresses the above referenced section of Title III and the potential that provisional voters' votes were not all counted completely. The notice requirements that allow provisional voters to determine whether their ballot was counted do not seem to address the specifics of only having some votes counted. Were voters who were not allowed to vote in local races informed of that? I request that your investigation include this issue of provisional ballots being counted inappropriately.

Please let me know if you have questions.

CERTIFICATE OF ATTESTATION

STATE OF COLORADO

COUNTY OF DENVER

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.

Marilyn Marks

Signature of Complainant

Sworn to and subscribed before me this 7 day of April, 2011.

Signature of Officer Authorized to Administer Oaths or Notary Public

Darlene Eckhardt

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known or Produced Identification

Type of Identification Produced CDL # 02-270-0950 exp 11/14/12



Provisional Ballot Statistics

Election : 11/2/2010 - 2010 Saguache County General Election

Accepted

AAB - Mail-In Ballot Issued/Not Voted	50
AAG - Registered Through Agency	0
ACP - New Address/Correct Precinct	2
ADB - Eligible Races and Issues/Voted Wrong Precinct	4
A EJ - Eligible Races and Issues/Election Judge Ballot	0
AFS - Count Federal and State Races/Issues Only	11
AOK - Confirmed Voters Eligibility	6
ARD - Incomplete Reg/Required Information Provided	1
AVD - Registered Through VRD	0

Rejected

RAB - Mail-In Ballot Issued/Voted	0
RED - Voted in a Polling Place	0
REE - Provisional Ballot Envelope Empty	0
REV - Voted During Early Voting	0
RFE - Felon Not Eligible to Vote	0
RFS - No Federal or State Candidates or Issues to Duplicate	0
RID - ID Required/Not Provided	0
RIN - Incomplete Registration/Unable to Confirm Eligibility	0
RIP - Incorrect Party in Primary	0
RNR - Not Registered/Cancelled	3
RNS - Affidavit Not Signed	0
RRD - Incomplete Reg/Required Information Not Provided	0
RWC - Not Resident of County or State	7

RECEIVED
APR 21 2011

Marks HAVA Complaint 55-11-001-- Amendment 2

Colorado Secretary of State

Issue of Standing to File a HAVA complaint in Colorado

On April 6, Secretary Gessler questioned my standing to file a HAVA complaint concerning the 2010 Saguache County general election. My standing to file this complaint is addressed on page one of the original complaint. This amendment elaborates on those points.

Public Law 107-252 Title IV, C 402.(a) (2) (B) requires that HAVA complaints be accepted from "any person who believes that there is a violation of any provision of title III." The law clearly honors the fundamental truth that all people are impacted by the quality of local, state and federal elections across the United States. The clear intent of the federal law was to avoid disenfranchising classes of citizens and voters by restricting complaints to certain groups of citizens. Given the federal statute, there is no question of standing.

The Secretary of State's HAVA Revised State Plan updated March 6, 2008 (<http://www.sos.state.co.us/pubs/elections/HAVA/files/HAVAstaterplanfinalversion.pdf>), Section 9, page 36 states that "any person who believes there is a violation of Title III may file a complaint." There is no further standing requirement.

SOS Rule 31.1 (b) and CRS 1-1.5-105 have a different standard requiring either being "personally aggrieved" having "personally witnessed" a violation of Title III.

The more restrictive, ill-defined and questionable Colorado statutory requirement that the complainant must have been "personally aggrieved," is not relevant. However, even if the Elections Division were to require that standard, it is clear that I have been personally aggrieved by the irregularities of the Saguache election, despite the fact that I am not a Saguache County voter. One presumes that being "personally aggrieved" requires a personal stake in the results of an election process. The state cannot legitimately argue that all citizens do not have a "personal stake" in the outcome of elections which impact state finances, the environment, regional land use issues, and state and federal offices. Even the supporters of the "winners" in the Saguache County election are "aggrieved" due to the impaired quality of the reported results and non-compliant processes reduce voter confidence, turnout, and impede the political process.

I am a registered and active elector in Pitkin County, Colorado. Federal and state contests on the ballot clearly affect all Coloradans. Irregularities in any such races have a negative impact beyond the borders of Saguache County. I supported several candidates for federal and state office with volunteer time and financial campaign contributions. Some won, and others lost. Any meaningful negative impact on the reported results of those candidates has implications for public policy and on their future candidacy for office. (If a defeated candidates' vote totals were materially understated in the official tallies, his decisions on future candidacy may be negatively affected.)

It is vitally important that the election process be proper and compliant, and accurate results reported. The goal cannot be to merely determine the correct "outcome" of declaring winners and losers with disregard for the process and accurate post-election reporting. For public policy reasons, Title 1 requires significant levels of reporting of detailed election results. Misstated results, even with "correct outcomes" of winners, misinforms the public and misinforms public

policy decisions. Counties with non-compliant election practices and questionable results impact the public at large. Presumably this supports the legislative intent of the federal requirement that "any person" may file a HAVA complaint.

As a specific example, I supported Bob Rankin (R) for Senate District 5 against incumbent Gail Schwartz. Rankin's results in Saguache were well below what had been expected. If irregularities depressed his results, this may affect his decision to run in future years. The possibly misstated results may have also affected his decision not to request a recount.

Although I supported Congressman Scott Tipton who won the Congressional District race, the reported results in Saguache may have been affected by irregularities. Good public policy dictates that detailed and accurate information be made public regarding levels of support for candidates and elected officials as measured by the election results.

Over \$20 million in state BEST funds were tapped based on a local special district election for Center School District. If the results were incorrect in this small election, it has negative fiscal impact to the state.

Attempting to apply arbitrary tests to determine whether a person has been "personally aggrieved" in an election can only lead to inconsistent and unfair decisions, based on complex considerations. For example:

- Are campaign contributors for the BOCC race who live out of county "personally aggrieved" when their candidate loses due to irregularities?
- Could a losing candidate residing in Pitkin County for a state house or senate race be "personally aggrieved" by irregularities in other counties in his district which may have caused him to lose the race? If so, what about his supporters?
- Are non-voting property owners "personally aggrieved," when taxes are increased based on inaccurate results of a tax measure on the ballot?
- Must a complainant prove that they voted in the election to be "personally aggrieved?"
- Must a complainant support only a "losing" candidate or issue to be "personally aggrieved" with respect to election irregularities?
- Given the prohibition on forcing a voter to disclose his election choices, how would the Division determine whether the voter is "personally aggrieved," if the criteria is based on whether his candidate won or lost?
- If Saguache HAVA complaints are limited to Saguache residents, which residents qualify as complainants? Only voters? Voters in the election at issue? Only voters disclosing their support for a losing candidate or issue? Only those who can prove their financial support for a candidate?

These and many other similar questions and scenarios make it clear that the federal law requiring stated to allow "any person" to file a HAVA complaint was intended to avoid discriminatory and politically biased decisions in accepting and investigating HAVA complaints.

To argue that election procedures and outcomes only impact the voting residents of a political sub-division is to dilute the importance of the democratic election process.

It should also be noted that I have "personally witnessed" a number of the violations alleged in the complaint by watching many hours of video surveillance records and personal video records (of the recount), which expose numerous of the security and ballot handling issues mentioned in the complaint.

Good public policy acknowledges that the quality of elections impacts all residents of the country to varying degrees, and cannot be parsed and measured on a relative scale from person to person. Attempting to measure a level of individuals' personal grievance in election irregularities is inappropriate and poor public policy. I urge you to honor the concept of the federal statute and avoid the temptation to discriminate against certain classes of people who chose to exercise their rights to file legitimate HAVA complaints.

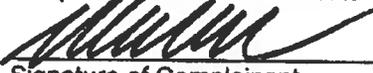
Please let me know if you wish to discuss further.

Marilyn Marks
970 429 7535

CERTIFICATE OF ATTESTATION

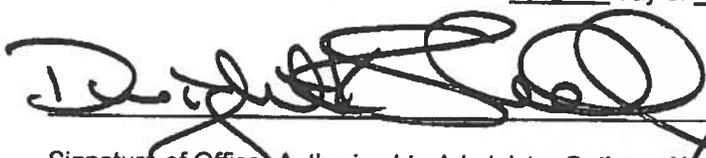
STATE OF COLORADO
COUNTY OF PITKIN

I, the undersigned, under penalty of perjury, do swear or affirm that the information contained in this complaint is true and correct to the best of my knowledge.



Signature of Complainant

Sworn to and subscribed before me this 10 day of April, 20 11.



Signature of Officer Authorized to Administer Oaths or Notary Public

DWIGHT K. SHELMAN III

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known or Produced Identification
Type of Identification Produced COLO ID 02-270-0950
Exp. 11-11-2012



Benjamin Schler

From: Marilyn R Marks <marilyn@aspenoffice.com>
Sent: Sunday, June 05, 2011 1:19 PM
To: Benjamin Schler
Cc: Michael Hagihara
Subject: addendum to HAVA Complaint 55-11-001--auditability of the voting system and "over-vote" remediation

Ben,

Title III of HAVA requires that a voting system used in a Federal election have audit capacity with a permanent paper record.

“(2) AUDIT CAPACITY.—

(A) IN GENERAL.—The voting system shall produce a record with an audit capacity for such system.

(B) MANUAL AUDIT CAPACITY.—

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

The Saguache voting system (m650 and Unity) effectively did NOT have that capacity, in that the clerk refused to maintain the record. The partial paper record that did exist was unreadable. Secondly, the M650 date and time stamp is inaccurate and inconsistent and cannot be relied on as a audit record. (I have sent the pdf to you separately by "you Send it", given its large file size.) The M650 audit log was printed on top of itself due to numerous paper jams, and the clerk claimed that the electronic data on the hard drive could not be accessed to produce an electronic or readable paper report. As a result of my CORA litigation, she belated produced on May 26, a paper printout of the M650 audit log. (If the public cannot access the audit log on a timely basis for filing complaints or election contests, its utility is greatly reduced, and effectively does not exist as effective audit capacity.) (Please note that Rule 45 requires that certified voting systems MUST be able to produce electronic output of all data in standard readable format. She and the vendor claim that that is not possible with the M650.)

You will see from the audit log that the unreadable nature renders the events of November 2 to have no audit capacity. Repeated requests that the clerk produce a new and readable copy only resulted in her defiance and claims that this unreadable document was the official record and she was not required to produce a record that was readable. Once she did, (May 26) it was too late to do anything about it with the canvass board or an election contest.

Also, the M650 creates an unauditible record in that

- a. There is no record of which operator is making entries or operating the equipment
- b. There is no security to prevent unauthorized access to the data on the hard drive or external disks.

- c. The time and date stamps are grossly inaccurate. (Examples: M650 audit log shows November 1 for election day activities on November 2. Audit log shows November 5 10:30 a.m. retabulation start as November 4, 5:06 a.m. November 8 tabulation of precinct data is shown on the audit log as November 6. The M650 audit log for the November 16 11:45 a.m. provisional ballot count reports a time of 5:40 p.m. November 13. The May 26 audit log reprint shows that it was performed on April 13.) Without meaningful and reliable chronology of activity reported on the audit log, the system has no effective audit capacity.

Additionally, the Unity ERM system cannot be said to have effective "audit capacity," in that the Saguache system log demonstrates that the time and date stamps sometimes go "backwards" and then jump forward hours later.

The Unity ERM also requires no passwords or system security or indications of who is accessing or manipulating the data.

OVER-VOTES:

HAVA repeatedly references the requirement for system to detect over-votes and notify the voter and have the opportunity for correction.

The M650 audit log shows numerous instances of over-votes being detected and then the detection and sorting mechanism turned off. We know from interviewing judges that the over-votes detected were never reviewed by the judges to determine what voter intent might indicate.

Even if the original design of some components of the manufacturer's voting system was HAVA compliant, the voting system in Saguache was NOT compliant.

See the HAVA Definition of a Voting System:

(b) VOTING SYSTEM DEFINED.—In this section, the term "voting system" means—

(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—

(A) to define ballots;

(B) to cast and count votes;

(C) to report or display election results; and

(D) to maintain and produce any audit trail information;

and

(2) the practices and associated documentation used—

(A) to identify system components and versions of such components;

(B) to test the system during its development and maintenance;

(C) to maintain records of system errors and defects;

(D) to determine specific system changes to be made to a system after the initial qualification of the system;

and

(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

The system log shows dozens of reports of results and operations being printed to paper and electronic media. The clerk has destroyed the majority of those reports which would show errors, defects and even valid results. The clerk claims that she no longer has access to the part of the voting system that tabulated certain of the results, and kept an audit log (the Unity system.)

The laptop containing the Unity system was returned to the vendor without making a complete copy of the contents (including the errors and defects.)

Therefore, this is NOT a voting system that can be considered compliant with Title III of HAVA.

Please acknowledge your receipt of this addendum (and the separately sent PDF file) to my HAVA Complaint. If a more formal format is required or an affidavit, please let me know.

Marilyn Marks
Aspen, CO
970 429 7535
Marilyn@AspenOffice.com

Memo

Date: November 5, 2010

To: Judd Choate, Director of Elections
Wayne Munster, Deputy Director of Elections

From: Amy Wilson, Training Coordinator

Re: Election Observation in Saguache County 11/2/10

I was asked to act as an observer from the Secretary of State's office in Chaffee and Saguache Counties on November 2, 2010. I have included a detailed list of my observation. Based on what I observed, I have also included some recommendations and included comments on the complaint from the Primary Election.

Observation

7:10 a.m. Villa Grove Baptist Church

- Polling place was up and running.
- Only 2 voting booths—not enough. Voters were all over the room filling out ballots.
- Accessible machine was not set up (by the time I left at 8:00 it was still not set up). One voter said he had a hard time seeing and the judges told his wife she could read the ballot to him.
- No HAVA signs.
- Judges were logging in seals when I arrived.
- Judges were always asking for ID.

8:15 a.m. Saguache County Courthouse

- Met with Melinda, checked on security of early and mail-in ballots. Boxes were sealed and secured in a vault. Seal logs were kept.
- Melinda told me about some problems with issuing ballots to the property owners in the Ambulance District. Judges had mistakenly given the voters their regular ballot (which contained the Ambulance District question) and the Ambulance District ballot. She had sent Renee out to Moffat to open the ballot box and take the three Ambulance District ballots out of the box since they could easily identify that they were wrong.
- Polling place at the courthouse had machine set up.
- Polling place set up was a little strange. Judges were in a room and voters were unattended out in the hall.
- No HAVA signs.

9:00 a.m. Dolores Nusbaum's residence (La Garita)

- Polling place set up in a very small living room of a cabin. Did not meet accessibility requirements.
- No HAVA signs.
- Accessible machine was not set up and judges said they weren't planning on setting it up. There was no room to put it anyway.
- Woman on crutches came in and asked to sit down to vote. There was no booth short enough to accommodate her so she just voted in the open.
- Judges said they could not get the lights on the voting booths to work, which was a problem at 7:00 a.m. when it was too dark for voters to see.
- Asked judges if there was another place to hold voting in the future. The only other buildings in town are a restaurant and a Catholic Church.
- Judges always asked for ID. One voter who didn't have it voted a provisional ballot.

10:00 a.m. Center School Library (3 precincts)

- Interesting set up—greeter judges shouted the voter's ballot style to a judge at another table across the room who shouted the serial number back to the greeter and then issued the ballot. It was quite chaotic at times.
- I stayed for one hour and there were provisional voters the whole time I was there.
- Voters were choosing not to go to the voting booths but instead found tables and chairs anywhere in the room. There were not enough booths. The library was large enough so voters could still have some privacy.
- Provisional voting process gave no opportunity for secrecy. These voters were not given secrecy envelopes. They filled out their ballot where 2 election judges could look at their ballots. Some voters went to the booth and then had to stand there with their voted ballots while the judge filled out the envelope. I saw several voters' ballots. I pointed this out to the head judge that this was a problem and urged her to give secrecy envelopes to provisional voters or instruct them to fold up their ballot and put it in the provisional envelope for secrecy.
- There were 2 judges there who spoke Spanish which was very helpful and necessary.
- Not sure why the judges have to write down the voter's full DL number. Seemed to be holding up the process.
- Judge had to ask a voter to remove his t-shirt which they considered political. Voter was belligerent but judge handled it well.
- Voter who couldn't see well was given reading glasses that one of the judges had brought with her.
- Judges always asked for ID.
- No HAVA posters.

12:45 p.m. Saguache County Courthouse (for counting at 1:00 p.m.)

- Visited briefly with Melinda. Told her about secrecy problems I had encountered. She said next time she would get different color secrecy envelopes for provisional voters.
- Also discussed the "electioneering incident" at Center and complimented the judge.
- Melinda said that staff had been out delivering additional provisional ballots. The need for provisionals was greater than they anticipated. I told Melinda that I had noticed the same thing.
- Watched the counting judges set up for counting. Another watcher was present.
- Talked to Renee' about making sure her early vote totals matched total ballots counted. Went over some methods to reconcile her numbers. Early vote ballot numbers did match with SCORE reports.
- Seal logs on ballot boxes looked good. Judges maintained seal log.
- Judges came up with a method to hand tally the write-in votes which seemed efficient.
- Advised judges not to darken the space on the ballot when it was not read by the machine. Advised them to put the ballot back through the machine and if the machine wouldn't read it, duplicate the ballot. Fortunately, the machine read the ballot on the second time through.
- Spent time talking to Renee about some post-election procedures. I urged her to organize her provisional ballots and to do the "easy" ones first (ID required, mail-ins, etc.) I told her to call us if she had questions. I also told her to call when she was putting together her canvass and Wayne, Hilary, Christi or I could help her with some procedures.

2:45 p.m. Moffat School

- No HAVA signs.
- Accessible machine was set up.
- Stayed for about 15 minutes and saw no voters.

3:30 p.m. Crestone Church

- There were 6 election judges in this precinct which was probably too many for such a small space.
- There were about 6 booths set up and no voters were using them. They were all sitting at the table voting together.
- Accessible machine was set up.
- No HAVA signs
- Two voters came in and said they couldn't see well. One voter was offered the machine but the judge said that the voter would have to go back through processing because a ballot had been issued. The voter chose not to use the machine but tried to read the ballot.
- One voter came in who was very shaky and had difficulty controlling his limbs. Filling out the ballot was very difficult for him and he could have benefited from a voting machine.
- Judges always asked for ID.

Recommendations

- Provide secrecy envelopes for provisional voters.
- Get HAVA signs for each precinct. (Lisa Doran at the SOS office can help you with this.)
- Print instruction cards at polling places (see Section 1-5-504, C.R.S.).
- Provide sample ballots for precincts (see Section 1-5-413, C.R.S.).
- If the majority of voters want to sit at a table and not use voting booths, consider getting some of the cardboard privacy screens that are designed for tables and setting up 8-10 in the polling place. They can be used instead of a regular voting booth. At the very least, provide a privacy screen for provisional voters.
- Accessible equipment must be set up. Train judges to recognize that a person with limited sight can benefit from using the voting machine. Provide a place (or lower booth) for a voter who needs to sit down to vote.
- Place magnifying sheets in precinct kits to help those who need a little extra help with the small print on the ballot. Work with the SOS Office (Lisa Doran) because grant funds may be available.
- Consider whether you need the judges to write down the voter's DL number in the pollbook. It took a lot of time and may not be necessary.
- Put a process in place for tracking your mail in ballot batches. Perhaps use some kind of "cover sheet" where you can account for ballots as they go from signature verification to opening to counting. Especially create a procedure for tallying valid write-in votes.
- How does Saguache County comply with the HAVA requirements for "second chance" voting? How do voters know if they have overvoted? HAVA requires some kind of education (poster) at the precincts that do not have scanners (none of the precincts have scanners). This is something you may want to visit with Wayne about.
- I did not encounter another watcher at the polling places. However, if there was a watcher there was no way for the watchers to find out who had voted at the polling place.
- Change signs for time in voting booth to 15 minutes (Rule 7.6).

Follow up on Primary Election Complaint

- All ballot boxes were sealed and locked with a padlock. All mail-in ballot drop-off boxes were also sealed.
- Ballot boxes containing early and mail in ballots were sealed with their corresponding SCORE reports and stored in the vault.

Stefanie Mann

From: Marilyn Marks <marilyn@aspenoffice.com>
Sent: Friday, January 04, 2013 6:24 PM
To: Stefanie Mann
Cc: Suzanne Staiert; Lisa Cyriacks; Marilyn Marks
Subject: Saguache HAVA complaint amendment #3
Attachments: VotingSystemStandardCommonStandardsExcerpt.pdf; EACAdvisory 7.20.2005.pdf

Stephanie,
Please see the attached EAC advisory on determining whether a voting system is compliant with HAVA. This advisory is directly on point regarding the audit trail required by HAVA. That was a key part of my complaint, that the audit trail was missing and defective.
Note also a "system" requires that a consolidated report using all sources of ballots be able to be generated. That is not possible with a standalone M100 or M650.

Marilyn Marks
Marilyn@TheCitizenCenter.org
www.TheCitizenCenter.org
970 404 2225

Follow us on Twitter@CitizenCenter1

2.5.3 Producing Reports

All systems shall be able to create reports summarizing the data on multiple levels.

2.5.3.1 Common Standards

All systems shall provide capabilities to:

- a. Support geographic reporting, which requires the reporting of all results for each contest at the precinct level and additional jurisdictional levels;
- b. Produce a printed report of the number of ballots counted by each tabulator;
- c. Produce a printed report for each tabulator of the results of each contest that includes the votes cast for each selection, the count of undervotes, and the count of overvotes;
- d. Produce a consolidated printed report of the results for each contest of all votes cast (including the count of ballots from other sources supported by the system as specified by the vendor) that includes the votes cast for each selection, the count of undervotes, and the count of overvotes;
- e. Be capable of producing a consolidated printed report of the combination of overvotes for any contest that is selected by an authorized official (e.g.; the number of overvotes in a given contest combining candidate A and candidate B, combining candidate A and candidate C, etc.);
- f. Produce all system audit information required in Section 4.5 in the form of printed reports, or in electronic memory for printing centrally; and
- g. Prevent data from being altered or destroyed by report generation, or by the transmission of results over telecommunications lines.

2.5.3.2 Precinct Count Systems

In addition to the common reporting requirements, all precinct count voting systems shall:

- a. Prevent the printing of reports and the unauthorized extraction of data prior to the official close of the polling place;
- b. Provide a means to extract information from a transportable programmable memory device or data storage medium for vote consolidation;
- c. Consolidate the data contained in each unit into a single report for the polling place when more than one voting machine or precinct tabulator is used; and



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

July 20, 2005

EAC Advisory 2005-004: How to determine if a voting system is compliant with Section 301(a) – a gap analysis between 2002 Voting System Standards and the requirements of Section 301(a)

The United States Election Assistance Commission (EAC) has received a number of inquiries from several states as to whether one or more particular voting systems comply with Section 301(a) of the Help America Vote Act of 2002 (HAVA). In addition, in one of its recent public meetings, EAC was asked to conduct an analysis to identify the gaps between the 2002 Voting System Standards adopted by the Federal Election Commission (FEC) and the requirements for voting systems under Section 301(a) of HAVA. EAC is not required by HAVA to preclear or approve voting systems purchased by states and local election jurisdictions. Furthermore, EAC does not believe that it was the intention of Congress or HAVA for EAC to assume this role. However, it is evident that states and local election jurisdictions as well as testing laboratories are in need of information that will help in determining whether a voting system meets the threshold requirements of Section 301(a). Thus, EAC offers the following analysis of Section 301(a) in light of the 2002 Voting System Standards.

Title III of HAVA, entitled “Uniform and Nondiscriminatory Election Technology and Administration Requirements,” imposes certain requirements upon states and local jurisdictions conducting federal elections. Section 301(a) sets forth the standards that voting systems must meet after January 1, 2006. Those requirements include functions and features that, among other things: (1) allow the voter to review his or her selections privately and independently prior to casting a ballot; (2) allow the voter to change his or her selections privately and independently prior to casting a ballot; (3) notify the voter when he or she has made more selections in a single race than are permitted (overvote); (4) provide for the production of a permanent paper record suitable to be used in a manual recount; (5) provide voters with disabilities, including visual disabilities, the same opportunity for access and participation (including privacy and independence) as for other voters; (6) provide accessibility in minority languages for voters with limited English proficiency as required by the Voting Rights Act of 1965; and (7) provide for

an error rate in operating the voting system that is no greater than the error rate set forth in Section 3.2.1 of the 2002 Voting System Standards adopted by the Federal Election Commission (FEC).

Although the 2002 Voting System Standards set forth measurable standards that predict compliance with some of the Section 301(a) requirements, those standards do not provide sufficient and adequate guidance as to what is required to meet the accessibility requirements of Section 301(a)(3); do not prescribe testable measures for language accessibility required by Section 301(a)(4) of HAVA; and do not prescribe standards that adequately explain the requirements for overvote notification required by Section 301(a)(1) of HAVA. As such, EAC issues the following policy statement to identify the gaps between the 2002 Voting System Standards and the requirements set forth under Section 301(a) of HAVA and to explain what is needed to meet the requirements of Section 301(a) above and beyond the testing requirements established in the 2002 Voting System Standards.

Section 301(a)(1):

The requirements of Section 301(a)(1) of HAVA are met if the voting system (1) conforms and complies with Section 2.4.3.3 of the 2002 Voting System Standards and (2) notifies the voter through a visual and/or audio message prior to casting the ballot when the voter makes more selections than are legally allowed in a single race or contest (overvote):

- (a) that an overvote has occurred and
- (b) the effect of overvoting.

Following that notification, the voting system must allow the voter to change his or her selection(s), if so desired. Voting systems that preclude and prohibit overvoting meet this requirement. Notwithstanding the above, certain paper ballot voting systems may meet the overvote requirements of Section 301(a)(1)(A)(iii) of HAVA by meeting the requirements set forth in Section 301(a)(1)(B).

Section 301(a)(2):

The requirements of Section 301(a)(2) of HAVA are met if the voting system conforms and complies with Sections 2.2.5.2.1 and 2.5.3.1 of the 2002 Voting System Standards.

Section 301(a)(3):

Section 301(a)(3) of HAVA requires that by January 1, 2006, at least one voting system in each polling place be accessible to persons with disabilities such that the voting system allows an individual with a disability the same access and

opportunity to vote privately and independently as is afforded a non-disabled voter. Compliance with Section 301(a)(3) requires that the voting system is accessible to persons with disabilities as defined by the Americans with Disabilities Act, including physical, visual, and cognitive disabilities, such that the disabled individual can privately and independently receive instruction, make selections, and cast a ballot. However, accessibility involves more than the technical features of the voting system. The accessible voting system also must be used in a manner that is consistent with providing access for disabled voters (e.g., the accessible voting system must be set up for use in a space that is accessible to a disabled voter who uses a wheelchair).

Conformance with Section 301(a)(3) is a complex matter, which must take into account the disability of the voter, the advancement of technology and its availability, and the efforts of the elections officials to make the voting process accessible to disabled voters in a private and independent manner. The following are some factors that must be considered in determining accessibility in conformance with Section 301(a)(3) of HAVA:

- (1) Section 2.2.7 of the 2002 Voting System Standards;
- (2) Section 2.4.3.1 (a) of the 2002 Voting System Standards;
- (3) Section 3.4.9 (a-e) of the 2002 Voting System Standards;
- (4) The voting system must afford a disabled voter the ability to perform the same functions (e.g., receiving and reading the ballot, making selections, reviewing selections, changing selections, and casting the final ballot) as are afforded to a non-disabled voter. These functions may be provided to the disabled voter through features of the voting system that are different than those used by non-disabled voters. The disabled voter need not and in many cases cannot have an identical voting experience as a non-disabled voter (e.g., a voter with a visual disability is afforded the same access to reading the ballot as a sighted voter when the ballot is read to the visually disabled voter using an audio component of the voting system).
- (5) Accessibility of the voting system to the voter includes accessibility to all equipment needed to cast and count ballots. Many jurisdictions use a paper ballot voting system that requires the voter to submit his or her own ballot after casting for purposes of ballot counting. Where such voting systems are in use, such jurisdictions must to the extent reasonably and technologically possible afford a disabled voter the same ability to submit his or her own ballot, in a private and independent manner, as is afforded a non-disabled voter. In this example, visually disabled voters must be allowed to submit the ballot independently, as the disability is one that is capable of being accommodated, and technology and practice provide a means that can be used to allow the visually disabled voter to

submit a ballot with the same degree of privacy and independence afforded to a sighted voter (e.g., a privacy sleeve).

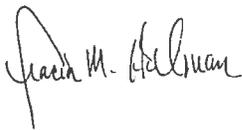
- (6) There may be certain disabled voters whose disabilities prevent them from voting independently (i.e., without assistance from a person of their choosing or a poll worker). While HAVA requires voting systems to allow independence and privacy, it does not preclude a disabled voter from requesting and obtaining the assistance of another person as provided in Section 208 of the Voting Rights Act of 1965.
- (7) Section 301(a)(3)(B) contemplates that an accessible voting system can include a direct recording electronic (DRE) voting system or other voting system equipped for individuals with disabilities. This advisory should not be read to preclude the innovation and use of accessible voting systems other than DREs for purposes of meeting this requirement.

Section 301(a)(4):

The minority language requirements of Section 301(a)(4) are met if the voting system complies with the minority language requirements of the Voting Rights Act of 1965 (contained in Section 203 as well as Section 4(f)(4)) and the implementing regulations found at 28 C.F.R. Part 55 and 67 F.R. 48871 (July 26, 2002). The voting system must provide all information, excluding the names of the candidates, that would otherwise be provided by the voting system in English (whether written or oral) in the language(s) that the voting jurisdiction is required to provide materials pursuant to the Voting Rights Act of 1965 and its regulations as referenced above.

Section 301(a)(5):

The requirements of Section 301(a)(5) are met if the voting system error rate does not exceed that established in Section 3.2.1 of the 2002 Voting System Standards.



Gracia Hillman, Chair



Paul DeGregorio, Vice Chairman



Ray Martinez III , Commissioner