

Douglas County Report

A. Scope and Authority for Investigation

On June 26, 2012, the Republican primary election for Colorado House District 39 (HD39) was held. Candidate Polly Lawrence received a total of 3,574 votes (53.45%), while Candidate Lu Anne Busse received a total of 3,109 votes (46.55%), a margin of 465 votes.¹ Because the margin of votes was greater than one-half of one percent of the votes cast for the HD 39 race, it did not trigger an automatic recount.² On July 11, 2012, Candidate Busse requested a recount under section 1-10.5-106, C.R.S.³

On July 23, 2012, before the recount was conducted, Candidate Busse filed complaints against the Douglas County Elections Department and the Teller County Elections Department.⁴

The recount in Teller County was held on July 23, 2012, and the recount in Douglas County was held on July 24-26, 2012. Candidate Busse supplemented both complaints after the recounts.⁵ This report will focus on the allegations against the Douglas County Elections Department, and a separate report will discuss the allegations against the Teller County Elections Department.

The Secretary of State (SoS) conducted this investigation under section 1-1-107, C.R.S., which authorizes the SoS to inspect and review the practices and procedures of county clerk and recorders in conducting elections.

1. Summary of Allegations

The allegations contained in both complaints against Douglas County have been grouped into four sections: (1) security plan and procedures; (2) conduct of the recount; (3) additional investigation requested; and (4) other concerns. The specific allegations are outlined below.

1. Security Plan and Procedures

Candidate Busse alleges the following deficiencies in Douglas County's security plan and procedures:

- The video security and surveillance system was inadequate;
- The computer equipment and scanning system did not have clearly visible seals;
- The chain of custody of the electronic images of ballots was not preserved; and
- The recount should have started with a new installation and verification of trusted build.

¹ HD 39 is comprised of a portion of Douglas County and all of Teller County. Candidate Lawrence received a total of 2,630 votes in Douglas County and 944 votes in Teller County. Candidate Busse received 2,160 votes in Douglas County and 950 votes in Teller County.

² See section 1-10.5-101(1)(b), C.R.S.

³ Attach. 1, Official Request for Recount, July 11, 2012.

⁴ Attach. 2, Complaint against Douglas County Election Department, July 23, 2012; Attach. 3, Complaint against Teller County Election Department, July 23, 2012.

⁵ Attach. 4, Supplemental Complaint against Douglas County Elections Department, July 29, 2012; Attach. 5, Supplemental Complaint against Teller County Elections Department, August 1, 2012.

2. Conduct of the Recount

The allegations pertaining to how the recount was conducted are sorted into the following categories: (a) the logic and accuracy test; (b) the canvass board; (c) the equipment used; (d) the procedures followed; and (e) the access of watchers.

- a. The allegations regarding how the logic and accuracy test was conducted include that the canvass board was not allowed to select a random sample of ballots and only forty-one of the ballots tested contained the HD39 race.
- b. Candidate Busse alleges violations regarding the conduct of the canvass board members including that the canvass board members refused to interact with watchers and canvass board members held numerous private meetings at which decisions were made.
- c. The allegations pertaining to the equipment used for the recount include the canvass board members were required to choose the machines used for the recount and a machine used for the recount was ineligible because it was used in the post-election audit
- d. As for the procedures followed during the recount, Candidate Busse alleges that Douglas County and Teller County were required to conduct the recounts in the same manner.
- e. The allegations regarding watchers include that watchers were denied adequate access and were not allowed to discuss observations, errors, or preliminary results with each other or canvass board members.

3. Additional Investigation Requested

Candidate Busse requested additional investigation and analysis in the following areas:

- Detailed comparison of precinct trend data;
- Inspection of all rejected ballots because a higher percentage of rejected ballots were rejected from Sedalia and Larkspur;
- An accounting audit scrutinizing the “statistically unusual” results of the primary; and
- Analysis of the last two batches of ballots processed and counted for the HD39 race on election night.

4. Other Concerns

In addition, Candidate Busse’s complaints raised the following concerns:

- One election judge reporting trends in processed votes before 7:00p.m. on election day;
- Election judges did not inform election staff that one scanning machine produced a vertical line on the left side of several ballots and that no solution was sought;
- Ballots had barcodes that could be used to trace ballots to its voter;
- Particular electors that voted in the primary election did not receive vote credit; and

- Election officials did not provide her with paper and electronic images of ballots during the recount.

B. Brief Conclusions

1. The video security and surveillance system complies with Election Rule 43.2.5.
2. There is no requirement that the computer equipment and scanning system utilized in Douglas County be sealed.
3. The rejected and spoiled ballots and return envelopes were properly secured.
4. Viewing electronic images of voted ballots, which are public records, is neither a security concern nor a violation of Title 1.
5. Douglas County was not required to install and verify trusted build before conducting the recount.
6. The logic and accuracy test was properly conducted.
7. Canvass board members are not required to interact with watchers.
8. The canvass board was not required to choose the machines used for the recount.
9. Douglas County was permitted to use the same equipment for the recount that was used in the post-election audit.
10. Douglas County was not required to use the same recount procedures as Teller County.
11. Watchers were given adequate access to the recount.
12. The recount was conducted in accordance with state law and election rules, and while the total number of votes cast for each candidate varied slightly, the result of the HD39 primary election did not change.

C. Analysis

As previously outlined, Candidate Busse's allegations have been grouped into the following sections: (1) security plan and procedures; (2) conduct of the recount; (3) additional investigation requested; and (4) other concerns.

1. Security Plan and Procedures

Candidate Busse alleges a number of deficiencies in Douglas County's security plan and procedures, including (a) the video security and surveillance system was inadequate; (b) the computer equipment and scanning systems were not properly sealed; (c) the rejected and spoiled

ballots and return envelopes were not properly secured; and (d) the chain-of-custody of electronic images of ballots was not preserved. Candidate Busse also alleges that trusted build should have been installed before the recount started.

a. The Video Security and Surveillance System

In her original complaint, Candidate Busse alleges that the video security and surveillance system was inadequate because signed, opened, and empty return envelopes and two of the resolution terminals were not in clear view of the cameras.

Because Douglas County has more than 50,000 registered voters, it must have video security surveillance of the following:

- All areas where election management software is used;
- All areas used for mail-in ballot processing, which includes but is not limited to signature verification areas and areas where ballots are stored, tabulated, and counted; and
- All areas where voting equipment is stored.⁶

SoS staff reviewed the video security surveillance system while observing the recount in Douglas County. Based on that review, SoS staff confirmed that 20 cameras provide 24-hour surveillance of the Douglas County Elections Office (Elections Office). Four cameras are positioned outside the Elections Office to monitor the ballot drop box, the outside of the warehouse, the parking lot, and the door to the basement where the counting room is located. Three cameras monitor the inside of the warehouse attached to the Elections Office where the voting equipment is stored. A total of 13 cameras are positioned throughout the inside of the Elections Office. These cameras monitor the inside view of the ballot drop box, the waiting area, and the room where ballots are stored. In addition, six of the 13 cameras are located in the basement where ballots are processed. These cameras monitor the entrance to the basement, the signature verification area, the Ballot Now stations, the four resolution stations, and the scanning area.⁷

SoS staff verified that the signed, opened, and empty return envelopes and all of the resolution terminals could be clearly viewed and monitored by the video security surveillance. As such, the entire video security surveillance system complies with Election Rule 43.2.5 and adequately monitored the areas where Candidate Busse expressed concern.

b. Sealing of Computer Equipment and Scanning System

Candidate Busse alleges that the computer equipment and scanning system did not have clearly visible seals, in violation of Election Rule 43. In addition, Candidate Busse asserts that Douglas County claimed to have an exemption to the sealing requirements outlined in Rule 43. Candidate Busse also claims that this exemption is false, and that based on this false claim Douglas County admits to not properly securing the computer equipment and scanning system.

⁶ Election Rule 43.2.5.

⁷ Attach. 6, Douglas County Security Plan.

Seals are required to be on (1) any removable card or cartridge that is inserted into a Direct Recording Electronic voting device (DRE) or optical scanner; and (2) any empty card or cartridge slot or door covering on a DRE or optical scanner.⁸ Douglas County does not use optical scanners, but instead uses commercial off-the-shelf (COTS) Ballot Now scanners. There is no strict requirement that COTS Ballot Now scanners be sealed because COTS Ballot Now scanners do not have empty card or cartridge slots where seals would be placed.

Douglas County submitted its security plan on April 20, 2012, and an addendum on June 11, 2012.⁹ In that plan, Douglas County indicated that it would place seals over the card and cartridge slots on its optical scanners. But, Douglas County does not have optical scanners. As such, if there is a failure, it was a failure to comply with the stated intention on its security plan, not a failure to comply with security requirements in Election Rule 43.

c. Security of Rejected and Spoiled Ballots and Return Envelopes

Candidate Busse alleges that Douglas County failed to properly secure and seal rejected ballots and that red metal boxes containing spoiled ballots were not locked or sealed. She also alleges that the return envelopes should be recounted and matched to paper ballots to determine if there are discrepancies because the return envelopes were not properly secured or sealed.

The county security procedures outlined in Election Rule 43 govern the handling of rejected and spoiled ballots and return envelopes. There is no strict requirement that spoiled ballots or return envelopes be sealed.¹⁰ Similarly, once rejected ballots are in the elections office, there is no requirement for these ballots to be sealed.

During the recount, SoS staff observed that all of the spoiled ballots were kept in red metal boxes that were locked and sealed with intab padlock seals.¹¹ Moreover, the spoiled ballots, along with all of the rejected ballots and return envelopes, were secured in the basement of the Elections Office, which is under continuous video surveillance and requires a security badge to gain access.¹² SoS staff observed that security badge access to the basement was restricted to specific employees and every individual entering the basement would individually badge-in or be accompanied by an Douglas County Elections Department employee.¹³ Additionally, while there is no requirement to do so, a log of every individual entering the basement was kept.

d. Chain of Custody of Electronic Images of Ballots

⁸ Election Rule 43.

⁹ Election Rule 43.2 requires security plans to be submitted sixty days prior to the first election the security plan procedures are used. The primary election on June 26, 2012, was the first election the security plans procedures outlined in the security plan were used. The addendum submitted provided photographs showing the layout of the building and the location of the video surveillance of the mail ballot proceeding areas. This addendum went beyond the requirements outlined in Election Rule 43. Thus, Douglas County was in compliance with the sixty-day requirement in Election Rule 43.2.

¹⁰ See Election Rule 43.2.7

¹¹ See Attach. 6, Table 1.

¹² See Election Rule 43.2.7

¹³ See Election Rule 43.2.3

Candidate Busse contends that the chain of custody for the electronic images of the ballots was not preserved because the ballots “were readily available for viewing and several shown to Busse on a terminal screen.”¹⁴

There is no state law or election rule that prohibits the electronic images of the voted ballots from being shown to an individual on a terminal screen. Moreover, voted ballots are considered public records and are available for inspection under the Colorado Open Records Act (CORA).¹⁵ Similarly, scanned or electronic images of paper ballots are eligible for public inspection under CORA.¹⁶ In light of the fact that Candidate Busse submitted a CORA request to Douglas County requesting a copy of all voted ballots from the primary election, presumably Candidate Busse is aware that voted ballots are public records subject to inspection. Furthermore, several allegations in her supplemental complaint allege that her rights as a candidate were violated because she was not provided access to the voted ballots.

Viewing electronic images of voted ballots on a terminal screen is neither a security concern nor a violation of Title 1. Further, the electronic images of voted ballots are a public record available for inspection under CORA.

e. Installation of Trusted Build

Candidate Busse alleges that the recount should have started with a new installation and verification of trusted build because of the alleged security violations.

Installing and verifying trusted build is specified as a remedy to be performed if there is evidence of tampering that occurred after the polls closed.¹⁷ There was no evidence of tampering in Douglas County. As such, Douglas County was not required to install and verify trusted build before conducting the recount.

2. Conduct of Recount

Candidate Busse alleges that the recount in Douglas County was not conducted in accordance with state law. Candidate Busse’s allegations regarding the conduct of the recount are grouped based on allegations concerning (a) the logic and accuracy test; (b) the canvass board; (c) the equipment used; (d) the procedures followed; and (e) the access of watchers.

a. Logic and Accuracy Test

The supplemental complaint contained two allegations that the logic and accuracy (L & A) test was conducted improperly during the recount. First, Candidate Busse alleges that the canvass board was not allowed to select a random sample of ballots for the L & A test. Second, she alleges that election rule was violated because only forty-one, not fifty ballots counted contained the HD39 race.

¹⁴ Attach. 3, page 1.

¹⁵ *Marks v. Koch*, 2011 Colo. App. LEXIS 1556, *10 (Sept. 29, 2011).

¹⁶ See *id.* at *16.

¹⁷ Election Rule 43.2.11(4).

First, Candidate Busse alleges that the canvass board was not allowed to select a random sample of ballots, but rather, election staff instructed the canvass board to “select only one batch of 200 paper ballots from the bundles in the boxes of ballots,” in violation of Colorado election rule.¹⁸ Presumably Candidate Busse is referring to Election Rule 14.6.3 which requires the canvass board to randomly select one percent or fifty ballots, whichever is greater, for an L & A test of central count/mail-in scanners. Central count/mail-in scanners were not used for the Douglas County recount and, therefore, Election Rule 14.6.3 did not apply.

Nevertheless, the canvass board selected a random sample of ballots for the L & A test. Douglas County had a total of 27,157 ballots cast in its June 2012 primary election, with a total of 4,783 votes cast in the HD39 race. The ballots were kept in batches of 200, totaling 136 batches. To ensure that the highest number of ballots containing the HD39 race were used, Douglas County election staff helped the canvass board locate the batches that most likely contained ballots with the HD39 race. From those batches, the canvass board randomly selected which batch would be used for the test. Contrary to the allegations in the complaints, counties are not required to select ballots from different batches to perform the L & A test.

Second, Candidate Busse alleges that Douglas County violated Colorado election rule because forty-one ballots, not fifty, were counted for the HD39 race. Election Rule 14.7 governed the Douglas County recount because Douglas County uses the Ballot Now voting system. With Ballot Now Voting Systems, the L & A test for recounts is performed with a test deck of 150 ballots from at least three randomly chosen precincts. Therefore, Douglas County was not required to test a minimum of fifty ballots containing the HD39 race.

Douglas County was first required to locate the batches of ballots that contained any ballot with the HD39 race.¹⁹ To ensure every ballot with a HD39 race was counted, Douglas County located every batch of ballots from the primary election. For the L & A test, the canvass board randomly selected one batch of ballots from 200 batches of ballots covering 96 precincts.²⁰ Because 200 ballots with over three precincts were tested, Douglas County exceeded the requirements of Rule 14.7 and there was no violation of Title 1.

b. Canvass Board

Several allegations in the supplemental complaint pertain to the conduct of canvass board members, including (1) canvass board members refused to interact with watchers; and (2) canvass board members held numerous private meetings at which decisions were made.

First, the supplemental complaint asserts that canvass board members refused to interact with concerned watchers and they had discussions with election staff out of earshot of the watchers.

Watchers are prohibited from interfering with the orderly process and conduct of any election, such as the counting of ballots, and watchers may not be allowed to interact with election

¹⁸ Attach. 4, page 2.

¹⁹ Election Rule 14.7.

²⁰ Attach. 7, Precinct Turnout – Total Voters – Unofficial.

officials or election judges.²¹ Moreover, canvass board members are not required to interact with watchers, nor are canvass board members required to ensure their conversations can be heard by watchers.²² Canvass board members are election officials appointed by the major political parties.²³ There is no statutory provision or rule requirement that covers the interactions of canvass board members. Moreover, it would be unreasonable for the Secretary of State to place requirements or restrictions on who canvass board members must interact with when performing their duties or on where their conversations, including casual conversations not pertaining to the conduct of the recount, must be held. Thus, there is no violation of Title 1.

Second, Candidate Busse asserts that canvass board members made decisions at private meetings and that the canvass board had determined whether to certify the results of the recount before the public meeting was held. Neither Title 1 nor Colorado Election Rule places requirements or restrictions on the interactions of canvass board members. As to any alleged violation of Colorado Sunshine Laws, the Secretary of State has no authority to investigate violations of Title 24.

c. Equipment Used

Candidate Busse contends that the canvass board should have been responsible for choosing the machines used for the recount. Second, she asserts that one of the machines chosen for the recount was, by rule, ineligible to be used because it was used in the post-election audit.

Presumably, these allegations are referring to Rule 14.6.1. Because Douglas County uses the Ballot Now Voting System, Rule 14.7 contains the provisions Douglas County was required to follow. As such, Rule 14.6.1 did not apply to the recount in Douglas County.

d. Procedures Followed

Candidate Busse contends that Douglas County and Teller County were required to conduct the recount in the same manner. There is no requirement in Title 1 or in Colorado Election Rules that a recount affecting two separate counties must be conducted in the exact same manner. Election Rule 14.3 requires that all procedures followed on election night are followed as closely as possible during the recount. Because each county utilizes different voting equipment, the counties could not conduct the recount in the same manner.²⁴ Further, because Douglas County and Teller County used different procedures on election night, different procedures were used for the recount.

e. Watchers

²¹ “ ‘Election Official’ means any county clerk and recorder, election judge, member of a canvassing board. . . .” Section 1-1-104(10), C.R.S.

²² In any election, canvass board members have three duties: (1) reconcile the ballots to confirm the number of ballots counted does not exceed the number of ballots cast; (2) reconcile the ballots cast in each precinct to confirm the number of ballot cast does not exceed the number of eligible, registered electors in the precinct; and (3) certify the abstract of votes cast. Section 1-10-101.5, C.R.S.

²³ Sections 1-10-101(1)(a), 1-1-104(10), C.R.S.

²⁴ Douglas County uses Hart voting equipment and Teller County uses Premier voting equipment.

The supplemental complaint alleges several errors regarding the access watchers had to the recount. More specifically, the supplemental complaint claims that watchers were denied adequate access and that they were not allowed to discuss observations, errors, or preliminary results with each other and canvass board members.

Any candidate may observe a recount or designate one watcher to observe a recount.²⁵ Each candidate subject to the recount, or the candidate's watcher, may be present in the room where the recount is conducted.²⁶ But watchers, including a candidate, are at all times prohibited from interfering with the recount process.²⁷ In addition, watchers may be prevented from interacting with election officials, which includes canvass board members and election judges.²⁸

While Election Rule 8 provides that watchers may observe the counting of ballots, no provision explicitly specifies how close to the counting process watchers must be permitted in order to observe nor how much access watchers are required to be granted.²⁹ But for election activities outside the immediate voting areas, such as the counting of ballots, it is within the discretion of the election official to determine how close watchers may observe.³⁰

During the entire recount, SoS staff observed that each candidate was permitted to observe the recount within six feet of the ballot counting. Further, Clerk Arrowsmith, permitted each candidate to have one watcher, in addition to the candidate, observe closer than six feet of where the ballots were counted. Throughout the entire recount, all watchers were permitted unfettered access to the counting room where they were able to observe the complete ballot counting process. As such, there was no violation of Title 1 and the access watchers were granted exceeded the requirements of the election rules.

3. Additional Investigation Requested

Both complaints request additional investigation and analysis into several matters including: (1) a detailed comparison of precinct trend data; (2) inspection of all rejected ballots because a higher percentage of ballots were rejected from Sedalia and Larkspur; (3) an accounting audit scrutinizing the "statistically unusual" results of the primary election; and (4) analysis of the last two batches of ballots processed and counted for the HD39 race on election night.

The purpose of a recount is to review the ballots to assure they were counted properly.³¹ The SoS observed that the ballots were counted properly and the recount was conducted in accordance with state law and election rules. Below are two tables outlining the results of the HD39 Republican Primary and the HD39 Republican Primary Recount. As illustrated, while the total

²⁵ Election Rule 14.4.2 provides that "any candidate who is subject to the recount may be present and observe the recount at any recount location or designate one [w]atcher to observe the recount"

²⁶ Election Rule 14.4.3

²⁷ Election Rules 14.4.3 and 8.8.

²⁸ "'Election official' means any county clerk and recorder, election judge, member of a canvassing board. . . .'" Section 1-1-104(10), C.R.S.

²⁹ See Rule 8.7.

³⁰ Election Rule 8.6

³¹ Election Rule 14.3.

number of votes for each candidate received slightly changed, the result of the HD39 primary election did not change.

HD 39 Republican Primary Results

Polly Lawrence	2,630
Lu Ann Busse	2,160
Votes Cast	4, 783
Over Votes	1
Under Votes	210

HD 39 Republican Primary Recount Results

Polly Lawrence	2, 2624
Lu Ann Busse	2, 159
Votes Cast	4, 783
Over Votes	8
Under Votes	210

4. Other Concerns

Throughout both complaints several other concerns were raised that will be addressed in this section.

First, in the original complaint, Candidate Busse asserts that at least one Republican election judge was reporting trends in the processed votes before 7:00 p.m. on election day. It is a misdemeanor to release information concerning the count of votes prior to 7:00 p.m. on election day.³² Clerk Arrowsmith is aware of this allegation and has assured the Secretary of State's Office that he takes it very seriously. It is our understanding that he has turned over this information to the proper prosecuting authority.

Second, Candidate Busse alleges that election judges did not inform election staff that one scanning machine has produced a vertical line on the left side of several ballots and that no solution was sought. SoS staff observed that election judges did in fact inform Douglas County election staff that one of the scanning machines had produced a vertical line on the left side of several ballots. Because the HD39 race was located on the right side of the ballot, the vertical line on the left side of the ballot did not affect the recount

³² Section 1-13-718, C.R.S.

Third, Candidate Busse asserts that the ballots have barcodes that could be used to trace a ballot to its voter in violation of the state constitution and state statute.³³ The SoS issued a temporary rule prohibiting all counties from printing ballots that have a barcode containing a unique or sequential number.³⁴ The purpose of this rule was to ensure that no ballot is printed with a number that could be used to trace the ballot to the voter that cast the ballot.³⁵ Because there is a need for a permanent rule to address the use of unique or sequential numbers on ballots, our office commenced formal rulemaking on February 27, 2013.³⁶

Fourth, the original complaint claims that particular electors voted in the primary election yet did not receive vote credit. To the extent that any voter is concerned with their registration status or receiving vote credit, that person should contact the Secretary of State's Office directly.

Fifth, two other concerns raised in the complaints refer to violations of CORA, and more specifically HB 12-1036.³⁷ Candidate Busse alleges that Douglas County elections officials refused to provide her with paper and electronic images of the ballots during the recount. The Secretary of State's authority is limited to complaints arising under Title 1, and therefore, any violation of Title 24 that may have occurred is not within the Secretary of State's purview.³⁸

D. Litigation & Next Steps

On August 27, 2012 Candidate Busse filed a lawsuit in Denver District Court against Secretary of State Scott Gessler, Douglas County Clerk and Recorder Jack Arrowsmith, and Teller County Clerk and Recorder Judith Jamison.³⁹ On October 10, 2012, Candidate Busse filed an Amended Complaint containing the following allegations:

1. Douglas and Teller counties' primary ballots contained unique serial numbers allowing ballots to be traced to the voter in violation of the Colorado Constitution;
2. Marking ballots that may be traced to voters substantially and unduly burdens the fundamental right to vote; and
3. Secretary Gessler, Clerk Arrowsmith, and Clerk Jamison have committed and are about to commit a breach or neglect of duty with regard to the November 2012 general election by failing to follow Colorado election law, rules, security plans, and conditions of use.⁴⁰

As of the date of this report, Candidate Busse voluntarily dismissed the third allegation regarding security violations in Douglas and Teller.⁴¹ In addition, the Court determined that the first and second allegations were futile and thus stricken from the Amended Complaint.⁴²

³³ Article VII, section 8 of the Colorado Constitution states that "no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it." Section 1-5-407(7), C.R.S. states that "[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

³⁴ Election Rule 10.8

³⁵ Attach. 8, Notice of Temporary Adoption, Aug. 20, 2012.

³⁶ Attach. 9, Notice of Proposed Rulemaking, Feb. 27, 2013.

³⁷ HB 12-1036 (section 24-72-205.5(3)(b)) provides that an interested party, such as a candidate subject to a recount, may request copies of ballots in connection with a recount.

³⁸ See section 24-72-204(5).

³⁹ Attach. 10, Verified Petition for Emergency Relief Under § 1-1-113(1), C.R.S. and Complaint for Declaratory Judgment, Aug. 27, 2012.

⁴⁰ Attach. 11, Verified Amended Complaint and C.R.S. § 1-1-113 Petition, Oct. 10, 2012.

⁴¹ Attach. 12, Stipulated Notice of Dismissal, Oct. 17, 2012.

As mentioned previously, the Secretary of State's Office has commenced formal rulemaking to ensure that no ballot is printed with a number that could be used to trace the ballot to the voter that cast the ballot.

As for the conduct of the recount and the topics of Candidate Busse's complaints, the purpose of any recount is to review the ballots to assure they were counted properly. While the total number of votes each candidate received changed slightly, the overall result of the HD39 primary election did not change. In addition, while Douglas County failed to comply with the stated intention on its security plan, as outlined in this report, the Douglas County Elections Department complied with Title 1 and election rules.

⁴² Attach. 13. Order Granting in Part Defendants' Motions to Dismiss and Granting in Part Plaintiffs' Motion to Amend, Oct. 16, 2012.

Attachment 1

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118 Mobile: (720) 291-8894

July 10, 2012

Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Via: Hand Delivery

RECEIVED

JUL 11 2012

ELECTIONS
SECRETARY OF STATE

Jack Arrowsmith
Douglas County Clerk & Recorder
125 Stephanie Place
Castle Rock, Colorado 80109

Via: Hand Delivery

Judith "JJ" Jamison
Teller County Clerk & Recorder
101 West Bennett Avenue
Cripple Creek, Colorado 80813

Via: Certified Mail #7006 0100 0006 7938 3307

RE: Candidate Busse Request for Recount of Colorado House District 39

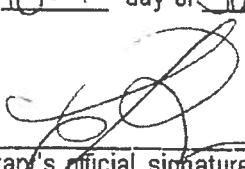
I am Lu Ann Busse, Republican primary candidate for the Colorado State House of Representatives for District 39 (HD 39). The current vote counts for the race show me behind. Therefore, I meet the requirements as an "interested party" in the 2012 primary election. Since Colorado House District 39 includes a portion of Douglas County and all of Teller County, these two county election offices are involved in collecting and tallying the votes for this race.

I formally through this written notarized statement request a recount be conducted to ensure all Colorado State House of Representatives District 39 votes have been identified, entered, and counted correctly.

I swear or affirm under oath that I have prepared the foregoing statement and that I am an interested party making this request for a recount.

Lu Ann Busse
Lu Ann Busse

7-10-12
Date

Subscribed and affirmed before me in the county of <u>Arapahoe</u> , State of Colorado, this <u>10th</u> day of <u>July</u> , 2012	
	
(Notary's official signature)	 TASHA M. DEL CASTILLO NOTARY PUBLIC STATE OF COLORADO My Commission Expires April 8, 2013
April 8, 2013 (Commission expiration date)	

Attachment 2

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118 Mobile: (720) 291-8894

July 22, 2012

Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Via: Facsimile

RE: 2012 Primary Election Complaint Against Douglas County Election Department

Dear Secretary Gessler:

I am Lu Ann Busse, Republican 2012 primary candidate for Colorado House of Representatives In District 39 (HD 39). Please consider this letter as an official complaint regarding the 2012 Republican primary election for HD 39 in Douglas County.

Person Alleging Complaint

Name: Lu Ann Busse Home Phone: 719-487-9499 Mobile Phone: 720-291-8894
Address: 1440 Yarnell Dr, Larkspur CO 80118 County: Douglas

Entity Against Whom Alleged Complaint is Brought

Name: Douglas County Clerk & Recorder's Election Department Phone: 303-660-7444
Address: 125 Stephanie Pl, Castle Rock CO 80109 County: Douglas

Based upon my direct observations and informal investigation as well as reports from other Republican voters in Douglas County, Colorado, I have justifiable reasons to believe that Douglas County election officials and staff may have neglected to perform all their duties and that other violations of state law may have occurred. Major issues uncovered thus far include:

I. Possible Violations:

- A. Rejected ballots, scanning system, computer equipment, and signed return envelopes did not appear to be properly secured and sealed when Candidate Busse toured the county's elections facility on 7/10/12. The tour was conducted by Clerk Jack Arrowsmith, Systems Coordinator Dub Jones, and Elections Operations Manager Michael Lyons, but **no election judges were present**. Chain of custody and access does not appear to have been preserved for several items including:
 1. Unopened ballots, rejected for signature problems, being received after 6/26/12, or other issues, were readily visible in a mail tray and not secured or sealed.
 2. Computer equipment and scanning system did not have clearly visible seals in possible violation of SOS Rule 43.
 3. Electronic images of the ballots for the election were readily available for viewing and several shown to Busse on a terminal screen.
 4. Spoiled ballots were in red metal box with small lock, but neither the lock nor box appeared to be sealed with numbered seals as were the boxes of paper ballots.
 5. Signed opened and empty return envelopes were stacked in mail trays on top of cabinet in an area that may or may not be clearly visible to any camera.

- B. In possible violation of SOS security rule 43.2.5, there appears to be no camera which can clearly view and monitor the two terminals of the computer where Busse was told the electronic images of the ballots are processed, resolved as needed, uploaded and downloaded, and tallied.
- C. In possible violation of his oath of office, at least one Republican Election Judge, before 7 p.m. on election day, was said to be reporting trends in the votes being processed to at least one contested candidate's campaign (not the Busse campaign).
- D. Ballots have bar codes, which may be distinguishing marks, in possible violation of CRS 1-5-407 (7) and the constitutional requirement that "no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it." Media coverage of bar codes on ballots and the traceability of ballots in the last 4.5 months (since 2/13/12) of this primary election may have suppressed turnout or voters' free expression of choice from certain segments of Republican voters who were more likely to support Busse and less likely to favor Lawrence due to the differences between the two candidates.

II. Indications of Additional Investigation and Analysis Warranted:

- E. Completed ballots in their sealed return envelopes from Pierre and Sara Lettellier of Larkspur were deposited in the drop box for ballots at the DMV office in Castle Rock on 6/25/12, but neither is shown as having voted in the final Douglas County 2012 primary election data purchased by Tactical Data Solutions. We are in the process of obtaining sworn affidavits regarding these two ballots. We also now are contacting another 90 voters, including several Republican Central Committee members, who were expected to appear on the final list as having voted, but are not there.
- F. One of County Commissioner Candidate Reed's adult daughters did not receive her mail-in ballot. When she went to the elections office to check, she reportedly was told that it was not mailed because she was listed as an inactive voter. However, she indicated she has been voting in elections, so she should not have been designated as inactive. Furthermore, inactive voters were reportedly mailed ballots.
- G. Long-time Douglas County resident and registered Republican, Martin Fox from Sedalia, does not show up on either the voted list or not voted list received by his District Captain.
- H. Candidate Lawrence won by 55% to 45% in Douglas County while she lost by a handful of votes in Teller County, giving rise to the need for more detailed comparison of precinct trend data.
- I. Since it is statistically unusual (odds of 1 in 1000 occurring by chance), an accounting auditor would scrutinize more closely the fact that in Douglas County the Lawrence, Busse and "under votes" numbers, all three, ended in zero:

Lawrence	2630
Busse	2160
Under Votes	210
Over Votes	1
Total Ballots	5001

J. Another group of numbers warranting further investigation and analysis are from the last two sets of ballots processed and counted for HD 39:

	Next to Last	Percentage	Last Set	Percentage
Lawrence	2710	53.5%	99	45%
Busse	194	42%	121	55%
Subtotal	4644		220	

This complete reversal of percentages is unusual since both sets of ballots reportedly came into the elections office on Tuesday, 6/26/12.

As soon as possible after completion, I will send your office a list of other individuals, who may have knowledge pertaining to the items above, with their contact information.

I would not presume to speculate why the alleged violations occurred. Your investigation can explore and may be able to determine any reason or reasons.

At this time, I also do not have enough information or knowledge to speculate on whether the possible violations listed above involve Title III of the Help America Vote Act of 2002.

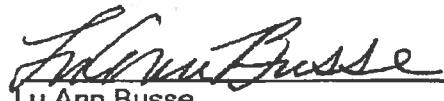
Since this race involves a recount which is scheduled to start tomorrow, I respectfully request that your office begin its investigation of my complaints regarding Douglas and Teller Counties' Election Departments immediately. I would really like to avoid an election contest lawsuit; and; the results of your staff's thorough and timely investigation may help us do just that.

Please ask the investigators you assign to each of my complaints to contact me as soon as possible at 720-291-8894 or 719-487-9499. Thank you.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct to the best of my knowledge.

Executed on July 22, 2012, at Larkspur, CO

Signature of Person Filing Complaint



Lu Ann Busse



July 23, 2012

Dear Ms. Busse,

In response to your email request received Friday, July 20, 2012 4:58 PM with the subject line of "Recount Request," please find the following documents:

1. A copy of the letter we received from the Secretary of State's Office regarding the recount procedures;
2. Secretary of State (SoS) Rule 14, which we will use as our written procedures for the following:
 1. procedures for the recount;
 2. procedures for testing the scanning system;
 3. procedures for resolutions conducted by election judges;
3. A list of recount workers and their assignments;
4. An agenda which includes the planned schedule/order of events for the recount and the schedule of Canvass Board meetings related to the recount.

These documents fulfill your requested items 1 – 6.

With regards to item 7 - Access to view and count every HD 39 Republican paper ballot.

During the recount process on Tuesday, we will not be isolating the individual ballots that contain HD 39. We must comply with SoS Rule 14.3 which states in part that "all procedures of election night shall be followed as closely as possible during the recount, including the examination of ballots." We intend to scan all of the ballots in their original batches, regardless of ballot content. To fulfill your request during the schedule of events tomorrow would interfere with the process and potentially put us in violation of Rule 14.

That said, after the election is closed, you may contact us to schedule a mutually agreed upon time to inspect copies of ballots as prescribed by C.R.S. 24-72-205.5 (3) (b). and determine estimated costs associated with your request.

With regards to item 8 - All electronic images of HD 39 Republican ballots produced during the processing of the ballots through and including June 26, 2012.

Our current voting system software security prohibits County access to scanned ballot images. In an attempt to be responsive to your request, we have contacted our voting system vendor to give us a quote to produce that data for you. Further, additional staff charges may apply.

As always, please feel free to contact me if you have any questions or concerns.

Sincerely,

Jack Arrowsmith
Douglas County
Clerk and Recorder



July 24, 2012

Dear Ms. Busse,

In response to your CORA request received Thursday, July 19, 2012 4:09 PM with the subject line of "Candidate Busse Electronic Data CORA Request," please find our responses below:

1. All electronic scanned images created during the primary election of the Republican paper ballots;

Our current voting system software security prohibits County access to scanned ballot images. In an attempt to be responsive to your request, we have contacted our voting system vendor to give us a quote to produce that data for you. Because we are unsure if this will compromise voter anonymity and ensure secrecy in voting as prescribed in Article 8, Section 8 of the Colorado Constitution, we will be asking the voting system vendor to redact any and all serial numbers as well as barcodes.

2. All user activity and keystroke logs and/or reports for the terminals and computer handling the election's electronic ballots and vote counting data;

Attached are the Windows Event Logs and Hart election audit logs from BallotNow station 1 & 2 as well as the Tally station.

3. All interim and preliminary vote tallies or tabulations of any preliminary results through and including July 9, 2012 for HD 39:

Four PDF files attached with time stamp in file name.

4. Electronic images of the ballots used in post-election audit.

Our current voting system software security prohibits County access to scanned ballot images. In an attempt to be responsive to your request, we have contacted our voting system vendor to give us a quote to produce that data for you. In our continued efforts to preserve voter anonymity and ensure secrecy in voting as prescribed in Article 8, Section 8 of the Colorado Constitution, we will be asking the voting system vendor to redact any and all serial numbers as well as barcodes.

As always, please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Arrowsmith".

Jack Arrowsmith
Douglas County
Clerk and Recorder

Potential Witnesses Regarding 2012 Primary Election in Douglas County

Lu Ann Busse	Mobile: 720-291-8894
Dave Gill	Mobile: 303-378-8608
Randy Reed, his spouse and daughter	Randy's Mobile: 303-525-9005
Richard Rosenbaum	Mobile: 303-257-0689
Yvonne Shaw	Home: 719-481-0454
Douglas County election officials and staff	Office: 303-660-7444
Douglas County primary election judges (next page)	
Specifically Regarding Recount	
Mark Braunlich (Watcher in Douglas & Teller)	Mobile: 704-497-3671
Harvie Branscomb (public observer)	Mobile: 970-963-1369
Mary Eberle	Home: 303-442-2164
Matthew Hess	Mobile: 303-246-9642
Marilyn Marks	Mobile: 970-404-2225
Chris Allen (Douglas County Green Party Chair)	
Douglas County Canvass Board Members	

MAIL BALLOT - PRIMARY ELECTION JUNE 26, 2012

Last	First	Aff
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ROUNDUP (2 + 4 CSV's) - Starts June 6 and June 25

Lindeman	Gill	R
Monroe	Larry	D
Johaneson	Michael	R

CSV's on Monday, 6/25 & Tuesday 6/26 (two teams of two)

PICKLE, FACE (3) - Starts 9:00am June 7

Wesierski	Walter	D
Wesierski	Bridget	R
Schnurle	George	U

RECEIVING (2 + Lead) - Starts 1:00pm June 7

Fisher	C Kennon	R
Gloisten	Kathleen	D
Kennedy	Christy	D

SIG VERIFY (5 + Lead) - Starts 9:00am June 11

Churchill	Jackie	R
Adderly	Cheryl	D
Gebhardt	John	D
Amick	Marsha	D
Mutzebaugh	Susan	R
Gibbons	Kathy	R

PROCESSING (12 + Lead) - Starts 9:00am June 14

Oswald	Doyle	D
Oswald	Kathleen	D
Robertson	Cherie	R
Hanneman	Barbara	D
Towt	Howard	R
Lindeman	Loretta	R
Van Why	Donna	D
Johnson	Adrienne	R
Parker	Jerry	U
Kerkhove	George	R
Oberle	Linda	U
Nitsch	Laryce	D
Pals	James	R

COUNTING (2) - 9:00am June 19

Klotz	Merlin	R
Spence (Scan)	Susan	R
Campbell (Scan)	Hugh (TC)	R

Resolution (appointed by Party - 2 per scanner) - Starts June 25

Levinsky	Morton	D
McPeters	Jane	D
Anderson	Jan	R
Anderson	Ray	R

Attachment 3

RECEIVED

JUL 23 2012

SOS-E-60-12-0013 (Busse)

Colorado Secretary of State

Lu Ann Busse

1440 Yarnell Drive, Larkspur CO 80118

Mobile: (720) 291-8894

July 22, 2012

Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Via: Facsimile

RE: 2012 Primary Election Complaint Against Teller County Election Department

Dear Secretary Gessler:

I am Lu Ann Busse, Republican 2012 primary candidate for Colorado House of Representatives In District 39 (HD 39). Please consider this letter as an official complaint regarding the 2012 Republican primary election for HD 39 in Teller County.

Person Alleging Complaint

Name: Lu Ann Busse Home Phone: 719-487-9499 Mobile Phone: 720-291-8894
Address: 1440 Yarnell Dr, Larkspur CO 80118 County: Douglas

Entity Against Whom Alleged Complaint is Brought

Name: Teller County Clerk & Recorder's Election Department Phone: 303-660-7444
Address: 101 W. Bennett Ave, Cripple Creek, CO 80813 County: Teller

Based upon publicly reported information, I have justifiable reasons to believe that Teller County election officials and staff may have neglected to perform all their duties and that other violations of state law may have occurred. Major issues uncovered thus far include:

I. Possible Violations:

- A. All mail-in ballots (~4,100 total of which ~70% went to Republican voters) were printed and mailed without voter affidavit and signature line.
- B. Apparently without statutory authority, procedures and rules were relaxed so that Teller County voters could send in their signature via facsimile and scanned images to "cure" ballots missing affidavits and signatures. There was no way to verify that the eligible voter returned both the ballot and an electronically transmitted signature for that ballot.

II. Indications of Additional Investigation and Analysis Warranted:

- C. A higher percentage of "cured" ballots occurred than usual in this county. Was this, in whole or in part, due to the relaxation of the rules?
- D. Republican primary voter turnout for this county was historically and unusually low. Did the mail-in ballot irregularities suppress voter turnout significantly for certain segments of voters predisposed to one HD 39 candidate?

I would not presume to speculate why the alleged violations occurred. Your investigation can explore and may be able to determine any reason or reasons.

At this time, I also do not have enough information or knowledge to speculate on whether the possible violations listed above involve Title III of the Help America Vote Act of 2002.

Since this race involves a recount which is scheduled to start tomorrow, I respectfully request that your office begin its investigation of my complaints regarding Douglas and Teller Counties' Election Departments immediately. I would really like to avoid an election contest lawsuit; and, the results of your staff's thorough and timely investigation may help us do just that.

Please ask the investigators you assign to each of my complaints to contact me as soon as possible at 720-291-8894 or 719-487-9499. Thank you.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct to the best of my knowledge.

Executed on July 22, 2012, at Larkspur, CO

Signature of Person Filing Complaint



Lu Ann Busse

Attachment 4

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118

Mobile: (720) 291-8894

Date: July 29, 2012

FAX TO: Scott Gessler, Secretary of State
From: Lu Ann Busse
cc: Suzanne Staiert, Deputy Secretary
Pages: 12

Attached is a supplement to my July 22, 2012 complaint against Douglas County's Election Department. I look forward to hearing from you or Deputy Sec. Staiert soon. Please let me know if there are any questions or if more information is needed.

Thank you,



Lu Ann Busse

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118

Mobile: (720) 291-8894

July 29, 2012

Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Via: Facsimile

RE: Supplemental Complaint Against Douglas County Election Department

Dear Secretary Gessler:

I am Lu Ann Busse, Republican 2012 primary candidate for Colorado House of Representatives in District 39 (HD 39). Please consider this letter as a supplement to the official complaint regarding the 2012 Republican primary election for HD 39 in Douglas County I submitted to your office on July 22, 2012 (another copy attached).

Person Alleging Complaint

Name: Lu Ann Busse Home Phone: 719-487-9499 Mobile Phone: 720-291-8894
Address: 1440 Yarnell Dr, Larkspur CO 80118 County: Douglas

Entity Against Whom Alleged Complaint is Brought

Name: Douglas County Clerk & Recorder's Election Department Phone: 303-660-7444
Address: 125 Stephanie Pl, Castle Rock CO 80109 County: Douglas

Based upon my direct observations and informal investigation as well as reports from watchers and members of the public at the recount in Douglas County, Colorado, I have additional justifiable reasons to believe that Douglas County election officials and staff may have neglected to perform essential duties and that other violations of state law may have occurred.

I. Possible Violations since July 22, 2012: (see attached 1st complaint for previous list)

- K. Clerk Arrowsmith claims that Douglas County has an "exemption" from following SOS security Rule 43 when apparently no such written exemption exists or is even allowed. After publicly stating that Douglas County had a "letter of exemption" on July 24, 2012 and after neither he nor the Secretary's staff could produce such a document, Clerk Arrowsmith walked back from that statement at the Canvass Board meeting on July 26, 2012 and changed his claim to Douglas County has a verbal exemption from following the security procedures and that the 2012 primary election in the county exceeded SOS requirements. In addition, the 2012 primary election security plan filed with the Secretary of State confirms that Douglas will follow the regular security requirements and mentions no exemption, verbal or otherwise. By claiming to have an exemption from rule 43, Douglas County election officials are admitting that they did not secure items as required by rule 43 (because they were exempt from doing so) and are confirming occurrence of the items listed in "I.A." of my July 22nd complaint.
- L. By their own admission, Douglas County officials and staff did not follow mandated security procedures. Thus, they should have started the recount with a new installation of the trusted build. Next, they should have tested the new installation before proceeding as required by the SOS rules. At the public meeting held as the recount began, Clerk Arrowsmith was asked about installing a new trusted build. He reaffirmed everything was properly secured and would not consider installing a new trusted build or other security testing. The Canvass Board members and SOS observers in attendance said nothing although decisions on how to conduct the recount are required of the Canvass Board.

Therefore, I have no confidence and Douglas County has no proof that someone had not tampered with or altered election items not secured in accordance with Rule 43. Mere video and door access surveillance is not adequate documentation.

M. Beyond item "L", the possibly illegitimate recount conducted on July 24-25, 2012 did not adhere to other procedures properly, including but not limited to the following:

1. Election staff, not Canvass Board, selected the machines for the recount. Selecting machine(s) for a recount is a stated duty of the Canvass Board in SOS recount rules.
2. One of the two machines selected by the staff for the recount was by rule ineligible for the counting since it had been used in the post-election audit. This prohibition was ignored by the Canvass Board and staff. Watchers struggled to get information on the serial number of the machines at issue, but were precluded from any meaningful observation at that time.
3. Canvass Board was not allowed to select a random sample of ballots, as required by SOS rule, for the pre-recount machine test. They were instructed by election staff to select only one batch of 200 paper ballots from the bundles in the boxes of ballots. Canvass Board members complied without checking the SOS recount rules.
4. The pre-recount machine test did not count the required minimum of 50 ballots for HD 39, only 41. No remedy was undertaken to meet the 50 ballot minimum despite my asking what they should do if they did not include enough ballots from HD 39.
5. The above problems were partially and incompletely observed by concerned authorized watchers, who strained to hear the deliberations of the Canvass Board and election staff. Canvass Board members refused to interact with the concerned watchers and hear their statements of concern about possible violations.
6. When one scanning machine produced a vertical line on the left side of several ballots in recount batch # 57, the operator did not inform anyone when it occurred. Therefore, the scanner was not cleaned and the batch was not rescanned as it would have been during the election. When this was discovered by the election judges resolving ballots, again no solution was sought as would have been done during the election. It is not known what impact, if any, this may have had on interpretation of ballot markings, but it shows the officials' and staff's general lack of concern for adherence to the procedures used during the primary election for this recount.
7. Douglas County did not allow several authorized watchers adequate access to observe the recount visually or auditorily, possibly violating the rights of the candidates and watchers. Some of this issue was remedied late Tuesday upon the intervention of Deputy Secretary Staiert. However, much of the damage already had been done as noted in items M.1-6 above.
8. The Canvass Board held numerous private meetings for three days. They moved to areas away from the public, candidates, and watchers so that their conversations in these meetings could not be heard. This is in possible violation of the Sunshine Laws and precluded candidates, watchers, and the public from having meaningful input on the correction of discrepancies that were occurring.
9. Douglas County did not allow watchers and candidates to discuss observations, errors, or preliminary results with Canvass Board Members, or even each other in some cases. This may have violated my rights to discuss emerging recount problems with my supporters, family, advisors and watchers. The documents and process were supposed to be public in nature. Prohibiting discussion of public documents appears obstructionist and improper. Wayne Munster from your office also approved this prohibition on Tuesday morning despite repeated objections from watchers.

- N. Douglas County did not conduct the recount in the same manner as Teller County so there was not uniformity of procedures across both counties in HD 39, even for the items that could have been done the same. [Note: This item also should be added to my July 22nd complaint against Teller County.]
- O. Douglas County Canvass Board met in private numerous times from July 24 through 26, 2012 in possible violation of Colorado Sunshine laws. Candidates and others were not allowed to listen to these meetings. I asked if we would be provided minutes of a couple of the meetings I saw going on during the recount and Clerk Arrowsmith said he would relay the information from the meetings verbally to "everyone." On two occasions on July 25, 2012, Clerk Arrowsmith gave a report to the candidates, observers and election workers present regarding the Canvass Board's decisions from these private meetings. It should be noted that any decisions made in private could potentially be set aside as invalid due to the possible violation of the Sunshine Laws.
- P. Douglas County Canvass Board appeared to have already made up their minds regarding certification when they did meet in public on July 26, 2012. The presentations, questions, and discussions appeared to be written down and rehearsed.
- Q. Clerk Arrowsmith refused to provide me, and my appointed watchers, access to the paper and electronic images of the ballots (see attached July 23rd and July 24th letters from Clerk Arrowsmith) during the recount. Not being able to examine the paper ballots and their images hindered my ability to properly observe and participate in the recount. These denials further prevented my appointed watchers from exercising their statutory rights to "assist in the correction of discrepancies." The substantial lack of adherence to rule 43 and the Clerk's denials of access to the paper ballots and electronic images of them have contributed substantially to my total lack of confidence in the results of the recount performed in Douglas County. Recently enacted HB12-1036* allows "interested parties" access to the paper ballots and their electronic images, without any redaction, during a recount. Therefore, these denials to view all the ballots and their images also may have violated my rights as a candidate involved in a recount.
- R. Clerk Arrowsmith refuses to allow me access to electronic images of the ballots until the bar codes and serial numbers have been redacted in order to "preserve voter anonymity and ensure secrecy in voting" (see attached July 24, 2012 letter from Clerk Arrowsmith). By refusing to provide me electronic copies of the electronic images of ballots until they can redact the bar codes and serial numbers, Clerk Arrowsmith is admitting these items are distinguishing marks, in possible violation of CRS 1-5-407 (7) and the constitutional requirement that "no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it."

*HB12-12036 reads in part "DURING THE PERIOD DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3), AN INTERESTED PARTY MAY INSPECT AND REQUEST COPIES OF BALLOTS IN CONNECTION WITH SUCH RECOUNT WITHOUT HAVING TO OBTAIN A COURT ORDER GRANTING SUCH INSPECTION. IN CONNECTION WITH AN INSPECTION BY AN INTERESTED PARTY AS AUTHORIZED BY THIS PARAGRAPH (b), AN INTERESTED PARTY MAY WITNESS THE HANDLING OF BALLOTS INVOLVED IN THE RECOUNT TO VERIFY THAT THE RECOUNT IS BEING CONDUCTED IN A FAIR, IMPARTIAL, AND UNIFORM MANNER SO AS TO DETERMINE THAT ALL BALLOTS THAT HAVE BEEN CAST ARE ACCURATELY INTERPRETED AND COUNTED;..." [24-72-205.5(3) (b)]

II. Indications of Additional Investigation and Analysis Warranted:

- S. Due to Douglas County's lack of adherence to proper security procedures, the return envelopes do not appear to have been properly secured and stored.
 - 1. All the return envelopes with voters' signatures from Douglas County need to be inspected and recounted.
 - 2. Envelopes need to be matched to the paper ballots to see if there are discrepancies in order to determine if any ballots or envelopes have been misplaced or lost. Is there a way to accomplish this through the electronic lists of the envelopes and the ballots generated during their processing?
- T. We have identified ~100 Douglas County Republican voters, including several Republican Central Committee members, who were expected to appear, missing from the final "voted" list. These voters are being contacted to see if they voted. Please let me know if your staff wants a copy of our list.
- U. Higher percentages of ballots were rejected from Sedalia and Larkspur, areas known to strongly support me. This warrants additional investigation, including inspection of all the rejected ballots and their envelopes from Douglas County.

Tactical Data Solutions was able to clear up the issue regarding ballots from Pierre and Sara Letellier of Larkspur listed as needing investigation in my original complaint. They both do show up as voted in the final list – there was confusion regarding the proper spelling of the last name which led to the mismatch in the data analysis.

Attached is a list of individuals, who may have knowledge pertaining to my original July 22nd complaint and this supplement to it. Since potential witnesses include the primary election judges, the list of their names provided to me by Douglas County is attached.

Again, I would not presume to speculate why the alleged violations occurred.

There may have been possible violations of Title III of the Help America Vote Act of 2002; but, we need to pull the references so I will submit that complaint separately.

Due to the possible major violations listed herein, I respectfully request that your staff, excluding Wayne Munster, redo the recount in Douglas County properly and make sure I am given all the access and rights to which I am entitled. Thank you.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct to the best of my knowledge.

Executed on July 29, 2012, at Larkspur, CO

Signature of Person Filing Complaint



Lu Ann Busse

Attachments: Busse July 22nd Complaint
July 23, 2012 Letter from Clerk Arrowsmith
July 24, 2012 Letter from Clerk Arrowsmith
Potential Witness List (including list of Douglas County election judges)

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118 Mobile: (720) 291-8894

August 1, 2012

Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Via: Facsimile

RE: Evidence for Busse Complaint Against Douglas County

Dear Secretary Gessler:

This letter includes evidence for your investigators to review regarding my complaints against Douglas County Election Department.

Item	Evidence	Issues/Questions Raised
electionbauditlog – tally.pdf	Entry lines 21 thru 26 show "2012 Primary Cumulative" reports created & viewed before election closed.	Cumulative results reports were viewed before 7:00 pm on 6/26. Why does report start at 5:46 pm on 6/26 & not show previous entries from June as requested?
Printouts of "Official" results	# of precincts in HD39 listed as 35 when there are only 33	Something is not programmed correctly since several reports regarding HD39 show 35 precincts when it only has 33 precincts in Douglas County
HD 39 Recount – Resolution Anomalies	8 resolution anomalies from the recount reported as "human errors"	Why did Canvass Board verified results with 8 known errors without asking for post-election audit or correcting the known errors?
Several different computer security logs	User reported as "elecadmin"	Why does not each user log in with a unique identifier when they use any of the terminals?

I also respectfully request that your Investigators interview all the Republican election judges regarding which campaigns they were speaking to and endorsing during the primary elections. (List of election judges was provided to your office on 7/29/12.) I was told of one who shared the trends of votes being processed with the spouse of a Republican candidate in contested primary; and Merlin Klotz was listed as endorsing my opponent on her campaign website during the primary. Please ask one of your staff to call me for more details regarding issues with election judges.

Thank you,

Lu Ann Busse

Lu Ann Busse

Attachments: Tally Audit Log – Official, p. 1
 HD39 - R – Official
 HD 39 Recount – Anomalies [misspelled in original]

Audit Log — Official

Douglas County — 2012 Primary Election — June 26, 2012

07/23/2012 03:23 PM

Precincts Reporting 0 of 146 = 0.00%

Page 1 of 6

Total Number of Voters : 27,157 of 104,084 = 26.09%

Data

Entry	User	Code	Date	Time	Description	Data
1	elecadmin	100	06/26/2012	5:48:28 pm	Create Election	(Time: 00:00:03)
2	elecadmin	307	06/26/2012	5:48:28 pm	DB Description	Desc: 2012 Primary Election (Time: 00:00:01)
3	elecadmin	308	06/26/2012	5:48:28 pm	DB Path	Path: C:\Program Files\InterChic\Tally\ DataBase\120628-174818\TallyData.db
4	elecadmin	309	06/26/2012	5:48:28 pm	Provisional Reassignment	Exclude
5	elecadmin	309	06/26/2012	5:48:26 pm	Provisional Reassignment	Disabled
6	elecadmin	309	06/26/2012	5:48:26 pm	Provisional Reassignment	Consolidate Predicts
7	elecadmin	309	06/26/2012	5:48:26 pm	Reporting Flag	Unofficial
8	elecadmin	302	06/26/2012	5:48:26 pm	Date/Time for Reporting	06/26/2012 04:00:00pm
9	elecadmin	303	06/26/2012	5:48:26 pm	Date/Time for Tabulation	06/26/2012 07:00:00pm
10	elecadmin	305	06/26/2012	5:46:26 pm	Unresolved write-in reporting	Report as under votes
11	elecadmin	306	06/26/2012	5:46:26 pm	Rejected write-in reporting	Report as under votes
12	elecadmin	310	06/26/2012	5:40:28 pm	Retrievable Ballots	Disabled
13	elecadmin	311	06/26/2012	5:46:26 pm	Ballot Source Label	Absentee - Absentee
14	elecadmin	311	06/26/2012	5:46:26 pm	Ballot Source Label	Early - Early
15	elecadmin	311	06/26/2012	5:46:26 pm	Ballot Source Label	Election - Election
16	elecadmin	312	06/26/2012	5:46:26 pm	Cross File Setting	Combine
17	elecadmin	1	08/26/2012	5:47:53 pm	User Login	
18	elecadmin	54	08/26/2012	5:47:53 pm	Database Selected	Connection Successful
19	elecadmin	55	08/26/2012	5:47:53 pm	DB Description	Desc: 2012 Primary Election
20	elecadmin	59	08/26/2012	5:47:53 pm	DB Path	Path: C:\Program Files\InterChic\Tally\ DataBase\120628-174818\TallyData.db
21	elecadmin	401	08/26/2012	5:53:38 pm	Report Created/Updated	2012 Primary Cumulative
22	elecadmin	401	08/26/2012	5:54:49 pm	Report Created/Updated	2012 Primary Cumulative
23	elecadmin	400	08/26/2012	5:57:54 pm	Viewed/Printed Report	2012 Primary Cumulative (Report Time 00:00:00)
24	elecadmin	400	08/26/2012	5:58:09 pm	Viewed/Printed Report	Cumulative Report (Report Time 00:00:00)
25	elecadmin	401	08/26/2012	6:07:39 pm	Report Created/Updated	2012 Primary Cumulative
26	elecadmin	400	08/26/2012	6:08:04 pm	Viewed/Printed Report	2012 Primary Cumulative (Report Time 00:00:00)
27	elecadmin	300	06/26/2012	6:08:23 pm	Provisional Ballots	Exclude
28	elecadmin	308	06/26/2012	6:08:23 pm	Provisional Reassignment	Disabled
29	elecadmin	301	06/26/2012	6:08:23 pm	Consolidate Flag	Consolidate Predicts
30	elecadmin	304	06/26/2012	6:08:23 pm	Reporting Flag	Unofficial
31	elecadmin	302	06/26/2012	6:08:23 pm	Date/Time for Reporting	06/26/2012 04:00:00pm
32	elecadmin	303	06/26/2012	6:08:23 pm	Date/Time for Tabulation	06/26/2012 07:00:00pm
33	elecadmin	305	06/26/2012	6:08:23 pm	Unresolved write-in reporting	Report as under votes
34	elecadmin	306	06/26/2012	6:08:23 pm	Rejected write-in reporting	Report as under votes
35	elecadmin	310	06/26/2012	6:08:23 pm	Retrievable Ballots	Disabled
36	elecadmin	311	06/26/2012	6:08:23 pm	Ballot Source Label	Absentee - Mail
37	elecadmin	311	06/26/2012	6:08:23 pm	Ballot Source Label	Early - Early
38	elecadmin	311	06/26/2012	6:08:23 pm	Ballot Source Label	Election - Election

**HD39 - R — Official
Douglas County, Colorado — 2012 Primary Election — June 26, 2012**

Page 1 of 1

07/25/2012 02:36 PM

Total Number of Voters : 20,742 of 74,391 = 27.88%
Number of District Voters: 5,001 of 15,760 = 31.73%

Precincts Reporting 0 of 35 = 0.00%

Party	Candidate	Mail	Early	Election	District Precincts Reporting 0 of 35 = 0.00%	
					Total	
R	Polly Lawrence	2,630	54.91%	0	0.00%	2,630 54.91%
R	Lu Ann Busse	2,160	45.09%	0	0.00%	2,160 45.09%
	Cast Votes:	4,790	95.78%	0	0.00%	4,790 95.78%
	Over Votes:	1	0.02%	0	0.00%	1 0.02%
	Under Votes:	210	4.20%	0	0.00%	210 4.20%

2012 Primary
Election night results - HD 39 only

HD 39 Recount - Resolution Anomalies

SN	Resolution	Reason	Resolution	Reason
2576	Select Polly Lawrence		Select Polly Lawrence	
72156	Select Polly Lawrence		Confirm Overvote	deselect both candidates *
101166	Select Lu Ann Busse	damaged contest	Select Lu Ann Busse	damaged contest
104822	Select Polly Lawrence		Confirm Overvote	deselect both candidates *
116238	Select Polly Lawrence		Confirm Overvote	deselect both candidates *
1708	Select Polly Lawrence		Confirm Overvote	deselect both candidates *
105454	Confirm Overvote	deselect both candidates	Confirm Overvote	deselect both candidates
68655	Select Polly Lawrence		Confirm Overvote	deselect both candidates *
1678	Select Lu Ann Busse	damaged contest	Select Lu Ann Busse	damaged contest
4105	Select Polly Lawrence		Confirm Overvote	deselect both candidates *
45841	Select Polly Lawrence		No resolution needed	Polly Lawrence received credit

SN	Resolution	Reason	Resolution	Reason
105568	Select Lu Ann Busse		Select Lu Ann Busse	
116096	Select Lu Ann Busse		Select Lu Ann Busse	
116169	Select Polly Lawrence		Select Polly Lawrence	Voter clearly marked Lu Ann Busse
54654	Select Lu Ann Busse	damaged contest	Select Lu Ann Busse	damaged contest
1544	Select Lu Ann Busse	damaged contest	Select Lu Ann Busse	damaged contest
105734	Select Polly Lawrence	damaged contest	Select Polly Lawrence	damaged contest
105735	Select Polly Lawrence	damaged contest	Select Polly Lawrence	damaged contest
54765	Select Lu Ann Busse	damaged contest	Select Lu Ann Busse	damaged contest
1423	Select Lu Ann Busse		Confirm Overvote	deselect both candidates *

* All reported as "human errors" by Mike Lyons on 7/26/12

Attachment 5

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118

Mobile: (720) 291-8894

Date: August 1, 2012

RECEIVED

AUG 01 2012

Colorado Secretary of State

FAX TO: Scott Gessler, Secretary of State
From: Lu Ann Busse
cc: Suzanne Staiert, Deputy Secretary
Stefanie Mann
Pages: 3
RE: Supplement to Busse Complaint Against Teller County

Attached is a supplement to my original July 22, 2012 complaint against Teller County, which I referenced in my last fax to you.

I look forward to your contacting me regarding the options to rectify the documented serious problems that occurred for 2012 HD 39 Republican primary.

Thank you,



Lu Ann Busse

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118

Mobile: (720) 291-8894

August 1, 2012

Scott Gessler
Secretary of State
Colorado Department of State
1700 Broadway
Denver, Colorado 80290

Via: Facsimile

RE: Supplemental Complaint Against Teller County Election Department

Dear Secretary Gessler:

I am Lu Ann Busse, Republican 2012 primary candidate for Colorado House of Representatives in District 39 (HD 39). This is a supplement to my official July 22, 2012 complaint regarding the 2012 Republican primary election for HD 39 in Teller County.

Person Alleging Complaint

Name: Lu Ann Busse Home Phone: 719-487-9499 Mobile Phone: 720-291-8894
Address: 1440 Yarnell Dr, Larkspur CO 80118 County: Douglas

Entity Against Whom Alleged Complaint is Brought

Name: Teller County Clerk & Recorder's Election Department Phone: 719-689-2951
Address: 101 W. Bennett Ave, Cripple Creek, CO 80813 County: Teller

Based upon written communications, some of which included you, released by your office, I have additional evidence to believe that Teller County election officials and staff neglected to perform all their duties properly and that other violations of state law occurred there.

I. Alleged Violations: (See July 22, 2012 Busse Compliant for previous list)

- E. Mail-in ballots, which accounted for over 70% of the votes cast for HD 39, were printed and mailed without the voter affidavit and signature line. According to Judd Choate, the head of elections for your office: "Legally, Teller violated 1-7.5-107(3)(b,5)(I) when they sent ballots with a return envelope missing the affidavit and signature line." (6/5/12 email from Judd Choate to Scott Gessler et al) [emphasis added by Busse]
- F. Allowing over 1,400 voters from the county to *cure* ballots by mailing, faxing or emailing their signatures violated Rule 29.1.2, which requires voters, who submit a mail-in ballot without a signature, must sign an affidavit *in person* in front of the county clerk or designee, again according to Mr. Choate. In another email on 6/5/12, he further stated: "In short, this is a problem that (in some respects) has no solution that doesn't violate statute, rules or both." [emphasis add by Busse]
- G. Douglas County voters in HD 39 were not afforded the options, which violated Rule 29, for *curing* their ballots so they did not receive equal treatment in this primary election.
- H. Ballots were not properly sealed and secured in accordance with Rule 43. I observed that the ballot box for the Cripple Creek Vote Creek was not sealed and my observer reported to me that the Florissant Vote Center ballot box was not sealed when the recount began on July 23, 2012. The explanation we received is that the Canvass Board forgot to re-seal the ballot boxes after they met on July 6, 2012.

- I. Canvass Board, Secretary of State staff, and election staff in Teller County followed different procedures for the recount of HD 39 in Teller County than those used in Douglas County, even for areas that could have been uniform, in possible violation of the SOS Recount Rule.
- J. Teller County Canvas Board meet with SOS and county election staff at the end of the actual counting for the recount and did not allow the candidates and their two watchers (one each) to hear their conservations until they decided upon and reported the results, in possible violation of Sunshine Laws.

II. Indications of Additional Investigation and Analysis Warranted:

- K. Republican primary voter turnout for this county was historically and unusually low. The mail-in ballot irregularities and options given voters may have suppressed voter turnout significantly for certain segments of voters. Mr. Choate mentioned this possibility on June 5th by stating: "...some will see this as a dubious request, which they will ignore or (even better) will see as an attempt to create election fraud or steal the voter's identity." My voters and supporters tend to distrust the government more and have greater concerns about election fraud than those of my opponent so this could have suppressed turn-out of my voters more than hers.

Once again, I would not presume to speculate why the alleged violations occurred.

Given that your office knew and communicated about Teller County's conducting an unlawful primary election as it was happening and the serious breaches of Rule 43 in Douglas County, I officially request that you and your staff not certify the results of the Republican primary race for Colorado House District 39 to go on the general election ballot. Doing so could be considered a serious violation of your duty since you would be certifying the results of an unlawful election, as it was described by your staff.

Please contact me regarding the options to rectify this major election issue since I have been told having another primary election for HD 39 is not an option due to the constraints of time. Thank you.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct to the best of my knowledge.

Executed on August 1, 2012, at Larkspur, CO

Signature of Person Filing Complaint



Lu Ann Busse

Addendum: Via email I will send your office a copy of the pdf file with the written communications regarding Teller County released by your office through a recent CORA request. It has too many pages to print and fax with this document.

Lu Ann Busse
1440 Yarnell Drive, Larkspur CO 80118 Mobile: (720) 291-8894

Date: August 1, 2012

URGENT

RECEIVED

FAX TO: Scott Gessler, Secretary of State
From: Lu Ann Busse
cc: Suzanne Staert, Deputy Secretary
Stefanie Mann
Pages: 5
RE: Do Not Certify Results of Colorado HD39 for Ballot

AUG 01 2012

Colorado Secretary of State

FAXED

Attached is a letter with additional evidence to consider regarding my complaint against Douglas County's Election Department. I look forward to hearing from your investigator soon to provide more details.

I am working on a supplement to my complaint against Teller County which I hope to complete and send to your office today. Please note that emails released from your office state Teller County violated election law and rules regarding the mail-in ballots and that due to the problems with the mail-in ballots, there was no way to hold Teller's primary election law without breaking statutes, rules and/or both. I will forward that evidence with the supplement.

Given that your office knew and communicated about Teller County's conducting an unlawful primary election as it was happening and the serious breaches of Rule 43 in Douglas County, I officially request that you and your staff not certify the results of the Republican primary races for Colorado House District 39 to go on the general election ballot. Doing so could be considered a serious violation of your duty since you would be certifying the results of an unlawful election, as it was described by your staff.

Please contact me regarding the options to rectify this major election issue since I have been told having another election for HD 39 is not an option due to the time frame.

Thank you,

Lu Ann Busse

Lu Ann Busse

Attachment 6

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: Douglas

Name of person submitting plan: Mike Lyons, Elections Operations Manager

Address: 125 Stephanie Place, Castle Rock, Co 80109

Email: Mlyons@Douglas.Co.Us

1. Date of the election for which this plan will be followed: June 26, 2012

2. Election (Coordinated, General, Primary, Recall):
Primary

3. Type of Election (Mail Ballot, Polling Place, Vote Center):
Mail Ballot

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:

Ballot Counting Room (Computer Systems)

Operations Manager	February 2012
Systems Coordinator	February 2012
Elections Manager	February 2012

Mail In Ballot Storage area (ballots) & Warehouse (election equipment)

Elections Manager	February 2012
Operations Manager	February 2012
Elections Coordinator	February 2012
Elections Clerk (CA)	February 2012
Elections Clerk (EB)	February 2012
Elections Clerk (BK)	February 2012
Elections Clerk (JK)	February 2012
Elections Clerk (CG)	February 2012
Elections Clerk (GK)	February 2012
Elections Clerk (EM)	February 2012
Elections Clerk (TC)	February 2012
Elections Clerk (AH)	February 2012
Elections Clerk (BW)	February 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.

State of Colorado Security and Contingency Plan

- 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.

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:

State of Colorado Security and Contingency Plan

- 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.

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.

State of Colorado Security and Contingency Plan

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

All equipment at any of our remote voting locations is set up by County Elections staff. Ballots are transported by a bi-partisan team of election judges.

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.
- 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 election judges will contact the county clerk if there is any evidence

State of Colorado Security and Contingency Plan

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.
- 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.

State of Colorado Security and Contingency Plan

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 I-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:

- 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.

State of Colorado Security and Contingency Plan

- 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
- 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: 5/8/12

Location of training: Service Centers

Number of election judges/field technicians receiving the security training: 6

- 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;

State of Colorado Security and Contingency Plan

- 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

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.

State of Colorado Security and Contingency Plan

- 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.

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.

State of Colorado Security and Contingency Plan

- 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 State. The county will not use the device for the remainder of the election unless 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 with seals and properly document the paper records and memory card.
- 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 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).

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

State of Colorado Security and Contingency Plan

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).

Douglas County utilizes our voting system on a closed network located in the secured Ballot Counting Room. Access to the room is secured with card key access and only 2 employees have access to the room. Further, only two employees know the administrator password to the system.

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).

Option #1 - Create a second (or backup) copy of the BOSS, and in some cases, the Tally database that is created immediately after the point of memory card downloads. The backup copy shall be stored on closed CD Media and documented as matching the master database. This process shall be observed by two election staff members. Chain of custody documents shall be generated for the media, and the media shall be sealed with at least two tamper evident seals and stored in a sealed or lockable transfer case that is stored in a limited access area. On Election Day, the designated election official shall load the sealed copy of the database onto the server/workstation, create a Tally database, if necessary, from the secured copy of the finalized database and proceed with uploading memory cards into Tally after documenting the loading of the backup master database onto the system. After loading the sealed database copy, the county shall re-secure the database with seals (updating necessary logs) in the limited access location.

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

Douglas County will utilize Windows Event logs to record this information, as well as the video recordings. This information will be stored in a file outside or separate from the database, which is NOT accessible for review and/or modification by user/operator accounts on the system, but it will be readily accessible to election officials or other interested party.

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).

Sequoia Voting Equipment Additional Requirements:

State of Colorado Security and Contingency Plan

- 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).

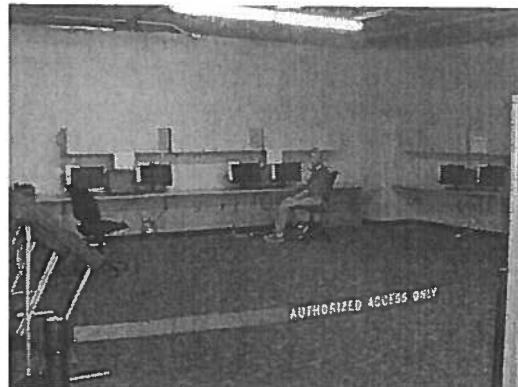
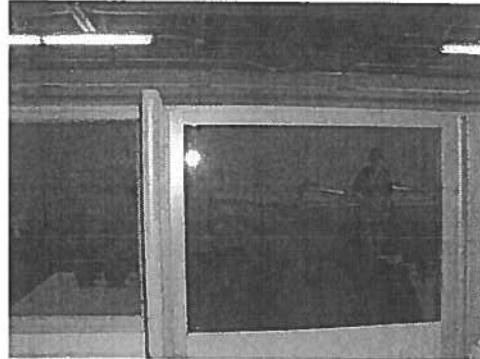
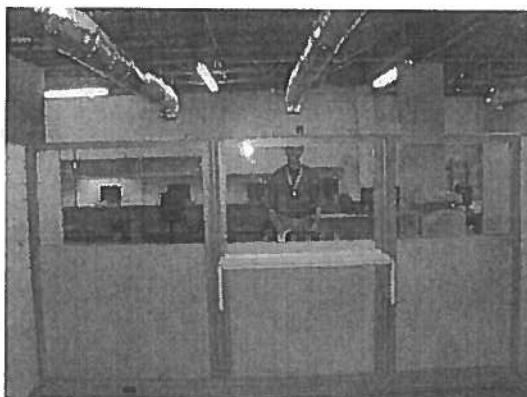
Counties shall indicate the manner of achieving additional logging requirements for the voting system software (Software Condition #2b).

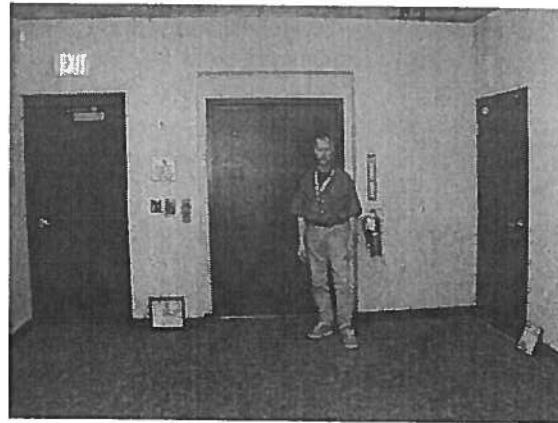
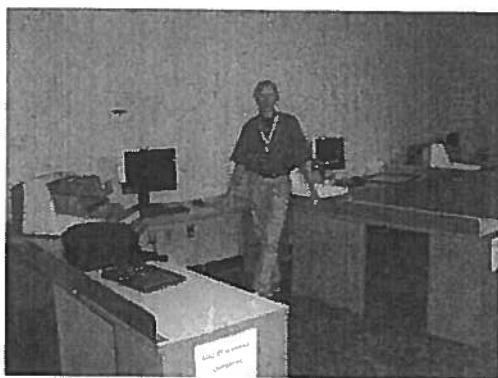
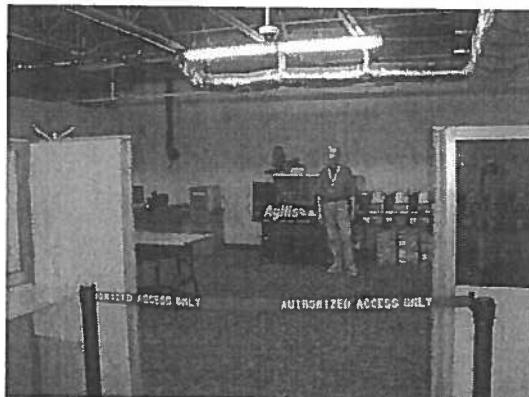
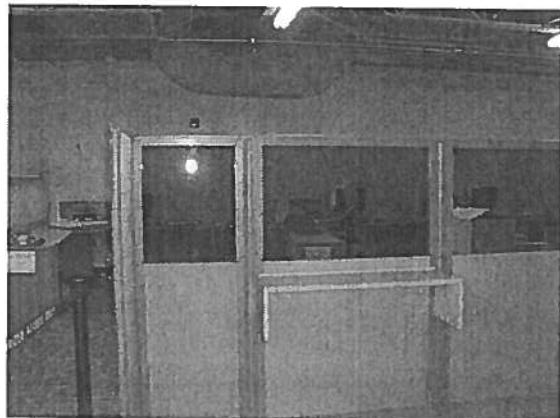
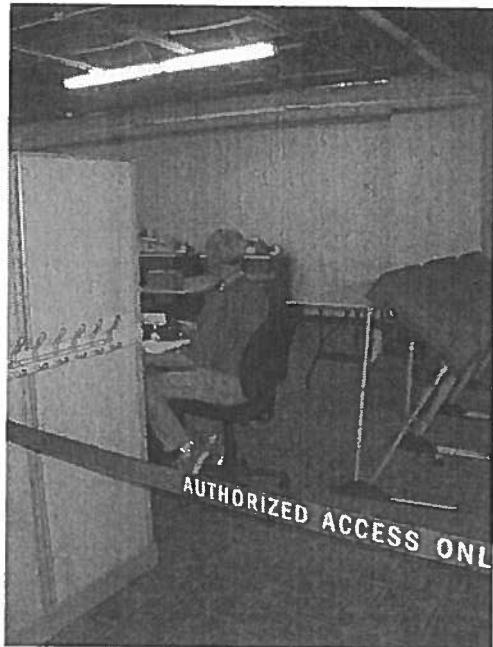
Counties shall indicate the physical environment and/or procedural changes made to secure the database and/or network as required (Central Count Condition #2).

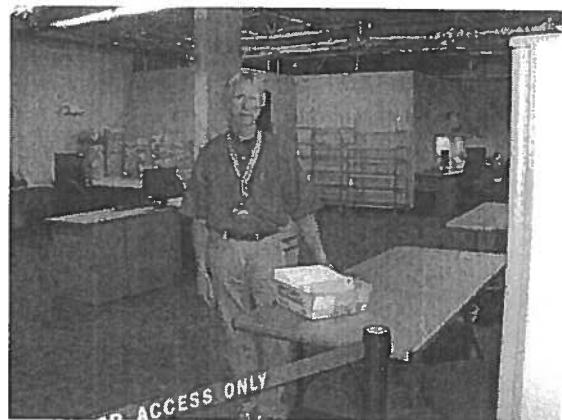
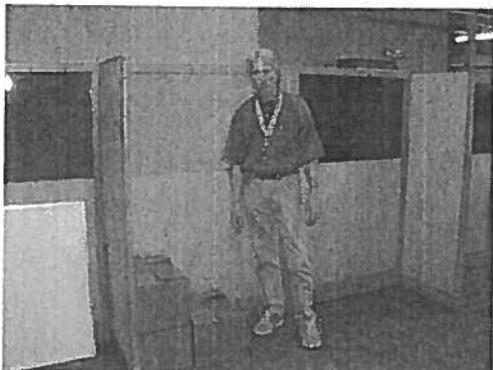
*2012 Primary Election
Security and Contingency Plan addendum*

June 8, 2012

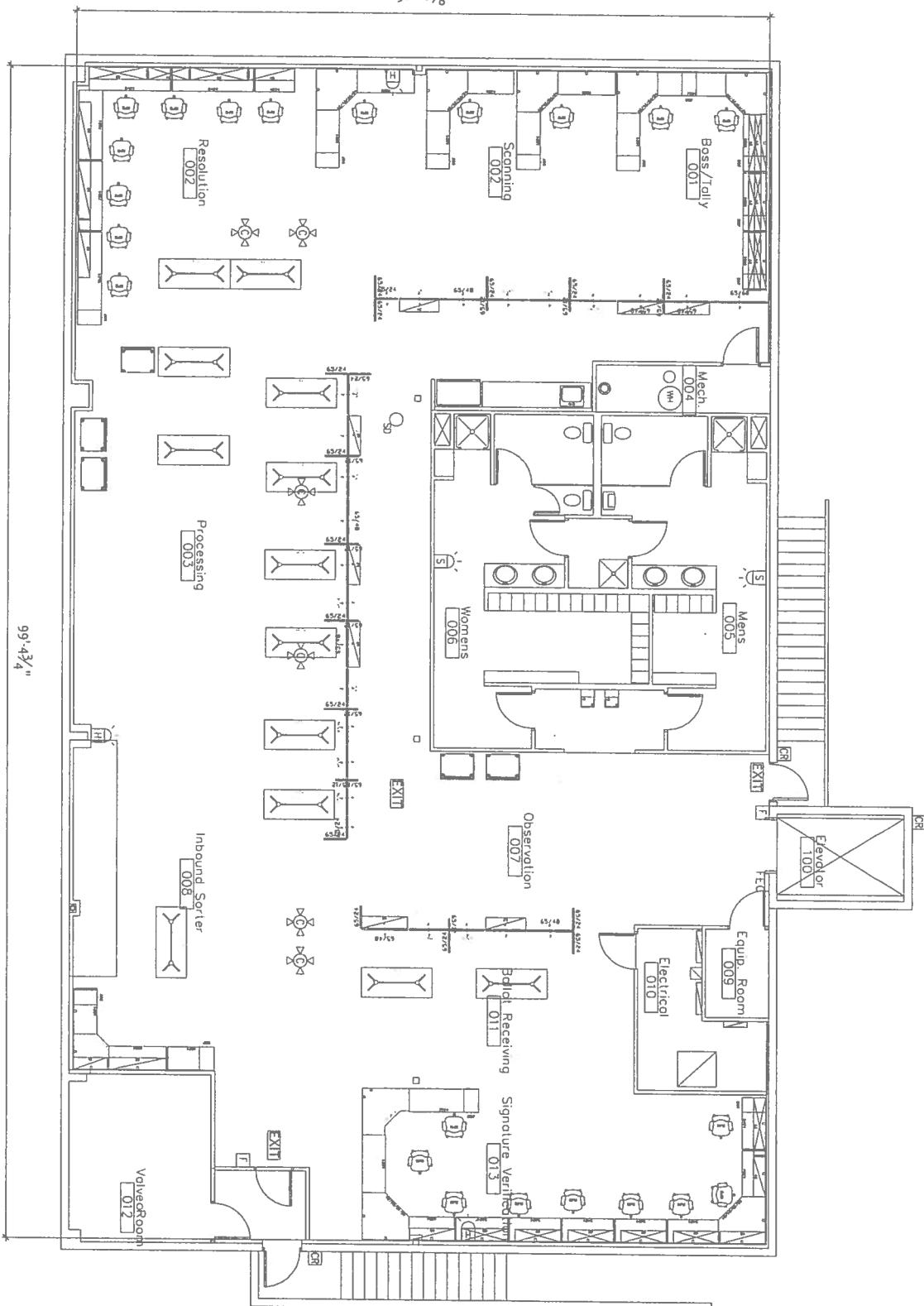
Photos of Mail Ballot processing area and Building Layout drawing showing location of video surveillance.







58'-10 $\frac{3}{8}$ "



Symbols

Pill Switch

Strobe

Horn

Smoke Detector

Camera

Card Reader

Exit
Edit



DOUGLAS COUNTY

DEPT OF FACILITIES MANAGEMENT
3026 N INDUSTRIAL WAY
CASTLE ROCK, COLORADO 80109
TEL: (303) 660-7707

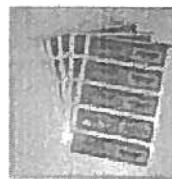
DC ELECTIONS FACILITY
BASEMENT LEVEL
125 STEPHANIE PLACE
CASTLE ROCK, CO 80109

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Table 1: Seals

InTab Combination Seal 03-1366	Heat Stamped Consecutive Numbering Two Piece Construction Plastic Body 12" Wire Push To Secure Clip with Regular or Heavy Duty Seal Cutters	
InTab Non-Residue Tamper Evident Label 03-1375	Dimensions: 1-3/16" x 4-5/16" Sequential Numbering Barcode Format: 3 of 9 100 Labels Per Pack Write-On Surface Repeating "VOID OPEN" Appears If Tape Is Removed	
InTab Padlock Seals 03-1300	Heat Stamped Sequential Numbering Double Scored Hasp Breaks by Hand or Use Heavy Duty Seal Cutters	
Rifkin Two Prong Tamper Evident Seals P92120-07	Designed for Rifkin Bags with locking chamber	

Ballot & Seal Certificate

A copy of the Ballot & Seal Certificate, which contains the judges' Birth Certificate (IBC) and the IABC Ballot Box (MBB) from the election, is to be placed inside the polling place and given to the Counting Station.

Electon 2022 Seven N Election	Install Date/Time
Site:	IABC Serial #:
IABC Insertion and Seal secured	Ward/Signature

Seal Information

The IABC seal of the IABC was secured with a tamper evident numbered seal. The seal which is two halves of the exterior case of the IABC, was secured with a tamper evident numbered seal, one seal for each of the four sides of the device.

The seal on the IABC door remains on the IABC until removed by the MBB processes.

Seal Location	Installed Seal #	Confirmed (IABC team initials)	Date, Time	New Seal #	How seal installed by: (Initials, date, time)
IABC door seal #					
Exterior case seal #					
Exterior case seal #					
Exterior case seal #					
Exterior case seal #					

Ballot Information

We, the unopposed election officials, certify that the IABC was transferred to the counting station, or the IABC was placed in a transfer seal and transferred to the counting station, and the above is true and correct list of the results unit.

The number of Access Codes in the IABC, read from the tape, is attached to the IABC, and as follows:

Issued:	Valid
Cancelled:	Expired

On considering the circumstances, the preceding official shall seal the ballot box and present it to the state-mandated period for reviewing the precinct election results.

Signature of election official	Signature of Poll Watcher (if present)
Signature of 2nd Off. #	Signature of Poll Watcher (if present)

Editor: _____

Figure 1: Ballot & Seal Certificate

Figure 2: Election Day Seal Log

Figure 3: JBC & eSlate Serial Number and Seal Log

**DOUGLAS COUNTY ELECTION
ELECTION SUPPLY RECEIPT**
GENERAL ELECTION - November 7, 2006

Vote Center: _____

PICK UP RECEIPT	YARD COLOR	SEAL LOG NUMBER	ITEM	QUANTITY
<input type="checkbox"/>	RED		American Tourister Bag	1
<input type="checkbox"/>	WHITE		American Tourister Bag	1
<input type="checkbox"/>		N/A	Election Judge Notebook	1
<input type="checkbox"/>				
<input type="checkbox"/>			Cell Phone ()	1

I Acknowledge Receipt of the above Equipment and Supplies:

By _____ Date _____ Time _____ Received _____

RETURN RECEIPT	TAG COLOR	SEAL LOG NUMBER	ITEM	QUANTITY
<input type="checkbox"/>	RED		American Tourister Bag	1
<input type="checkbox"/>	WHITE		American Tourister Bag	1
<input type="checkbox"/>		N/A	Election Judge Notebook	1
<input type="checkbox"/>			Red Not A Transfer Case	1
<input type="checkbox"/>			Yellow Counter Bag	1
<input type="checkbox"/>			Red Counter Bag - Provincial	1
<input type="checkbox"/>			Cell Phone ()	1

I Acknowledge Receipt of the above Equipment and Supplies:

By _____ Date _____ Time _____ Received _____

Benton, Douglas, Lincoln

VOTE CENTER: _____

Figure 4: Judge Pickup Form

Figure 5: MBB Check off Sheet

Figure 6: Receiving Team Seal Log

Figure 7: VBO Chain of Custody

eState seal log - VBO & eState hardware test log
Douglas County Event Center
VBO Serial # V03028
eState Serial # A01870
eAU Serial #
Seal # 6A224799
Seal # 60021758
Seal # 60021797
Seal # 60021796
VBO Serial # V039136
eState Serial # A009798
eAU Serial #
Seal # 60021793
Seal # 60021752
Seal # 60021791
Seal # 60021794
VBO Serial # V013149
eState Serial # A001120
eAU Serial #
Seal # 60021793
Seal # 60021789
Seal # 60021788
Seal # 60021787
VBO Serial # V015115
eState Serial # A00169E
eAU Serial #
Seal # 60021785
Seal # 60021784
Seal # 60021783
Seal # 60021782
VBO Serial # V029860
eState Serial # A00166C
eAU Serial #
Seal # 60021780
Seal # 60021779
Seal # 60021778
Seal # 60021777
VBO Serial # V0131ED
eState Serial # A0096F
eAU Serial #
Seal # 60021775
Seal # 60021773
Seal # 60021773
Seal # 60021772

Figure 8: VBO & eSlate Hardware Test Log



DOUGLAS COUNTY
COLORADO

Emergency Response Procedures

For Employees of Douglas County

September, 2011

Provided by Facilities Management, Risk Management
& Office of Emergency Management

INTRODUCTION

An organized response to any emergency is not by chance - planning is a key element to any emergency. It is incumbent upon each Douglas County department and employee to have adequate information in order to react and respond appropriately for emergency events that could require different responses depending upon the circumstances and specific threat. Recognizing this, each employee should prepare a plan of action for responding to a variety of emergencies that could affect them, their staff, and/or the public.

The Emergency Response Guide has been designed to provide a set of guidelines to utilize when planning for, and responding to, an emergency event at individual Douglas County facilities. This guide should be used in conjunction with the Emergency Preparedness Guide (available from the Office of Emergency Management).

Each section of the Emergency Response Guide includes an overview of each possible scenario and includes actions, roles, and responsibilities identified for an appropriate response. While comprehensive, is not an exhaustive list. As a Douglas County employee, you may be called upon to help with some emergency planning and response actions that could include, but may not be limited to:

- Immediate response to the scene to gather information and make immediate decisions
- Activate "on scene" organized groups to evaluate information and determine what response efforts are necessary
- Initiate and maintain proper action plans
- Inform and coordinate with outside agencies and first responders that may be required for preserving life safety, property, and the environment

In each emergency scenario, the magnitude must first be assessed in order to determine the level of appropriate response. It is critical to designate and authorize personnel in advance who will be responsible for making critical site decisions for each facility during an emergency. The list of Emergency Response Team (ERT) members for each site is available from Risk Management.

Please remember that this plan is only a guideline and departments are responsible for the review and revision for response to an emergency at their individual facility. Once individual plans are developed, they need to be practiced and discussed regularly, to develop and maintain organized response efforts that minimize damages and other losses. A unified, informed and prepared staff makes each of us safer.

INTRODUCTION TO MANUAL

PHONE CONTACTS

Attempt to define the type and extent of crisis as soon as possible.

Emergency Contacts & Information		
EMERGENCY 911		
Douglas County Government	(303) 660-7400	www.douglas.co.us
Douglas County Sheriff	(303) 660-7500	www.dcsheriff.net
Animal Control	(303) 660-7529	
Risk Management	(303) 660-7425	
Lead Emergency Response Team Contacts		
ERT Contacts:	Office Number	Cellular Number
Facilities Management & Offsite Contacts		
Facilities Management & Offsite Contacts:	Office Number	Cellular Number

PHONE CONTACTS

FIRE SAFETY

In the event a fire is identified, there are two responses: TO EVACUATE OR NOT TO EVACUATE.

1. Once a fire is identified at your site, **activate the nearest building alarm**, evacuate the building and **call 911**.
2. Upon assessment, if found to be a small fire, such as in a trashcan, and there are no hazardous materials involved or a lot of smoke, use the nearest extinguisher with the PASS method for suppression.
3. **If you are not trained in the PASS method of extinguisher use, DO NOT attempt to put the fire out.**
4. **DO NOT RISK SAFETY WITH FUTILE ATTEMPTS TO EXTINGUISH FIRES.**
 - a. The PASS method is to **PULL** the extinguisher's safety pin, **AIM** extinguisher at base of fire, **SQUEEZE** the handle and **SWEEP** the extinguisher from side to side.
5. If evacuation is necessary, do it in an organized/controlled manner. See the evacuation section of this booklet.
6. Evacuate to the pre-determined evacuation assembly locations.
7. Before exiting each room, designate personnel to assure lights are off, windows are closed, and the door(s) are shut but not locked. While exiting, close all open doors to unoccupied rooms, if possible.
8. If safe to do so, locate and take Material Safety Data Sheets (MSDS), if available, with you as you leave. See Hazardous Material Section.
9. The assigned assembly locations should be a minimum of 300 feet upwind from the building and not near access roads.
10. Designated emergency response team members should account for all personnel once outside and report any missing persons to the Building ERT, who will report to the fire department contact.
11. **DO NOT RE-ENTER THE BUILDING.** Only fire department personnel will search the building. You will be notified that it is safe to return to the building by the fire department contact.

PERIODICALLY PRACTICE AND DOCUMENT FIRE DRILLS

Roles & Responsibilities	
Building ERT:	Department ERT:
Account for personnel & report list to the Fire Department contact.	Evacuate staff & take roll call.
Assign roles as needed.	Report roll to Building ERT.
Assist injured & assure they are provided with medical attention.	Assist as needed and as instructed.

FIRE SAFETY

TORNADO WATCH/WARNING

During severe weather season – Please monitor conditions using either NOAA radio or other media outlet.

1. A tornado **watch** means conditions are right for a tornado to occur. There is no immediate action to complete, but you must keep an eye on the skies, monitor the NOAA radio or other media outlet, and be prepared in the event a warning is issued.
2. A tornado **warning** means a tornado or funnel cloud has been spotted, or that Doppler radar indicates a thunderstorm circulation which can spawn a tornado is present in or around Douglas County. Immediate action is required to prevent injury, death and/or property damage.
3. If a **tornado warning** is issued in Douglas County, the departments will be notified by the **building supervisor**.
4. If outside during a tornado warning report immediately back to the building.
5. The building supervisor will instruct occupants to move in an orderly manner to their tornado sheltering areas.
6. The sheltering areas should be away from windows and other glassed areas.
7. When using hallways as refuge areas, stay out of the path of swinging doors.
8. When in refuge areas, take roll and report missing occupants to the building supervisor.
9. The building supervisor will announce the “**all clear**” once the danger passes. At that point occupants can report to their respective locations.

PERIODICALLY PRACTICE & DOCUMENT THE TORNADO DRILL

Roles & Responsibilities	
Building ERT:	Department ERT:
Account for personnel.	Evacuate staff & take roll call.
Assign roles as needed.	Report roll to Building ERT.
Assist injured & assure they are provided with medical attention.	Assist as needed and as instructed

TORNADO WATCH/WARNING

SUSPICIOUS PERSON/ INTRUDER/ PERSON WITH A WEAPON

In each facility, there are many doors used to access the building. To keep any threat of “suspicious persons” and “intruders” to a minimum, the main entrance should be used for outside access by all visitors. To ensure use of the main entrance for all visitors, please keep building doors closed and locked. Emergency Panic Bars are installed at each outside access point, in case an emergency exit is needed.

1. Call 911
2. Contact Building Supervisor
3. Contact Building Security Guard/Officer

Roles & Responsibilities	
Building ERT: Determine need for lockdown.	Department ERT: If activated, initiate lockdown procedures.
Assign roles as needed.	Communicate with staff over established procedures such as with radio, P. A. system
Assist injured & assure they are provided with medical attention.	Assist as needed and as instructed
Determine if the ERT needs to be assembled.	

SUSPICIOUS PERSON/INTRUDER

LOCKDOWN

There are many instances in which a Lockdown, or Shelter in Place, would be the most prudent and appropriate response to a hazard. Hazards can include gunfire, a potentially dangerous intruder, or a safety hazard reported by Law Enforcement/Fire Department. Assessment should be made by the Building Emergency Response Team Leader.

Call 911 and report the emergency.

Be prepared with status of occupants – is the emergency necessitating a Lockdown or an Evacuation?

Once the need for a Lockdown has been determined:

- Clear all hallways or passages and direct people into the nearest securable room.
- Close and lock all doors and windows, if appropriate.
- Close window coverings and stay away from windows.
- Create a roster of individuals within the room.
- Wait for further instructions.
- Do not leave the room until told to do so by Law Enforcement/Fire Department.

Roles & Responsibilities	
Building ERT: Determine need for lockdown (Shelter in Place or Evacuation).	Department ERT: If activated, initiate lockdown procedures.
Assign roles as needed.	Communicate with staff over established procedures such as with radio, P. A. system.
Assist injured & assure they are provided with medical attention.	Assist as needed and as instructed.
Determine if the ERT needs to be assembled.	

LOCKDOWN

HAZARDOUS MATERIAL INCIDENT

A Hazardous Materials Incident is defined as a release of materials or substances that pose a risk to the safety and health of the community or environment when released from its container. Some examples of hazardous materials include:

- Spilled chemicals
- Leaking compressed gas
- Poison release/spill
- Unusual or Unrecognized odor
- Fuel spill

1. If you suspect that a harmful substance has been released or spilled, do not attempt to clean it up yourself. Secure the area around the substance and leave the area immediately.
 - 1a. Should there be a sudden and unexplained illness and similar symptoms from multiple individuals, treat as a potential Hazardous Materials Incident.
 - 1b. Should there be a suspected HAZMAT plume outside of the building, do not leave the building and follow Shelter-In-Place procedures.
2. If there is time, locate and take the Material Safety Data Sheets (MSDS) with you as you leave the area.
3. Call 911 and provide as much information as possible concerning the incident and/or substance involved. This should include visible container(s), odor(s) if any, description of material(s), and the location of the release. The 911 dispatcher will notify the HAZMAT team, Law Enforcement, Shift Supervisors, and others as deemed appropriate.
4. **DO NOT** touch, move, or purposely smell any suspected hazardous material.
5. The Building Supervisor, in coordination with HAZMAT personnel, will determine whether or not to assemble the Emergency Response Team and/or evacuate the building.
6. If the Fire Department and/or HAZMAT team is contacted and responds, they will attempt to further assist in identification of the substance, decide if further evacuation is necessary and issue an “all clear” signal when completed.
7. If the building is evacuated, staff and visitors should remain in a safe location at least 300 feet upwind from the building. They should remain there until the HAZMAT team advises the Building Supervisor that it is safe to re-enter the building.
8. Once the building supervisor gives the “all clear” signal, employees may re-enter the building and resume normal operations.

Responsibilities	
Building ERT:	Department ERT:
Assess & communicate need for Evacuation or Shelter In Place.	Once determined, Evacuate or Shelter In Place.
Account for all personnel.	Communicate with staff over established procedures such as with radio, P. A. system.
Assign roles as needed.	Assist as needed and as instructed.
Assist injured & assure they are provided with medical attention.	Account for all personnel – take roster to pre-determined assembly site.
Determine if the ERT needs to be assembled.	
Facilities Management:	
Assist as needed.	
Obtain MSDS (Material Safety Data Sheets)	

HAZARDOUS MATERIAL

BOMB THREATS

Should you receive a telephone call alerting you of a bomb, it is very important that you obtain as many details as possible using the checklist on the following page. A copy of the Bomb Threat Checklist, detailed below, should be kept near each of the office phones for easy access.

TELEPHONE BOMB THREATS

1. If possible, the person receiving the threat should have someone else immediately contact 911 and advise of the situation.
2. If alone, the person receiving the threat should contact 911 immediately after the call, giving as much information as possible, and then notify the area supervisor.
3. The Building Supervisor will determine the need to evacuate the building and/or conduct a search. If instructed by the Building Supervisor, the Emergency Response Team should look for unusual or suspicious noises or packages. **DON'T TOUCH ANYTHING SUSPICIOUS.** If a suspicious package is located, contact the Area Supervisor. The Area Supervisor will contact 911 Dispatch and advise that a suspicious package has been located.
4. If a suspicious package is located, the bomb squad will respond. In these circumstances, there is a high probability for the presence of secondary devices.
5. If the building needs to be evacuated, utilize the Evacuation Procedures and modify where necessary. If the primary evacuation route is inaccessible for any reason, an alternate predetermined evacuation route should be utilized.
6. If evacuated, employees, citizens, etc. should stay in their evacuation areas, away from the building, until the "all clear" has been given to re-enter the building by the Area Supervisor.

DO NOT USE ANY WIRELESS COMMUNICATION DEVICES
This includes Cell phones, 2-way pagers, radios and/or radio phones.

Roles & Responsibilities	
Building ERT: Assess & communicate need for Evacuation.	Department ERT: Once determined, begin Evacuation procedures
Assign staff as needed	Account for all personnel – take roster to pre-determined assembly site
Assign roles as needed	Assist as needed and as instructed.
Assist injured & assure they are provided with medical attention	Facilities Management:
Determine if the ERT needs to be assembled.	Assist as needed and instructed

BOMB THREATS

BOMB THREAT CHECKLIST

(Keep this form by your desk or workstation next to phone)
KEEP THE CALLER ON THE LINE AS LONG AS POSSIBLE

TIME OF CALL: _____

DATE OF CALL: _____

PHONE NUMBER AND EXTENSION CALL CAME IN ON: _____

EXACT WORDS USED BY THE CALLER: _____

QUESTIONS TO ASK THE CALLER

1. When is the bomb going to explode? _____
2. Where is the bomb located? _____
3. What does the bomb look like? _____
4. What kind of bomb is it? _____
5. What will cause the bomb to explode? _____
6. Did you place the bomb? _____
7. Where are you calling from? _____
8. What is your name? _____

CHARACTERISTICS OF THE CALLERS VOICE: (Circle appropriate descriptions)

Calm	Laughing	Lisp	Deep Breathing	Crying	Rasp
Excited	Normal	Deep	Slow	Distinct	Rapid
Slurred	Soft	Nasal	Clearing throat	Accent	Loud
Stutter	Familiar	Disguised	Cracking voice	Ragged	Angry

Did the caller have an accent and if so what kind? Describe: _____

ANY BACKGROUND SOUNDS (Circle all that apply)

Street Noise	House Noises	Crockery	Motor	Animal Noises	Local
Voices	Office	Clear	PA System	Factory Machinery	Static
Booth	Long Distance	Office Machinery			

BOMB THREAT CHECKLIST

SHELTER-IN-PLACE

The following are examples of emergencies or threats in which the preferred response might involve using the shelter of the building in order to mitigate exposure to the risk:

An External Chemical Spill or Gas Leak
Visible Smoke, Vapor Cloud, or Fire (Outside the Building)
Severe Weather (e.g. Tornado)

The **Building Emergency Response Team Leader** will assess the situation and determine whether to initiate a Shelter in Place or Evacuation of the Building. Should an Evacuation be needed, the Building ERT Leader will activate the fire alarm system and call 911 to report the emergency.

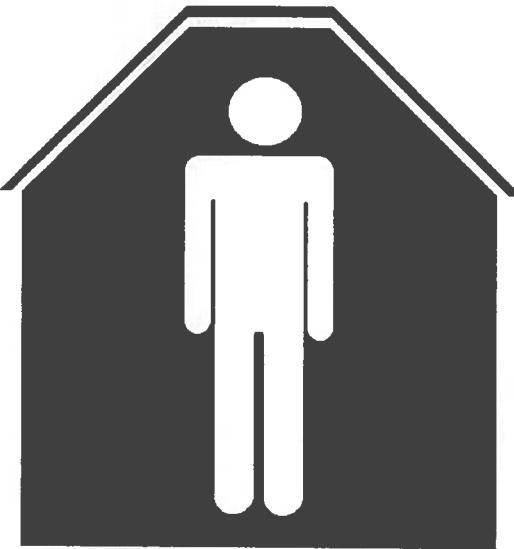
Shelter in Place Procedures:

- Hang "Sheltering-in-Place" sign on the outside of the door.
- All of the lockdown procedures should be followed and supplemented by the following:
 - Tape around doors, windows, and vents or place wet towels at bottom of door. Know where these items are kept.
 - If possible, affix the roster to a window visible to responders from outside the building.
 - Electricity will be left on. Intercoms, radios, and televisions may be used for getting information during the event.

Building ERT Leader:	Department ERT Leader:
Determine need for Shelter in Place (Lockdown) and Notify Department ERT Leaders.	Begin the procedures for Shelter In Place (Lockdown).
Assign staff as needed.	Account for all personnel – use roster.
Call emergency personnel, if needed.	Assist as needed and instructed.
Facilities Management:	
Assist as needed and instructed.	

SHELTER-IN-PLACE

Do Not Enter
We are Sheltering in Place



SHELTER-IN-PLACE

SUSPICIOUS PACKAGE/MAIL

Attributes of a Suspicious Letter, Package or Parcel		
Foreign Mail	Misspelling of Common Words	Excessive Postage
Handwritten Messages or Letters	Packages with Odd Noises	Special Delivery
Airmail	Poorly-typed Addresses	Restrictive Markings
Incorrect Titles	Titles but no Names	Lopsided or Uneven Envelop
Excessive Weight	No Return Address	Protruding Wires or Aluminum Foil
Rigid Envelops, Bulky	Excessive Taping	Oily Stains, Discoloration, Odor
	Material Leaking from Package	

1. If any of the items listed above are identified on a package, do not move, disturb or open the package. Secure the area around the item and contact the building supervisor(s)
2. The person who identified the suspicious package should not "broadcast" the matter and cause panic, but contact the building supervisor(s) giving as much detail about the situation as possible.
3. The building supervisor(s) will then determine whether or not to contact 911 and/or evacuate the building.
4. If law enforcement is contacted they will evaluate the situation and decide if the package is a threat to safety, and if the building needs to be evacuated and additional resources contacted.

NOTE: In most cases law enforcement will be contacted unless the building supervisor(s) can determine the package does not pose a threat.

5. If the building is evacuated, use the Evacuation Procedures, modifying where necessary. Employees should remain in their safe location away from the building until the "all clear" signal is given by law enforcement or the building supervisor(s) to re-enter the building.
6. Once the "all clear" signal, has been given, employees and citizens may re-enter the building and resume normal operations.
7. For additional information, refer to the section on Bomb Threats and Hazardous Material.

Roles & Responsibilities	
Building ERT: Evaluate need & call for Emergency Personnel.	Department ERT: Assist as needed and as instructed.
Assess & communicate need for Evacuation.	Account for all personnel – take roster to pre-determined assembly site
Assign staff as needed.	
Facilities Management: Assist as needed and instructed.	

SUSPICIOUS PACKAGE/MAIL

LIGHTNING

To determine the distance lightning is from your specific location use the following rule: For every 5 seconds between a lightning flash and hearing the thunder boom lightning is approximately 1 mile away. For example: If lightning flashes and thunder is heard 10 seconds later, the lightning is approximately 2 miles away.

LIGHTNING IDENTIFIED

1. If you are outside when lightening is occurring, seek shelter inside a building until the lightening subsides.
2. If you are unable to shelter inside a building, minimize your contact with the ground – crouch down and put your hands on your knees. **DO NOT LIE FLAT ON THE GROUND.**
3. If in your vehicle, keep windows and doors closed, touching as little metal as possible.

Roles & Responsibilities	
Building ERT: Assign staff as needed.	Department ERT: Assist as needed and as instructed.
Call emergency personnel, if needed.	Account for all personnel – take roster to pre-determined assembly site.
Facilities Management: Assist as needed and instructed.	

LIGHTNING

EVACUATION

The following are examples of emergencies or threats in which the preferred response might be to evacuate the building in order to mitigate exposure to the risk:

- An Internal Chemical Spill or Gas Leak
- Visible Smoke, Vapor Cloud, or Fire (inside the building)
- Bomb Threat (DO NOT UTILIZE CELL PHONES)
- Suspicious Mail

The **Building Emergency Response Team Leader** will assess the situation and determine whether to initiate a Shelter in Place or Evacuation of the Building. Should an Evacuation be needed, the Building ERT Leader will activate the fire alarm system and call 911 to report the emergency.

Evacuation Procedures:

- **DO NOT PANIC** - remain calm and listen to instructions.
- **DO NOT RUN**.
- **DO NOT OPEN HOT DOORS** - before opening any door, touch it near the top with the back of your hand to see if it is hot.
- **DO NOT USE ELEVATOR**.
- **DO NOT BREAK WINDOWS** - oxygen feeds fires.
- **DO NOT ASSIST FIRE-FIGHTING PERSONNEL** unless asked to do so.
- **DO NOT BE A SPECTATOR** - head away from problem area, to designated safe refuge and mustering area. Remain in this area until instructed to return or relocate.
- Evacuate when instructed to do so using the quickest route out of the building. Evacuation routes should minimize exposure to hazards.
- Obtain personnel roster, exit the room and ensure everyone is out.
- Close windows, turn off lights, and close (**BUT DO NOT LOCK**) door
- Keep to the right, grasp available handrails, walk, keep silent, and if the assigned exit is not usable, take next nearest stairs.
- If possible, people in wheelchairs or using crutches should be carried. Wheelchairs, crutches, or other necessities should be carried separately down the stairs for them.
- Move to primary or alternate assembly area. Consideration should be given to wind direction and potential continued exposure to smoke and/or fumes.
- **ACCOUNT FOR EVERYONE ASSIGNED TO THE LOCATION**. Report any discrepancies immediately to the incident commander.

Our Primary Assembly Area is: _____

Our Alternate Assembly Area is: _____

Building ERT Leader:	Department ERT Leader:
Determine need for Evacuation or Shelter in Place.	Begin the procedures for Evacuation or Shelter In Place.
Assign staff as needed.	Account for all personnel – take roster to pre-determined assembly site, if applicable.
Call emergency personnel, if needed.	Assist injured & assure they are provided with medical attention.
Facilities Management:	
Assist as needed and instructed.	Assist as needed and instructed.
Check Building Systems.	

EVACUATION

EXPLOSION/ GUNFIRE

If there is an explosion, staff should prepare their employees for evacuation, using evacuation procedures.

REFER TO EVACUATION PROCEDURES

If there is gunfire, staff should immediately follow lockdown procedures and barricade the doorways/windows leading into their area. Armed gunmen typically do not attempt to breach barricaded locations. A good rule of thumb is if you cannot be seen, you probably will not be targeted.

REFER TO LOCKDOWN PROCEDURES

BUILDING/AREA SUPERVISOR

Based upon the circumstances, an announcement as to the threat and current location may allow personnel in the hallways to evacuate in the proper direction and avoid the threat. Example: "Gunman in the first floor lobby." Once gunfire subsides, evacuation should be by order of law enforcement. When gunfire is accompanied by fire/explosions, staff must base the order to evacuate on the threat levels of the environment. (What is the bigger/more immediate threat?)

Explosions and gunfire inside large buildings can be deceiving. Sounds of gunfire and explosions echo throughout hallways, sometimes giving the impression that the sound came from a different direction than the origin. This can be dangerous as misinterpreting the origin of the noise may cause someone to encounter the armed subject(s) if evacuating in the wrong direction.

1. If possible, the employee should immediately contact 911, provide as much information as possible and notify a supervisor.
2. Once outside, the supervisor should assemble the emergency response team to help control the situation.
3. Maintenance should turn off the utilities, if possible.
4. Once emergency crews arrive, the supervisor should immediately meet with them to explain the situation and be available to re-enter the building, if requested.
5. The building must be secured and all access roads kept for responding authorities.

EXIT NOT IMMEDIATELY AVAILABLE

1. If exit from the building cannot be completed immediately, employees should be instructed to seek cover under their desk, if possible. The Public should be accompanied by employees.
2. When seeking shelter under a desk, employees should cover their heads with their hands and assume a kneeling, face down position on the floor until debris ceases flying, at which time they can exit the building.

Building ERT:	Department ERT:
Assign staff as needed.	Evacuate and/or Shelter In Place.
Call emergency personnel.	Account for all personnel – take roster to pre-determined assembly site, if applicable.
Assist injured & assure they are provided with medical attention.	Assist injured & assure they are provided with medical attention.
Facilities Management:	Assist as needed and instructed.
Assist as needed and instructed.	Call emergency personnel, if instructed.
Shut down Utilities to building, if instructed.	

EXPLOSION/GUNFIRE

WEATHER RELATED CLOSURE INSTRUCTIONS

- In the event of inclement weather resulting in hazardous or unsafe road conditions, the County Manager may order the closure or delay in the opening of County offices.
- It is the responsibility of County employees to call one of the numbers listed below for information concerning delayed openings or closures. No individual phone calls will be made.
- Notice is also posted in the News Room on the home page of the County's website. Notification is also given to 850 KOA-AM News Radio, as well as all Denver-based television stations.
- For office closures during regular business hours, each department will be notified directly and an **Employee Alert** will be issued via email. To find out if the County offices are closed due to inclement weather, **call 303.660.7400, 303.660.7401, or 303.660.7300** for a recorded message and/or refer to the previously mentioned resources for information.
- The delay/closure message will be recorded **no later than 5:30 a.m.** on any day that adverse weather or road conditions exist.
- We encourage all employees to work directly with their immediate supervisor to weigh the impact of meeting their individual needs, as well as the departmental operational needs and make their decisions accordingly.
- Employees who leave early may take paid time off from their vacation, personal, floating holiday or compensatory time. We encourage employees to discuss this with their supervisor and refer to the Employee Handbook for more details.

The County believes this approach provides for collaboration among employees, individual departments and elected official offices so that choices may be made in the best interest of the individual employee, the organization and the citizens we serve.

WEATHER RELATED CLOSURE

WINTER WEATHER DEFINITIONS

The National Weather Service issues many different types of watches and warnings during the winter months. Here is what they mean:

WINTER STORM WATCH: A winter storm watch is issued when winter storm conditions are possible within the next 12 to 36 hours, but the timing, intensity, or occurrence may still be uncertain.

WINTER STORM WARNING: A winter storm warning is issued when heavy snow is occurring or will develop in the next 18 hours. The heavy snow may be accompanied by wind and blowing snow.

BLIZZARD WARNING: A blizzard warning is issued when the following conditions are expected for at least 3 hours: Sustained winds of 35mph or greater with considerable falling and/or drifting snow lowering visibilities to less than 1/4 mile. Remember, snow does not necessarily need to be falling and dangerous wind chills are often observed during blizzard events.

WINTER WEATHER ADVISORY: A **winter weather advisory for snow** is issued when these general snow accumulations are expected: Between 4 and 8 inches in 12 hours in the mountains. Between 3 and 6 inches in 12 hours at lower elevations, such as Denver Metro.

A **winter weather advisory for snow and blowing snow** is issued when falling snow is accompanied by blowing snow to cause travel problems due to lowered visibilities and drifting snow.

A **winter weather advisory for blowing snow** is issued when wind blown snow will occasionally reduce visibilities and create a hazard for travelers.

FROST/FREEZE WARNING: Below freezing temperatures are expected and may cause significant damage to plants, crops, or fruit trees in areas unaccustomed to freezing temperatures. Usually issued for first frost/freeze of season and again in spring for late frost/freezes.

HIGH WIND WARNING: A high wind warning is issued for the following conditions: Sustained winds of 50mph for at least 1 hour, or gusts to 75mph for any duration in the mountains and foothills. Sustained winds of 40mph for at least 1 hour, or gusts to 58mph for any duration at lower elevations away from the foothills.

We as weather forecasters use different wording or terms when we describe a snow event. Whether it is just some flurries or a large winter storm we use different words that best suit the snow event that is expected.

FLURRIES: Light snow falling for short durations. No accumulation or light dusting is all that is expected.

SHOWERS: Snow falling at varying intensities for brief periods of time. Some accumulation is possible. You can best relate to these by thinking about a summer shower, but instead of rain you get snow.

SQUALLS: Brief, intense snow showers accompanied by strong, gusty winds. Accumulation may be significant. Snow squalls are best known in the Great Lakes region.

BLOWING SNOW: Wind-driven snow that reduces visibility and causes significant drifting. Blowing snow may be snow that is falling and/or loose snow on the ground picked up by the wind.

BLIZZARD: Winds over 35 mph with snow and blowing snow, reducing visibility to near zero.

SLEET: Rain drops that freeze into ice pellets before reaching the ground. Sleet usually bounces when hitting a surface and does not stick to objects. However, it can accumulate like snow and cause a hazard to motorists.

FREEZING RAIN: Rain that falls onto a surface with a temperature below freezing. This causes it to freeze to surfaces, such as trees, cars, and roads, forming a coating or glaze of ice. Even small accumulations of ice can cause a significant hazard.

FROSTBITE: Frostbite is damage to body tissue caused by that tissue being frozen. Frostbite causes a loss of feeling and a white or pale appearance in extremities, such as fingers, toes, ear lobes, or the tip of the nose. If symptoms are detected, get medical help immediately! If you must wait for help, slowly re-warm

WINTER WEATHER DEFINITIONS

WINTER WEATHER DEFINITIONS

affected areas. However, if the person is also showing signs of hypothermia, warm the body core before the extremities.

HYPOTHERMIA: LOW BODY TEMPERATURE

Warning signs - uncontrollable shivering, memory loss, disorientation, incoherence, slurred speech, drowsiness, and apparent exhaustion.

Detection - Take the person's temperature. If below 95F (35C), immediately seek medical care! If medical care is not available, begin warming the person slowly. Warm the body core first. If needed, use your own body heat to help. Get the person into dry clothing, and wrap them in a warm blanket covering the head and neck. Do not give the person alcohol, drugs, coffee, or any hot beverage or food; warm broth is better. Do not warm extremities (arms and legs) first! This drives the cold blood toward the heart and can lead to heart failure.

WIND CHILL: The wind chill is based on the rate of heat loss from exposed skin caused by combined effects of wind and cold. As the wind increases, heat is carried away from the body at an accelerated rate, driving down the body temperature. Animals are also affected by wind chill.

WINTER WEATHER DEFINITIONS

MEDIA

In the event that you are contacted directly by any media agency, please notify your supervisor.

NO EMPLOYEE shall talk with MEDIA.

MEDIA – RELEASE OF INFORMATION

Attachment 7

Precinct Turnout — Total Voters — Unofficial

Douglas County, Colorado — 2012 Primary Election — June 26, 2012

Page 2 of 5

Total Number of Voters : 200 of 0 = 0.00%

02/21/2013 09:09 AM

Precincts Reporting 0 of 146 = 0.00%

Precinct Name	Reg Voters	# Ballots	% Turn Out	Precinct Name	Reg Voters	# Ballots	% Turn Out
224	0	0	0.00%	243	0	0	0.00%
225	0	1	0.00%	244	0	2	0.00%
226	0	1	0.00%	245	0	4	0.00%
227	0	5	0.00%	246	0	0	0.00%
228	0	0	0.00%	247	0	0	0.00%
229	0	1	0.00%	248	0	2	0.00%
230	0	0	0.00%	249	0	1	0.00%
231	0	0	0.00%	250	0	0	0.00%
232	0	3	0.00%	251	0	0	0.00%
233	0	1	0.00%	252	0	0	0.00%
234	0	0	0.00%	253	0	0	0.00%
235	0	1	0.00%	254	0	0	0.00%
236	0	1	0.00%	255	0	0	0.00%
237	0	3	0.00%	256	0	1	0.00%
238	0	3	0.00%	257	0	3	0.00%
239	0	0	0.00%	258	0	1	0.00%
240	0	1	0.00%	259	0	2	0.00%
241	0	4	0.00%	260	0	2	0.00%
242	0	2	0.00%				

Precinct Turnout — Total Voters — Unofficial

Douglas County, Colorado — 2012 Primary Election — June 26, 2012

Page 3 of 5

02/21/2013 09:09 AM

Precincts Reporting 0 of 146 = 0.00%

Total Number of Voters : 200 of 0 = 0.00%	
Precinct Name	

Reg Voters	# Ballots	% Turn Out
------------	-----------	------------

Precinct Name	Reg Voters	# Ballots	% Turn Out
---------------	------------	-----------	------------

Precinct Name	Reg Voters	# Ballots	% Turn Out	Precinct Name	Reg Voters	# Ballots	
261	0	0	0.00%	316	0	3	0.00%
262	0	1	0.00%	317	0	3	0.00%
263	0	2	0.00%	318	0	1	0.00%
264	0	1	0.00%	319	0	1	0.00%
301	0	0	0.00%	320	0	0	0.00%
302	0	1	0.00%	321	0	2	0.00%
303	0	3	0.00%	322	0	0	0.00%
304	0	0	0.00%	323	0	0	0.00%
305	0	0	0.00%	324	0	2	0.00%
306	0	0	0.00%	325	0	0	0.00%
307	0	1	0.00%	326	0	0	0.00%
308	0	0	0.00%	327	0	1	0.00%
309	0	0	0.00%	328	0	2	0.00%
310	0	1	0.00%	329	0	0	0.00%
311	0	4	0.00%	330	0	0	0.00%
312	0	3	0.00%	331	0	4	0.00%
313	0	2	0.00%	332	0	2	0.00%
314	0	2	0.00%	333	0	2	0.00%
315	0	1	0.00%				

Precinct Turnout — Total Voters — Unofficial
Douglas County, Colorado — 2012 Primary Election — June 26, 2012

Page 4 of 5

Total Number of Voters : 200 of 0 = 0.00%

02/21/2013 09:09 AM

Precincts Reporting 0 of 146 = 0.00%

	Total Number of Voters	Reg Voters	# Ballots	% Turn Out	Precinct Name	Reg Voters	# Ballots	% Turn Out
334	0	3	0.00%	405		0	1	0.00%
335	0	2	0.00%	406		0	0	0.00%
336	0	1	0.00%	501		0	2	0.00%
337	0	2	0.00%	502		0	0	0.00%
338	0	0	0.00%	503		0	1	0.00%
339	0	2	0.00%	504		0	1	0.00%
340	0	0	0.00%	505		0	2	0.00%
341	0	0	0.00%	506		0	0	0.00%
342	0	2	0.00%	507		0	0	0.00%
343	0	0	0.00%	508		0	0	0.00%
344	0	0	0.00%	509		0	0	0.00%
345	0	2	0.00%	510		0	0	0.00%
346	0	1	0.00%	511		0	3	0.00%
347	0	1	0.00%	512		0	0	0.00%
348	0	4	0.00%	Provisional-All		0	0	0.00%
401	0	1	0.00%	Sample-All		0	0	0.00%
402	0	0	0.00%					
403	0	0	0.00%					
404	0	1	0.00%					

Precinct Turnout — Total Voters — Unofficial
Douglas County, Colorado — 2012 Primary Election — June 26, 2012

Page 5 of 5

02/21/2013 09:09 AM

Precincts Reporting 0 of 146 = 0.00%

Total Number of Voters : 200 of 0 = 0.00%	<input type="text"/>
Precinct Name	<input type="text"/>
Reg Voters	<input type="text"/>
# Ballots	<input type="text"/>
% Turn Out	<input type="text"/>

Precinct Name	<input type="text"/>
Reg Voters	<input type="text"/>
# Ballots	<input type="text"/>
% Turn Out	<input type="text"/>

Totals: 0 200 0.00%

Attachment 8



Notice of Temporary Adoption

Office of the Secretary of State
Election Rules
8 CCR 1505-1

August 20, 2012

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Election Rules³ are adopted on a temporary basis and immediately effective.

(Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. *Annotations* may be included):

New Rule 10.8 is adopted as follows:

10.8 USE OF SERIAL NUMBERS ON BALLOTS.

- 10.8.1 EXCEPT FOR BALLOTS SENT TO MILITARY OR OVERSEAS ELECTORS BY ELECTRONIC TRANSMISSION UNDER RULE 25.2.7, NO COUNTY MAY PRINT A BALLOT FOR USE IN A STATE OR FEDERAL ELECTION THAT HAS EITHER A UNIQUE OR SEQUENTIAL NUMBER, OR A BARCODE CONTAINING A UNIQUE OR SEQUENTIAL NUMBER, EXCEPT ON THE REMOVABLE STUB.
- 10.8.2 AFTER ELECTION JUDGES HAVE DISASSOCIATED A VOTED BALLOT FROM ITS ENVELOPE AND THE STUB IS REMOVED, THE COUNTY MAY WRITE OR PRINT UNIQUE OR SEQUENTIAL NUMBERS ON THE VOTED BALLOT FOR AUDITING AND ACCOUNTING PURPOSES, INCLUDING DUPLICATION OF DAMAGED BALLOTS AND RISK LIMITING AUDITS.
- 10.8.3 FOR ANY ELECTION HELD ON OR BEFORE AUGUST 20, 2012, THE COUNTY MUST REDACT ANY UNIQUE OR SEQUENTIAL NUMBERS, OR BARCODES CONTAINING UNIQUE OR SEQUENTIAL NUMBERS, BEFORE PROVIDING BALLOTS IN RESPONSE TO A REQUEST FOR INSPECTION UNDER CORA (SECTION 24-72-205.5(4)(B)(II), C.R.S.).

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2011).

² Section 24-4-103, C.R.S. (2011).

³ 8 CCR 1505-1.

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State's findings to justify the immediate adoption of these new rules on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

These new rules are immediately effective on a temporary basis.

Dated this 20th day of August, 2012,



Suzanne Staert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁴ Section 24-4-103(6), C.R.S. (2011).



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Election Rules
8 CCR 1505-1

August 20, 2012

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions are also intended to improve elections administration in Colorado and to increase the transparency and security of the election process.

The Secretary has received credible evidence that a unique number or bar code containing a unique serial number, printed on the face of a ballot can be used to trace the ballot to the voter who cast it. The purpose of this rule is to ensure that no ballot is printed with a number that can be used for this purpose. While there may be technological means of randomizing the numbers, it is essential that all Colorado voters have confidence in the processes and procedures for the upcoming Presidential election.

After voted ballots have been separated from return envelopes and the ballot stubs are removed, unique numbers may be used for accounting and auditing purposes, including risk limited auditing and duplication of damaged ballots. The rule also requires that counties redact unique numbers or barcodes containing unique numbers from any ballots printed before the adoption of the rule that are provided in response to a request under the Colorado Open Records Act.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2011), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”

¹ Article VII of the Colorado Constitution, Title I of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

2. Section 1-1.5-104(1)(e), C.R.S., (2011), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”
3. Section 1-5-407(7), C.R.S. (2011), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

**STATE OF
COLORADO**
Department of State
1700 Broadway
Suite 200
Denver, CO 80290



Scott Gessler

Secretary of State

Suzanne Staert

Deputy Secretary of State

Statement of Justification and Reasons for Adoption of Temporary Rules

Office of the Secretary of State
Election Rules
8 CCR 1505-1

August 20, 2012

New Rule 10.8

In accordance with Colorado election law,¹ the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws during the 2012 election cycle. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

The Secretary of State anticipates commencement of formal rulemaking in accordance with the State Administrative Procedure Act² in the near future to consider adoption of these amended and new rules on a permanent basis. Adoption of the rules on a temporary basis, however, is necessary to provide clear guidance to county clerks given the close proximity of the 2012 General Election.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2011). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “...[the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

² Section 24-4-103(3)(a), C.R.S. (2011).

³ Section 24-4-103(3)(6), C.R.S. (2011).

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Administration (303) 860-6900
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Attachment 9



Notice of Proposed Rulemaking

Office of the Secretary of State
Election Rules
8 CCR 1505-1

February 27, 2013

I. Notice of hearing

As required by the State Administrative Procedure Act,¹ the Secretary of State gives notice of proposed rulemaking. A hearing is scheduled for April 2, 2013 from 2:00 p.m. to 5:00 p.m. in the Blue Spruce Conference Room on the second floor of the Secretary of State's Office at 1700 Broadway, Denver, Colorado 80290.

II. Subject of the proposed rulemaking

The Secretary is considering amendments to the election rules² in order to improve the administration and enforcement of Colorado elections law³ and to increase the transparency and security of the election process.

Specifically, the Secretary is considering permanent adoption of rules regarding the use of unique numbers on ballots. A detailed Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statutory authority for proposed rulemaking

The rule revisions and amendments are proposed in accordance with the following statutory provisions:

1. Section 1-1-107(2)(a), C.R.S., (2012), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1)(e), C.R.S., (2012), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”

¹ Section 24-4-103(3)(a), C.R.S. (2012).

² 8 CCR 1505-1.

³ Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 (“HAVA”), P.L. No. 107-252.

3. Section 1-5-407(7), C.R.S. (2012), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

IV. Copies of draft rules

A preliminary draft of the proposed rules is posted on the Secretary of State's rules and notices of rulemaking website at:

www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130402.html.

You may also contact our office to request a paper or editable electronic copy of the draft rules.

As required by the State Administrative Procedures Act,⁴ if changes are made before the hearing, revised proposed draft rules will be available to the public and posted on the website by March 28, 2013.

V. Opportunity to testify and submit written comments

The Secretary values your feedback in our rulemaking process, and we would very much like to hear your thoughts on the proposed amendments. Please review and consider the attached proposed draft rules.

All interested persons will have the opportunity to testify and provide written comment concerning the rule amendments. To ensure that the hearing is prompt and efficient, oral testimony may be time-limited.

You may submit written comments by mail, email, or in person to our office anytime before the hearing. If you attend the hearing, you may submit written comments to the hearing panel as well. Additional opportunity to comment in writing may be announced at the conclusion of the hearing.

All written comments will be posted online at the Secretary of State website www.sos.state.co.us/pubs/rule_making/hearings/2013/ElectionRulesHearing20130402.html.

Prior to posting online, contact information including home address, email address, and telephone number(s) will be redacted from submissions unless otherwise directed by the contributor.

VI. Broadcast and audio recording of hearing

If you are unable to attend the hearing, you may listen to the live broadcast from the Blue Spruce Conference Room online at www.sos.state.co.us/pubs/info_center/audioBroadcasts.html. After the hearing, visit the same website and click on “archived recordings” to access an audio recording of the hearing.

⁴ Section 24-4-103(3)(a), C.R.S. (2012). “Any proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

VII. Office contact

If you have any questions or would like to submit written comments, please contact Andrea Gyger with the Administration Division at SoS.Rulemaking@sos.state.co.us or (303) 894-2200 ext. 6329.

Dated this 27th Day of February, 2013.



Suzanne Staert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State



Draft Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State
Election Rules
8 CCR 1505-1

February 27, 2013

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Election Rules. The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Federal and Colorado election laws.¹ The revisions are also intended to improve elections administration in Colorado and to increase the transparency and security of the election process.

The Secretary received credible evidence that a unique number or bar code containing a unique number, printed on the face of a ballot can be used to trace the ballot to the voter who cast it. The purpose of this rule is to ensure that no ballot is printed with a number that can be used for this purpose. It is essential that all Colorado voters have confidence in the processes and procedures for the upcoming Presidential election.

After voted ballots have been separated from return envelopes and the ballot stubs are removed, unique numbers may be used for accounting and auditing purposes, including risk limited auditing and duplication of damaged ballots. The rule also requires that counties redact unique numbers or barcodes containing unique numbers from any ballots printed before the adoption of the rule that are provided in response to a request under the Colorado Open Records Act.

On February 1, 2013, the Secretary issued a request for public comment to help our office develop preliminary draft rules to address the use of numbers on ballots. The comments we received in anticipation of rulemaking are available online at: www.sos.state.co.us/pubs/rule_making/ruleComments.html and are incorporated into the official rulemaking record.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

¹ Article VII of the Colorado Constitution, Title 1 of the Colorado Revised Statutes, and the Help America Vote Act of 2002 ("HAVA"), P.L. No. 107-252.

1. Section 1-1-107(2)(a), C.R.S., (2012), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1)(e), C.R.S., (2012), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”
3. Section 1-5-407(7), C.R.S. (2012), which states that “[n]o printing or distinguishing marks shall be on the ballot except as specifically provided by [the Uniform Election Code].

Preliminary Draft of Proposed Rules

Office of the Colorado Secretary of State Election Rules 8 CCR 1505-1

February 27, 2013

Disclaimer:

In accordance with the State Administrative Procedure Act, this draft is filed with the Secretary of State and submitted to the Department of Regulatory Agencies.¹

This is a preliminary draft of the proposed rules that may be revised before the April 2, 2013 rulemaking hearing. If changes are made, a revised copy of the proposed rules will be available to the public and a copy will be posted on the Department of State's website no later than **March 28, 2013**.²

SMALL CAPS indicate proposed additions to the current rules.

~~Stricken type~~ indicates proposed deletions from current rules.
(Annotations) may be included.

New Rule 10.8:

10.8 USE OF UNIQUE NUMBERS ON BALLOTS.

- 10.8.1 EXCEPT FOR BALLOTS SENT TO MILITARY OR OVERSEAS ELECTORS BY ELECTRONIC TRANSMISSION UNDER RULE 25.2.7, NO COUNTY MAY PRINT A BALLOT FOR USE IN A STATE OR FEDERAL ELECTION THAT HAS A UNIQUE NUMBER, OR A BARCODE CONTAINING A UNIQUE NUMBER, THAT IS SPECIFIC TO A SINGLE BALLOT. NOTHING IN THIS RULE PROHIBITS A COUNTY FROM PRINTING A UNIQUE NUMBER OR BARCODE ON THE REMOVABLE STUB.
- 10.8.2 AFTER ELECTION JUDGES HAVE DISASSOCIATED A VOTED BALLOT FROM ITS ENVELOPE AND THE STUB IS REMOVED, THE COUNTY MAY WRITE OR PRINT UNIQUE NUMBERS ON THE VOTED BALLOT FOR AUDITING AND ACCOUNTING PURPOSES, INCLUDING DUPLICATION OF DAMAGED BALLOTS AND RISK LIMITING AUDITS.
- 10.8.3 FOR BALLOTS PRINTED BEFORE THE ADOPTION OF THIS RULE THAT ARE IN A COUNTY'S POSSESSION, THE COUNTY MUST REDACT UNIQUE NUMBERS, OR BARCODES CONTAINING UNIQUE NUMBERS, BEFORE PROVIDING BALLOTS IN RESPONSE TO A REQUEST FOR INSPECTION UNDER THE COLORADO OPEN RECORDS ACT (SECTION 24-72-205.5(4)(b)(II), C.R.S.).

¹ Sections 24-4-103(2.5) and (3)(a), C.R.S. (2012). A draft must be submitted to the Department at the time that a notice of proposed rulemaking is filed with the Secretary of State.

² Section 24-4-103(4)(a), C.R.S. (2012). “[A]ny proposed rule or revised proposed rule by an agency which is to be considered at the public hearing...shall be made available to any person at least five days prior to said hearing.”

New Rule 10.9

10.9 TRACKING BALLOT BATCHES. THE COUNTY CLERK MUST IMPLEMENT A PROCESS TO DISSOCIATE ANY BATCH NUMBER FROM THE COUNTED BALLOTS NO LATER THAN THE FINAL CERTIFICATION OF THE ABSTRACT OF VOTES CAST.

Attachment 10

12 AUG 21 1111:50

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street, Room 256 Denver, CO 80202 720-865-8301</p> <p>Petitioners/Plaintiffs: LU ANN BUSSE and JOHN W. ROSENBAUM, PRO SE vs.</p> <p>Respondents/Defendants: SCOTT GESSLER, in his official capacity as Secretary of State of the State of Colorado; and, JACK ARROWSMITH, in his official capacity as Clerk and Recorder of Douglas County, Colorado; and, JUDITH JAMISON, in her official capacity as Clerk and Recorder for Teller County, Colorado</p>	<p>12 AUG 21 1111:50</p> <p>▲ COURT USE ONLY ▲</p>
<p>Parties Without Attorney: Petitioners/Plaintiffs: Lu Ann Busse and John W. Rosenbaum Address: 1440 Yarnell Dr., Larkspur, CO 80118 Phone: 720-291-8894 FAX Number: 719-487-9499 (call first) Email: Lu@Busse4Colorado.us</p>	<p>Case Number: 12 CV <u>12 CV 5322</u></p>
<p>VERIFIED PETITION FOR EMERGENCY RELIEF UNDER § 1-1-113(1), C.R.S., AND COMPLAINT FOR DECLARATORY JUDGMENT</p>	

COME NOW Petitioners/Plaintiffs, pro se, pursuant to § 1-1-113(1), C.R.S.; § 1-1-110(1), C.R.S.; § 1-1-107(1), C.R.S.; § 1-5-407(7), C.R.S.; and 28 U.S.C. § 1983, and for their Petition and Complaint against the Respondents/Defendants, allege:

I. Parties, Jurisdiction and Venue

1. At all times relevant hereto, the Plaintiff, Lu Ann Busse, was a resident and eligible elector of Douglas County, State of Colorado, who voted in the House District 39 primary.
2. At all times relevant hereto, the Plaintiff, John W. Rosenbaum, was a resident and eligible elector of Douglas County, State of Colorado, who voted House District 39 primary.
3. Defendant Secretary of State, Scott Gessler, is an official of the State of Colorado, located in Denver, Colorado. Secretary Gessler is the chief election officer for the state of Colorado

and pursuant to § 1-1-107(1), C.R.S., is responsible for enforcing the election statutes. Plaintiffs are suing Secretary Gessler in his official capacity only.

4. Defendant Clerk and Recorder of Douglas County, Jack Arrowsmith, is an official of Douglas County, State of Colorado. Clerk Arrowsmith is the chief election officer for Douglas County, Colorado and pursuant to § 1-1-110, C.R.S., is responsible for conducting the elections in Douglas County. Plaintiffs are suing the Douglas County Clerk in his official capacity only.
5. Defendant Clerk and Recorder of Teller County, Judith Jamison, is an official of Teller County, State of Colorado. Clerk Jamison is the chief election officer for Teller County, Colorado and pursuant to § 1-1-110, C.R.S., is responsible for conducting the elections in Teller County. Plaintiffs are suing the Teller County Clerk in her official capacity only.
6. Defendants are officials tasked to conduct elections in the State of Colorado in compliance with all relevant statutes and regulations for conducting elections.
7. Plaintiffs have decided to precede pro se at this time.
8. This Court has personal and subject matter jurisdiction pursuant to § 13-1-124 (a) and (b), C.R.S.
9. Venue is appropriate before this Court pursuant to Rule 98(b)(2) of the Colorado Rules of Civil Procedure because it involves claims against the Secretary of State.

II. General Allegations

10. Plaintiffs incorporate by reference paragraphs 1-9 as if fully set forth herein.
11. Plaintiff Lu Ann Busse (hereinafter "Plaintiff Busse") is one of two qualified Republican candidates for the 2012 primary election for the Colorado House of Representatives, District 39 (hereinafter "House District 39").
12. The primary election for House District 39 also included was one Democrat candidate. There was no American Constitution Party candidate for House District 39.
13. House District 39 consists of all thirteen (13) precincts in Teller County and thirty-three (33) of the precincts in Douglas County.
14. On June 20, 2012, the Secretary of State (SoS) issued SoS Order 12-002 giving this official direct supervision of the Teller County primary. Secretary Gessler assigned multiple staff members to manage and work the 2012 primary election in that county.
15. Plaintiff Busse requested a recount pursuant to § 1-10.5-106, C.R.S., based her own informal preliminary investigation which uncovered several possible violations of duty by officials in both counties and with the Colorado Department of State.
16. Plaintiff Busse filed complaints with the Secretary of State on July 22, 2012, against both

Teller County and Douglas County officials for violations of their duty in conducting the primary election for House District 39.

17. The House District 39 Republican primary recount in Teller County was conducted on July 23, 2012 and in Douglas County from July 24, 2012 through July 26, 2012.
18. Plaintiff Busse requested that the Secretary of State withhold the State's certification of the House District 39 Republican primary results via a telephone conversation with Deputy Secretary Suzanne Staiert and Elections Division Director Judd Choate on July 27, 2012.
19. During the July 27, 2012 telephone conversation, Plaintiff Busse also asked Deputy Secretary Staiert and Director Choate to assist in opening a dialogue, concerning rectifying the issues with the primary election for House District 39 and alleged violations of duty, with Douglas and Teller counties.
20. Based on observations of the recount, Plaintiff Busse filed additional complaints against Douglas County, on July 29, 2012, and against Teller County, on August 1, 2012.
21. On August 1, 2012, Plaintiff Busse wrote directly to Secretary of State Scott Gessler to request that he withhold certification of the House District 39 primary election results.
22. On August 7, 2012, Plaintiff Busse spoke with Secretary Gessler over the telephone but did not reach resolution of her complaints regarding violations of duties and improper handling of the House District 39 primary election and recount. The Secretary stated that major changes regarding elections would occur in the coming days.
23. On August 7, 2012, the Douglas County Board of Commissioners filed the Douglas County District Court Case #2012CV1771 against Marilyn Marks of Citizen Center, who was one of Plaintiff Busse's appointed recount watchers, for emergency judicial review of Ms. Mark's Colorado Open Records Act (CORA) request regarding Douglas County Canvass Board meetings during the House District 39 recount.
24. On August 13, 2012, the Teller County Clerk was relieved of her election duties and responsibilities as new managerial staff was hired to take over all the Teller County election functions upon the recommendation of the Secretary of State pursuant to his report regarding the problems with the Teller County 2012 primary election, dated August 6, 2012.
25. On August 20, 2012, the Secretary of State released Emergency Rule 10.8 requiring that no county mark ballots with unique or sequential numbers and barcodes on ballots like those used by Douglas County for 2012 primary election.
26. The use of numbers and their corresponding barcodes, unique to each voter, as covered by SoS Emergency Rule 10.8 was one of the major complaints Plaintiff Busse brought against Douglas County officials to the Secretary of State on July 22, 2012 and July 29, 2012.
27. On August 24, 2012, Marilyn Marks filed her response and cross-application to the suit filed against her by Douglas County.
28. In Marilyn Marks' response/cross-application and corresponding affidavit, she details

Douglas County officials' several violations of duty with regard the House District 39 recount and requests the certification of the recount results be invalidated by the court as well as other relief. The Douglas County District Court Case #2012CV1771 may impact significantly the certification process of the Republican candidate for House District 39 for the general election ballot.

29. Plaintiffs allege that the Douglas County officials, Teller County officials, the Secretary of State, and his staff have committed major violations of duty, which significantly impacted the House District 39 Republican primary election to such a degree that Plaintiff Busse could have won the race if these violations had not occurred.
30. The combined violations of duty resulted in the failure of the House District 39 primary election for Democrat and Republican candidates to substantially comply with the Colorado statutes, SoS Rules and procedures, as well as the Colorado Constitution in the case of Douglas County.
31. County and Colorado Department of State officials violated Colorado Open Meeting Law, Colorado Open Records Act, Colorado recount statute, and SoS recount regulations during the recount. Plaintiffs may file another case regarding these violations but decided the time-sensitive controversies of the underlying election should be considered by the Court first.
32. The 2012 primary for House District 39 is the only election at any level in Colorado that suffered from the combined violations of duty of the officials in Douglas County, Teller County, and the Secretary of State elections division as described by this petition and had no votes from other counties to lessen the overall impact of these violations.
33. The Secretary of State is about to commit an additional major violation of duty by accepting the results of unlawful primary elections for House District 39 and certifying the invalid results for the general election ballot on or before September 10, 2012.

III. First Claim for Relief

Constitutional and Statute Violations in Douglas County – Colorado Constitution Article VII, Section 8; § 1-5-407(7), C.R.S.; and § 1-1-110(1), C.R.S.

34. Plaintiffs incorporate paragraphs 1 - 33 herein by reference.
35. The Douglas County ballots for the 2012 primary election were marked with voter-specific barcodes and numbers whereby a ballot can be identified as the ballot of the person casting it, in violation of § 1-5-407(7), C.R.S. and the Constitution of the State of Colorado, Article IV, Section 8.
36. The Secretary of State knowingly allowed Douglas County to use ballots marked with unique barcodes and numbers in violation of the Colorado Constitution and statute.
37. Plaintiffs offer paragraphs 38 – 45 below in support of their claim that the ballots cast for the

2012 primary election in Douglas County were unconstitutional due to their distinguishing marks and requires emergency relief by the Court under § 1-1-113(1), C.R.S.

38. The secrecy of the ballot is guaranteed to eligible voters by the Colorado Constitution, Article VII, Section 8 which provides: "All elections by the people shall be by ballot, and in case paper ballots are required to be used, no ballot shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it."
39. The Douglas County Clerk's violation of the voters' right to a secret ballot allows the Court to void and nullify the votes from Douglas County in this primary election because of the violation of the Colorado Constitution (Article VII, Section 8). (See *TAYLOR v. PILE*, 154 Colo. 516 (1964) (391 P.2d 670).)
40. The Colorado Supreme Court ruled in *Taylor v. Pile*, 154 Colo. 516 (1964) (391 P.2d 670) that:
 - a. "An election wherein ballots are numbered in such a manner that the vote of any person thereafter may be determined by comparison with the number on the ballot and the poll registration book is contrary to the state of Colorado's constitutional and statutory guarantee of a secret ballot and, therefore, void ab initio."
 - b. "The use of 'marked ballots' by which the vote of every elector could be ascertained resulted in a void election."
 - c. "*[w]hen the undisputed fact was made to appear that all the ballots cast were not secret ballots, it was the duty of the court to declare the election void.*" (emphasis added)
41. Douglas County uses the Hart Voting System specifically referenced in the SoS Emergency Rule 10.8 of August 20, 2012, disallowing the use of unique barcodes and serial numbers.
42. The Douglas County Clerk was warned that the use of voter-specific numbers and barcodes on the ballots could cause the county's primary elections to be voided in an April 12, 2012 letter from Citizen Center.
43. The Douglas County Clerk has denied Plaintiff Busse's written requests to inspect and count the primary's paper ballots and electronic images of the ballots until the barcodes and serial numbers have been redacted in order to "preserve voter anonymity and ensure secrecy in voting."
44. The Douglas County Clerk's denial of access ballots until the barcodes and serial numbers are redacted, is an admission that the ballots are marked in a way "whereby the ballot can be identified as the ballot of the person casting it," in violation of § 1-5-407(7), C.R.S., and the Colorado Constitution, Article VII, Section 8..
45. Richard Rosenbaum, Yvonne Shaw, and Plaintiff John Rosenbaum, all eligible Republican voters who live in the Douglas County portion of House District 39 and who voted in the 2012 primary, sent written complaints about the use of voter-specific

barcodes to the Douglas County Clerk and Canvass Board on July 24, 2012.

46. Media coverage of Colorado counties', including Douglas', using ballots with barcodes traceable to individual voters during the last 4 and 1/2 months (since the February 13, 2012 announcement of the Citizen Center v Gessler et al. litigation) of the primary election may have suppressed turnout or voters' free expression of choice from certain segments of Republican voters who were more likely to support Plaintiff Busse and less likely to favor her opponent. While significant, the impact of the violation of voters' rights to a secret ballot in Douglas County for this primary election cannot be quantified by an exact number.
47. As a direct result of these violations, Plaintiff Busse, as a candidate, has been denied a properly conducted primary election and damaged by the violations.
48. As a direct result of these violations, both Plaintiffs, along with all other Douglas County electors who voted in the 2012 primary election, have been denied their constitutional and statutory rights to a secret ballot, which allows this Court to declare the Douglas County 2012 primary election void.

IV. Second Claim for Relief
Election Statute Violations in Teller County - § 1-1-110(1), C.R.S.; § 1-7.5-1-7(6);
and SoS Rule 29.1.2

49. The Teller County Clerk allowed the issuance of approximately 4,100 mail-in ballots that did not comply with § 1-7.5-107(3)(b.5)(I), which requires a return envelope with an affidavit and signature line.
50. Over 70% of the Teller County votes for House District 39 were cast by mail-in ballot.
51. The Teller County Clerk allowed approximately 1,400 mail-in ballot voters to sign and submit affidavits by mail, facsimile, or email. This deviation did not comply with SoS Rule 29.1.2, which requires a voter to sign an affidavit in person in front of the Clerk or her designee.
52. The Secretary of State approved Teller County's failure to comply with Rule 29.1.2.
53. The Teller County Clerk, and the Secretary of State through his approval of the deviation from Rule 29.1.2, disenfranchised certain segments of voters during this primary election through the mail-in ballot irregularities and the non-complaint options given mail-in ballot voters. SoS Elections Director Judd Choate discussed this possibility in an email on June 5, 2012, in which he commented about the Teller County Clerk's asking voters to send in signatures via mail, email, or fax: "[s]ome will see this as a dubious request, which they will ignore or (even better) will see as an attempt to create election fraud or steal the voter's identity."
54. Plaintiff Busse's supporters tend to distrust the government more and have greater concerns about election fraud than those of her opponent so this deviation from compliant

election procedures could have significantly disadvantaged Plaintiff Busse by differentially and substantially suppressing the turnout of her voters in Teller County, which accounts for ~30% of House District 39 voters. While significant, the impact of this disenfranchisement of voters in Teller County cannot be quantified by an exact number of votes.

55. Numerous other violations of SoS Rules and procedures before and during the Teller County 2012 primary election are detailed in the August 6, 2012 SoS report regarding the county's primary election. This report states, "After an 18-month assessment of activity in Teller County, SoS has concluded the County is not prepared to properly administer elections in Colorado."
56. As a direct result of these serious election violations, the primary election in Teller County was not in substantial compliance with Colorado election law, should not have been certified by Teller County, and should not be certified by the Secretary of State. The Plaintiffs seek emergency relief from the Court under § 1-1-113(1), C.R.S., to resolve this controversy.
57. As a direct result of these violations by the Teller County Clerk and the Secretary of State, Plaintiff Busse, as a candidate, has been denied a properly conducted primary election and damaged by the violations.
58. As a direct result of these election violations, Plaintiffs have been damaged by an improper certification of the primary elections results in Teller County.

V. Third Claim for Relief

Election Security Violations in Douglas and Teller Counties - SoS Security Rules and Procedures; and § 1-1-110(1), C.R.S.

59. The Douglas County Clerk and staff did not follow election rules and procedures for properly sealing and securing documents and equipment before, during, and after the 2012 primary election.
60. The Douglas County Clerk stated publicly that he had an exemption from the mandatory requirements of SoS security rules.
61. The Douglas County Clerk's claim of an exemption from SoS security rules is an admission that he did not comply with the rules.
62. The Douglas County Clerk and his staff did not comply with mandatory SoS security rules and procedures, including, but not limited to:
 - a. Not sealing the data ports of the computer equipment which processes and counts the electronic images of the ballots;
 - b. Not securing and sealing rejected and duplicate ballots properly; and
 - c. Not keeping chain of custody logs for data memory cards and the items described in 62.a and 62.b above.

63. Significant numbers of ballots, DRE machines, and other items in Teller County were not properly secured during the primary election in accordance with SoS security rules and procedures, as verified in the SoS August 6, 2012 Teller County Primary Election Report.
64. During the House District 39 recount in Teller County, at least one metal box of ballots was found to not have been sealed and secured from July 6, 2012 until July 23, 2012.
65. The Douglas County Clerk's, the Teller County Clerk's, and their respective staff's violations of SoS security regulations make it impossible to reconstruct this primary election since the chain of custody for the ballots and the equipment has been lost.
66. As a direct result of these violations, Plaintiffs have been denied their statutory right to a secure election process for the House District 39 primary elections and damaged by these violations. The Plaintiffs seek emergency relief from the Court under § 1-1-113(1), C.R.S., to resolve this controversy.

VI. Fourth Claim for Relief

Election Violations Committed or About to be Committed by Secretary of State – Colorado Constitution Article VII, Section 8; § 1-5-407(7), C.R.S.; § 1-7.5-1-7(6), C.R.S.; § 1-1-107(1), C.R.S.; and SoS Rule 29.1.2

67. The Secretary of State knowingly allowed Douglas County to use ballots marked with unique barcodes and numbers in violation of the Colorado Constitution and statute.
68. As a direct result of this violation, Plaintiffs have been denied their constitutional and statutory right to a secret ballot.
69. The Secretary of State knew prior to the primary election that Teller County was not ready to conduct an election in substantial compliance with both statute and regulations.
70. The Secretary of State failed to promulgate adequate procedures to correct the problems in Teller County either before or during the primary election.
71. The Secretary of State approved Teller County's failure to comply with SoS Rule 29.1.2.
72. Due to the election violations which occurred in Douglas and Teller Counties, the Secretary of State should not accept the House District 39 primary results from these counties or certify these results for the general election ballot.
73. As a direct result of the violations by the Secretary of State and his staff, Plaintiff Busse, as a candidate, has been denied a properly conducted primary election and damaged by these violations.
74. The Secretary of State is about to commit an additional major violation of duty by accepting the results of substantially non-compliant Republican and Democrat primary elections for House District 39 and certifying invalid results for the general election ballot on or before September 10, 2012.

75. The Plaintiffs seek emergency relief from the Court under § 1-1-113(1), C.R.S., to resolve these controversies.

VII. Fifth Claim for Relief

Declaratory Relief Seeking a Judgment Against the Defendants Declaring that Their Actions Violated the Right to Equal Treatment of the Law – Fourteenth Amendment

76. The Secretary of State, the Douglas County Clerk, and the Teller County Clerk violated House District 39 Douglas County voters' right to equal treatment of election law.
77. The Secretary of State and Douglas County election officials denied House District 39 Douglas County voters' constitutional and statutory rights to a secret ballot through ballots marked with voter-specific barcodes and numbers, whereby a ballot can be identified as the ballot of the person casting it. The ballots for Teller County voters were not marked in this way. This resulted in unequal treatment of the Colorado Constitution for Douglas County versus Teller County voters within the same Colorado House of Representatives District 39.
78. Douglas County voters were not afforded the extraordinary, liberal Teller County options, approved by the Secretary of State, to supply signed affidavits for their mail-in ballots by mail, facsimile, or email so there was not equal treatment of Colorado election law for Douglas County versus Teller County voters within the same Colorado House of Representatives District 39 in this primary election.
79. According to Douglas County election reports, there were approximately 107 ballots rejected because they were returned with missing or questionable signatures. Many of these ballots, under the extraordinary, more liberal, Secretary of State approved procedures used in Teller County, would likely have been accepted and counted with a mailed, email, or facsimile signature option.
80. As a direct result of these violations, Plaintiffs, both eligible Douglas County voters, were denied their Fourteenth Amendment rights to equal treatment of the law.

WHEREFORE, premises submitted, Petitioners/Plaintiffs pray for judgment in their favor against the Defendants as follows:

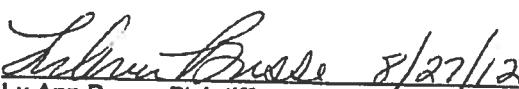
- A. An order issued pursuant to Colorado Constitution, Article VII, Section 8; § 1-5-407(7), C.R.S.; § 1-1-110(1), C.R.S.; § 1-7.5-1-7(6), C.R.S.; that finds the 2012 Colorado House District 39 primary election for all candidates was not in substantial compliance with Colorado law and declares it void.
- B. An order issued pursuant to the Colorado Constitution, Article VII, Section 8; § 1-5-407(7), C.R.S.; and § 1-1-110(1), C.R.S.; for all counties in Colorado to immediately and continuously follow Secretary of State Emergency Rule 10.8.

- C. An order issued pursuant to § 1-1-110(1), C.R.S., that orders Douglas County and Teller County election officials to adhere properly and consistently to all Secretary of State security rules, procedures, and measures immediately and continuously from the date of the order; and orders that the Secretary of State train all election officials, staff and workers in both counties on the proper implementation of these security rules and procedures before the overseas ballots are mailed on or about September 21, 2012.
- D. A declaratory judgment in favor of Plaintiffs and against the Defendants for their violations of duty, which violated the Plaintiffs' rights to equal protection and treatment of the law as guaranteed by the Fourteenth Amendment.
- E. For costs of suit herein, including Plaintiffs' reasonable Rule 11 unbundled services fees and other attorney's fees incurred during this case, pursuant to 42 U.S.C. § 1988, against the Defendants.
- F. For such other relief as the Court may deem just and reasonable under the circumstances.

WHEREFORE, Petitioners/Plaintiffs respectfully request this urgent election matter be set for an emergency hearing immediately because the Secretary of State is required to certify the ballot for the general election by September 10, 2012.

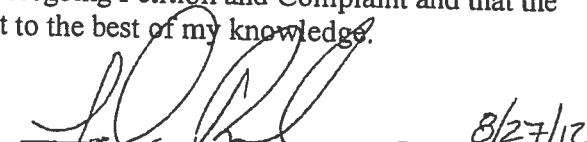
VERIFICATION AND ACKNOWLEDGEMENT

I swear/affirm under oath that I have read the foregoing Petition and Complaint and that the statements set forth therein are true and correct to the best of my knowledge.


 Lu Ann Busse, Plaintiff, pro se Date 8/27/12

Subscribed and affirmed, or sworn to before
 me in the County of El Paso
 State of Colorado, this 27
 day of August, 2012.

My Commission Expires: April 14, 2015


 John W. Rosenbaum, Plaintiff, pro se Date 8/27/12

Subscribed and affirmed, or sworn to before
 me in the County of El Paso
 State of Colorado, this 27
 day of August, 2012.

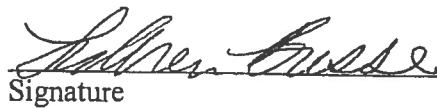
My Commission Expires: April 14, 2015


 Notary Public/Clerk
 JENNIFER MASON
 NOTARY PUBLIC
 STATE OF COLORADO
 PETITION FOR EMERGENCY ORDER UNDER § 1-1-113(1), C.R.S.
 MY COMMISSION EXPIRES April 14, 2015


 Notary Public/Clerk
 JENNIFER MASON
 NOTARY PUBLIC
 STATE OF COLORADO
 PETITION FOR EMERGENCY ORDER UNDER § 1-1-113(1), C.R.S.
 MY COMMISSION EXPIRES April 14, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that an original of the foregoing document, the Plaintiffs' *Verified Petition for Emergency Relief Under § 1-1-113(1), C.R.S., and Complaint for Declaratory Judgment*, was filed with the Court on August 27, 2012 and true and correct copies were served, or attempted to be served, via hand delivery on the Respondents/Defendants, Secretary of State Scott Gessler, the Colorado Attorney General, Douglas County Clerk and Recorder Jack Arrowsmith, and Teller County Clerk and Recorder Judith Jamison.



Signature

Attachment 11

**DISTRICT COURT, CITY AND COUNTY OF DENVER,
STATE OF COLORADO**

Court Address: 1437 Bannock Street, Room 256
Denver, CO 82002

PETITIONERS/PLAINTIFFS:

LU ANN BUSSE, and

▲ COURT USE ONLY ▲

TREON GOOSSEN, and

JOHN W. ROSENBAUM, and

RICHARD L. ROSENBAUM

v.

RESPONDENTS/DEFENDANTS:

SCOTT GESSLER, in his official capacity as Secretary of the State of Colorado; and

JACK ARROWSMITH, in his official capacity as Clerk and Recorder of Douglas County, Colorado; and

JUDITH JAMISON, in her official capacity as Clerk and Recorder of Teller County, Colorado.

John A. Culver, #21811
Sarah J. Parady, #40292
BENEZRA & CULVER, P.C.
274 Union Boulevard, #220
Lakewood, CO 80228-1835
Telephone: (303)716-0254
Facsimile: (303)716-0327
Attorneys for Plaintiffs

Case No. 2012 CV 5322

Div.

VERIFIED AMENDED COMPLAINT AND C.R.S. § 1-1-113 PETITION

Plaintiffs Lu Ann Busse, Treon Goossen, John W. Rosenbaum, and Richard L. Rosenbaum, through their attorneys, the law firm of Benezra & Culver, P.C., for their Verified Amended Complaint and C.R.S. § 1-1-113 Petition, allege the following:

I. INTRODUCTION

1. Plaintiffs, who are registered and active voters in Douglas and Teller Counties, bring this challenge to enforce their Colorado Constitutional right to a secret ballot and U.S. Constitutional right to vote, which were violated in the June 2012 primary election in those counties. They bring an additional challenge under C.R.S. § 1-1-113 to multiple breaches of duty by election officials, including a failure by Douglas County to follow statutorily mandated procedures for securing voting equipment, and seek an order of this court requiring Defendants to substantially comply with these important safeguards throughout the November 2012 general election and thereafter.

II. PARTIES

2. Plaintiff Lu An Busse is a registered Republican voter in Douglas County, Colorado and a resident of Douglas County, Colorado. Plaintiff Busse voted by mail in the contested Republican primary elections for State House District 39, District Attorney for the Eighteenth Judicial District, at-large University of Colorado Regent, and Douglas County Commissioner District 2 in June 2012. Plaintiff Busse was also a Republican candidate for House District 39.

3. Plaintiff Treon Goossen is a registered Republican voter in Teller County, Colorado and a resident of Teller County, Colorado. Plaintiff Goossen voted in the contested Republican primary elections for State House District 39, U.S. House District 5, at-large University of Colorado Regent, and Teller County Commissioner District 1 on June 26, 2012.

4. Plaintiff John W. Rosenbaum is a registered Republican voter in Douglas County, Colorado and a resident of Douglas County, Colorado. Plaintiff J. Rosenbaum voted by mail in the contested Republican primary elections for State House District 39, District Attorney for the Eighteenth Judicial District, at-large University of Colorado Regent, and Douglas County Commissioner District 2 in June 2012.

5. Plaintiff Richard L. Rosenbaum is a registered Republican voter in Douglas County, Colorado and a resident of Douglas County, Colorado. Plaintiff R. Rosenbaum voted by mail in the contested Republican primary elections for State House District 39, District Attorney for the Eighteenth Judicial District, at-large University of Colorado Regent, and Douglas County Commissioner District 2 in June 2012.

6. Defendant Scott Gessler is the elected Secretary of State of the State of Colorado. The Secretary is the public officer responsible for supervising the conduct of primary, general, congressional vacancy and statewide ballot issue elections in the State of Colorado. The Secretary is responsible for enforcing the election laws and for promulgating rules necessary for the proper administration and enforcement of those laws. The Secretary is responsible for inspecting and reviewing the practices and procedures of county clerk and recorders. At all times material to this Complaint, the

Secretary has acted or will act under color of state law. The Secretary is sued in his official capacity.

7. Defendant Jack Arrowsmith is the elected Clerk & Recorder of Douglas County, Colorado. Defendant Arrowsmith is the public officer responsible for the conduct of elections in Douglas County. At all times material to this Complaint, Defendant Arrowsmith has acted or will act under color of state law. Defendant Arrowsmith is sued in his official capacity.

8. Defendant Jamison is the elected Clerk & Recorder of Teller County, Colorado. Defendant Jamison is the public officer responsible for the conduct of elections in Teller County. At all times material to this Complaint, Defendant Jamison has acted or will act under color of state law. Defendant Jamison is sued in her official capacity.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction on this Complaint pursuant to Article VI, § 9 of the Colorado Constitution and § 13-1-124(1)(a) of the Colorado Revised Statutes.

10. Pursuant to C.R.C.P. Rule 98(b)(2) and C.R.C.P. 20(a), venue is proper in this district because Defendant Gessler's office is located herein and because Plaintiffs' claims arise from a set of common occurrences in which Defendants acted together.

IV. FACTUAL ALLEGATIONS

Douglas County Primary Election

11. The 2012 primary election for Douglas County occurred from June 4, 2012 to June 26, 2012. The election was conducted entirely by mail. See Board of County Commissioners of Douglas County, Colorado, Resolution No. R-011-153, 10/25/11, Exhibit 1.

12. In Douglas County, four races had multiple Republican candidates, requiring a primary vote: State House District 39; Douglas County Commissioner District 2; District Attorney for the Eighteenth Judicial District; and at-large University of Colorado Regent. See Colorado Secretary of State, Douglas County Report, 7/30/12, Exhibit 2; Douglas County 2011 Primary Election Post Election Audit, 7/3/12, Exhibit 3. For Democrats, no races had contested primary votes. Id.

13. In the CU Regent and 18th Judicial district races, the number of votes cast by Douglas County Republican voters was too small to change the result of the election, based on the total of all other votes cast throughout the state. See Colorado Secretary of State, Office & District Report, Regent of the University of Colorado - At Large,

Exhibit 4;¹ Colorado Secretary of State, Office & District Report, District Attorney - 18th Judicial District, Exhibit 5.²

Violation of Colo. Const. Article VII, § 8

14. Douglas County uses an electronic voting system manufactured by Hart InterCivic ("Hart"). See Voting Equipment Vendors in the 64 Colorado Counties, Exhibit 6; Security & Contingency Plan, Douglas County, 6/26/12, Exhibit 7, at 2, 14. One subset of the equipment used within the Hart voting system is a set of ballot scanning equipment known as "BallotNow." See Exhibit 6; Email from Sheri Davis to Jack Arrowsmith, 9/11/12, Exhibit 8 (with attached document "Hart Interactive, Election Solutions Knowledge Base: Article #26 in a Series"). Hart cautions its customers that "Serial numbers are produced in a sequential order and should *not* be aligned with voter lists in any way, including when files are sent to a printer." Exhibit 8 (attachment at 1) (emphasis in original).

15. In the June 2012 primary election, Douglas County issued only ballots which contained unique serial numbers. See Affidavit of Lu Busse, Exhibit 22, ¶ 4. These numbers were contained in several digits of the 12-digit barcode on the bottom left margin of each ballot. As explained in Hart literature regarding the BallotNow system, "the lower left barcode . . . can be used to provide a unique serial number for each ballot." Hart InterCivic, BallotNow Barcodes Description of Content, 9/27/12, Exhibit 9; see also Exhibit 8.

16. Douglas County contains many different and overlapping districts for various elections, and each voter's set of districts (along with her party registration) dictates which races will appear on her ballot, known as her "ballot style." Upon information and belief, in order to print and mail the correct ballot style to each voter in the County, the County was required to send its ballot printer, Integrated Voting Systems ("IVS"), a list of voters and associated ballot styles.

17. Upon information and belief, this list---which may have been contained in a single computer file, or in multiple files---contained at least each voter's name and the unique number assigned to each by Colorado's Statewide Voter Registration System ("SCORE").

18. Upon information and belief, this file or files listed voters in the order in which June 2012 primary ballots were to be printed and assigned serial numbers. Also upon information and belief, Douglas County has maintained that list in the same order since it was sent to the printer, and it is accessible to election staff and available to the public and press via an Open Records Act request.

¹ For this race, Matt Arnold received 99,111 votes and Brian Davidson received 156,658. Without Douglas and Teller Counties, Mr. Arnold receives 91,202 votes and Mr. Davidson receives 144,879.

² For this race, George Brauchler received 27,029 votes and Leslie Hanson received 25,567. Without Douglas County, Mr. Brauchler receives 16,476 votes and Ms. Hanson receives 16,312.

19. Upon information and belief, Douglas County then created one or more large printable files containing images of multiple ballots--each ballot with a unique serial number---and sent these to IVS, which matched each ballot with the corresponding voter on the Douglas County list and prepared the ballots for mailing.

20. Thus, upon information and belief, election staff and others need only consult the voter list sent to IVS, and add the voter's position on the voter list to the first serial number in the County's pdf file, in order to match a particular ballot's serial number to the voter whose voting choices it reflects.

21. Other Colorado counties which use Hart voting systems follow the procedure just described, and citizen activists have succeeded in determining the serial number of a voter's ballot in those counties using his or her name and the voter lists and ballot pdfs sent to the printer. See Affidavit of Marilyn Marks, Exhibit 10, ¶¶ 22-42.

22. The State of California disallowed the use of serial numbers with Hart equipment in 2007 after its Secretary of State issued a formal finding that "the Hart voting system allows raw ballot records and other information to be used to reconstruct how each voter voted, potentially compromising the secrecy of the ballot." California Secretary of State, Withdrawal of Approval of Hart InterCivic System . . . and Conditional Re-Approval of Use of Hart Intercivic System, 12/6/07, Exhibit 11 at 2.

23. On at least three occasions, Defendant Arrowsmith has responded to CORA requests made of his office by stating that he cannot release ballots from the primary, or that he will redact serial numbers when doing so, because of the risk of "exposing individual responses of voters, violating confidentiality of the ballot." Letter from Jack Arrowsmith to Marilyn Marks, 7/30/12, Exhibit 12; see also Letter from Jack Arrowsmith to Marilyn Marks, 7/24/12, Exhibit 13 ("Because we are unsure if [releasing unredacted scanned images of primary ballots] will compromise voter anonymity and ensure secrecy in voting as prescribed in Article 8 [sic], Section 8 of the Colorado Constitution we will be asking the voting system vendor to redact any and all serial numbers as well as barcodes."); Letter from Jack Arrowsmith to Lu Busse, 7/24/12, Exhibit 14 (same).

24. After the primary election, on August 20, 2012, Defendant Gessler responded to increasing public concern regarding the traceable nature of ballots printed with Hart serial numbers in counties throughout the state, and issued Emergency Rule 10.8, 8 CCR 1505-1(10.8). Colorado Secretary of State Order 12-003, 8/20/12, Exhibit 15; Colorado Secretary of State, Notice of Temporary Adoption, 8 CCR 1505-1(10.8), 8/20/12, Exhibit 16.

25. In his "Statement of Basis, Purpose, and Specific Statutory Authority" supporting the Emergency Rule, Defendant Gessler wrote that he "has received credible evidence that a unique number or bar code containing unique serial number, printed on the face of a ballot can be used to trace the ballot to the voter who cast it." Exhibit 15; see also Letter from Michael Hagiwara to Al Kolwicz, 11/30/11, Exhibit 17

(letter from Secretary of State's office to complaining citizen regarding their investigation into potential traceability of Hart ballots).

26. Emergency Rule 10.8 is applicable only to the upcoming November 2012 election and provides, in relevant part:

"10.8.1. Except for ballots sent to military or overseas electors by electronic transmission under Rule 25.2.7, no county may print a ballot for use in a state of federal election that has either a unique or sequential number, or a barcode containing a unique or sequential number, except on the removable stub.

10.8.2 After election judges have disassociated a voted ballot from its envelope and the stub is removed, the county may write or print unique or sequential numbers on the voted ballot for auditing and accounting purposes, including duplication of damaged ballots and risk limiting audits."

Exhibit 16.

27. Prior to Emergency Rule 10.8, the Secretary of State's office affirmatively supported counties using the Hart voting system should they choose to print serial numbers on each ballot, as virtually all counties in Colorado which used the Hart system did. See Letter from Judd Choate to County Clerks, 6/15/12, Exhibit 19.

28. By its terms, Emergency Rule 10.8 applies only to the November 2012 election. Ex. 16. Accordingly, the Rule does not prevent similar use of serial numbers in future elections.

29. The traceability of Hart ballots has received extensive news coverage throughout the state. See Exhibit 20 (compilation of news stories).

30. Plaintiff R. Rosenbaum swears that he will not vote in the November 2012 general election or any election thereafter unless he is assured that his ballot will not include a unique mark and will not be traceable to him. Affidavit of Richard Rosenbaum, Exhibit 21.

31. Plaintiffs Busse, R. Rosenbaum, and J. Rosenbaum state that learning of the serial numbers on their June primary ballots shook their faith in the secrecy of their votes and in their ability to freely vote their conscience, and affected their confidence in Douglas County elections. See id.; Ex. 22, Busse Aff., ¶¶ 5, 10; Affidavit of John Rosenbaum, Exhibit 23; see also Statement of Yvonne Shaw, Exhibit 24.

Violations of Secretary of State Election Rule 43

32. Secretary of State Election Rule 43, 8 CCR 1505-1(43), governs election security requirements for Colorado counties. See Election Rule 43, Exhibit 25; see also C.R.S. § 1-5-616 (requiring Secretary of State to promulgate election security standards and Counties to adopt security plans).

33. The Secretary of State's office adopted its most recent "Conditions of Use" for the Hart voting system on August 26, 2008. See Exhibit 18. This document represents the Secretary of State's determination regarding what procedures are necessary to ensure the integrity of elections conducted using the Hart system. It states that "[a]ny deviation from the conditions provides significant weakness in the security, auditability, integrity and availability of the voting system." Id. at 1.

34. Rule 43.2.2(c) provides that "[o]ptical scanners used in a remote or central tabulating location shall meet the following seal requirements:

- (1) The county must place a seal over each card or cartridge inserted into the unit, or over any door or slot containing the card cartridge.
- (2) The county must place a seal over each empty card or cartridge slot or door covering the area where the card or cartridge is inserted.
- (3) Prior to start of voting and after the close of voting, two employees or election judges must visually confirm that all seals are intact and that the seal serial numbers match those logged in the chain-of-custody log."

See Exhibit 25.

35. Rule 43.2.2(d)(2) provides that "[t]he county must handle Removable memory cards and cartridges in a secure manner at all times. The county must transfer and store any removable card and/or cartridge that is not sealed in a voting machine in a secure container with at least one seal. The county clerk and recorder must maintain a written or electronic one seal. Upon delivery and reception, election judges or county personnel must verify, and indicate by signing and dating the chain-of-custody log, that all seal serial numbers match those listed in the log." See Exhibit 25.

36. Similarly, the Hart Conditions of Use require that system operators "maintain logs indicating the use of the report printing functions of the software and detailed information to changes of the system including hardware changes which shall include: insert removable media, remove removable media, modify system hardware drivers, modify system physical hardware, and any other system property changes Logs shall be maintained physically in a file outside or separate from the database, which is NOT accessible for review and/or modification by user/operator accounts on the system[.]" Ex. 18 at 5 (Software Conditions 3(b)).

37. Secretary of State Election Rule 11.1.14, 8 CCR 1505-1(11.1.14), defines a "voting system" as "a system that facilitates the process of casting, recording, and

tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures of casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system." Election Rule 11, Exhibit 26.

38. The Hart Conditions of Use further provide that with respect to precinct scanner machines, central count scanner machines, and DRE machines, "Counties will be required to maintain constant seals on voting device memory slot, back panel, and other entry points." Ex. 18 at 6 (Precinct Count Scanner Conditions (1); 8 (Central Count Scanner Conditions (1)); 10 (DRE Conditions (2)(a)).

39. In its Security Plan adopted pursuant to C.R.S. § 1-5-616(5), Douglas County states that it "will place a seal over each card or cartridge inserted into the unit, or over any door or slot containing the card or cartridge" and "will place a seal over each empty card or cartridge slot or door covering the area where the card or cartridge is inserted" on its optical scanners and Judge's Booth Controllers. Exhibit 7 at 3.

40. On July 10, 2012, Plaintiff Busse toured the Douglas County facility. She observed multiple violations of Rule 43, the Conditions of Use, and the Douglas County Security Plain, including cards and cartridges without seals left on countertops and in election workers' pockets; voting and scanning machines without seals; and failure to make a log entry when a card containing ballot information was placed in a machine, or apparently to keep any logs at all. See Ex. 22, Busse Aff., ¶ 9.

41. On September 25, 2012, witness Dave Gill visited the Douglas County election facility and observed that Douglas County did not use seals on cards or cartridges containing voting system data used in conjunction with the BallotNow and Tally systems which scan and count votes. See Affidavit of David Gill, Exhibit 27, ¶ 9.

42. In addition, as of Mr. Gill's September 25, 2012 visit, Douglas County did not use serially numbered tape for the ports into which memory cards and cartridges may be inserted on its BallotNow and Tally system machines which scan and count votes. Id.

43. Mr. Gill observed during his September 25, 2012 visit that Douglas County did not maintain any written, external chain-of-custody logs reflecting (1) use of memory cards and cartridges and (2) sealing and unsealing of ports on its BallotNow and Tally voting equipment. Id.

44. Similarly, in a video released by Douglas County on September 30, 2012, no seals are visible on any voting system equipment data ports. See Building Confidence in Douglas County Election Equipment, 9/30/12, available at <http://vimeo.com/47738079>.

45. Upon information and belief, Douglas County has not repeated all required testing on equipment that was unsealed in July 2012 and only recently sealed.

46. The Conditions of Use additionally provide protections that prevent computers used as part of the voting system from any form of internet access or even network access outside the voting system itself.³

47. Matthew Hess, a computer security expert, received in response to a CORA request a video of a Douglas County "trusted build" of its voting system. This video reflects that remote access software was present on Douglas County voting system computers within its voting facility. These machines are located in extremely close proximity to one another with no need for remote access. The presence of this software strongly suggests that the machines are networked with other machines outside the facility, in violation of the Conditions of Use. See Matthew Hess, "System Integrity at Question in Douglas County Elections," 9/25/12, <http://www.matthewhess.org/2012/09/25/system-integrity-at-question-in-douglas-county-elections/> (link to video and commentary by Mr. Hess).

48. In the video, Mr. Hess also observed violations of Rule 43 and the Conditions of Use corroborating Mr. Gill's and Ms. Busse's observations, including the lack of seals on the workstation used to access the voting system and on a memory card inserted into the system. See id.

49. Douglas County officials do not deny that they are not in compliance with Rule 43 and the Conditions of Use, but claim that the unique security features of their central vote counting facility make these protections superfluous and that the Secretary of State has "exempted" them from the provisions discussed above. For example, in an August 1, 2012 letter responding to a CORA request, Defendant Arrowsmith claimed that

[Elections Operations Manager] Mike Lyons submitted our Security Document to the Secretary of State and we received approval for the document. At my request, [personnel from] the Secretary of State's office toured our facility and we were able to answer a number of their questions. We characterized the entire basement as a 'high security' area and went over the security we had built into the structure. [One representative] asked that we provide a copy of the floor plan and a copy of the location of our video cameras to be added to our current security plan which we submitted to them. It is our belief that this finalized our security plan based on the basement area and thus constituted an *implicit exemption as the SoS was aware in advance of our security measures* and that neither their office nor their Observers raised any concerns.

³ See Exhibit 18 at 1 (Global Conditions (1) ("Modem and other telecommunications devices may not be used on any subsystem component")); 2 (Global Conditions (6) ("Counties using the voting system shall affirm in their security plan submission that the voting system is used only on a closed network and/or as stand alone devices as required.")) & Global Conditions (7) ("Use of wireless components is forbidden on the system.")); 9 (Central Count Scanner Conditions (5) ("The voting system must be used with no network connectivity between devices/units and software. Only a direct connection . . . between scanner and workstation will be allowed.")).

Letter from Jack Arrowsmith to Marilyn Marks, 8/1/12, Exhibit 28 (emphasis added).

50. On July 10, 2012, Plaintiff Busse requested a recount of votes cast in Teller and Douglas Counties for House District 39. Letter from Lu Ann Busse to Scott Gessler, 7/10/12, Exhibit 29.

51. The recount in Douglas County began on July 24, 2012 and continued through July 26, 2012. Recount Agenda, 7/24/12, Exhibit 30. Plaintiff Busse attended.

52. During the July 26, 2012 Douglas County Canvass Board meeting to certify the results of the recount, Defendant Arrowsmith stated that he had been given a "verbal okay" to violate Rule 43 as described. See Transcript of July 26, 2012 CB Meeting, Exhibit 31, at 5; Ex. 22, Busse Aff., ¶ 6. Douglas County Systems Coordinator Clerk Arrowsmith and Dub Jones made the same claim at the beginning of the recount on July 24, 2012. See Transcript of July 24, 2012 CB Meeting, Exhibit 32, at 2-3; Ex. 10, Marks Aff., ¶ 8-18.

53. Yet, on July 25, 2012, a Secretary of State employee had commented in an internal email, "Here is Douglas' security plan. After a very quick review, I don't see and [sic] exemption from use of seals and would be surprised if we had done that." Email from Christi McElven to Michael Hagihara et al., 7/25/12, Exhibit 33.

54. Similarly, witness Mary Eberle made a CORA request to the Secretary of State's office on August 2, 2012 for documents "that concern a request for, or a response to such a request for, an exemption to any security procedures in Rule 43." Email from Mary Eberle to Andrew Cole, 7/30/12, Exhibit 34. In response, that office confirmed that it found no responsive records within the past year. Id.

55. Despite repeated requests from the public, Defendant Arrowsmith has never been able to provide any evidence of an "exemption" to Rule 43 from the Secretary of State's office. Rule 43 and C.R.S. § 1-5-616 contain no provision for such an exemption.

56. Clerk Arrowsmith has no intention of remedying these security violations prior to the November election, based upon his belief that he is "exempt" from Rule 43 and other applicable rules.

Teller County Primary Election

57. Voting in the 2012 primary election for Teller County occurred from June 4, 2012, the day mail-in ballots were sent to voters, through June 26, 2012, the day of in-person voting and the final day to turn in a mail-in ballot. Colorado Secretary of State, 2012 Election Calendar, 1/11/12, Exhibit 35.

58. In Teller County, four races had multiple Republican candidates, requiring a primary vote: House District 39; Teller County Commissioner District 1; U.S. House District 5; and at-large University of Colorado Regent. Colorado Secretary of State, Teller County Report, 7/30/12, Exhibit 36; Teller County Election Summary Report, 7/6/12, Exhibit 37. There were no races in which more than one Democrat ran in the primary. Id.

59. In each Republican race in which Teller County Republicans were able to vote in the June primary, with the exception of House District 39 and Teller County Commissioner District 1, the number of votes cast by Teller County voters is too small to change the result of the election, based on the total number of other votes cast throughout the state. See Colorado Secretary of State, Office & District Report, Regent of the University of Colorado - At Large, Exhibit 4;⁴ Colorado Secretary of State, Office & District Report, Representative to the 113th United States Congress - District 5, Exhibit 38.⁵

60. The Teller County primary was the first primary election occurring under the watch of Defendant Jamison. It was plagued with problems, as described in an August 13, 2012 special report by Defendant Gessler's office. See Colorado Secretary of State, Teller County Primary Election Report, Exhibit 39. The Report concludes that "Teller County is not prepared to properly administer elections," and details problems including inability of election staff to use the statewide voter registration database; failure to maintain voting equipment; lack of any written procedures for election judges; failure to conduct Logic and Accuracy testing on all equipment; and "failure to plan for the most basic election activities." Id. at 1-7. Many of these failures, including the failure to conduct Logic and Accuracy testing, constitute violations of the Colorado election code. Id. at 4 (failure to conduct testing was "a clear statutory violation"); see also C.R.S. § 1-7-509(b) ("The designated election official shall conduct at least three tests on all electronic and electromagnetic voting equipment, including a hardware test, a public logic and accuracy test . . . and a postelection test or audit."); Letter from Paul Hultin to Richard Coolidge & Maurie Knaizer, 8/24/12, Exhibit 40 (detailing Teller violations of Rule 43).

61. In fact, the problems with Defendant Jamison's election preparations were so severe that on June 20, 2012, Defendant Gessler issued an Order appointing two members of his staff to supervise the June 26 Teller County Primary and a third to serve as an observer to that election. Colorado Secretary of State, Order 12-002, 6/20/12, Exhibit 41; Email from Wayne Munster to Judd Choate, 6/19/12, Exhibit 42; Email from Judd Choate to Scott Gessler et al., 6/15/12, Exhibit 43.

62. The Chair of the Teller County Republicans sent a letter to Defendant Jamison after the primary concluding that Defendant Jamison "failed to fulfill [her]

⁴ In this race, Matt Arnold received 99,111 votes and Brian Davidson received 156,658. Without Douglas and Teller Counties, Mr. Arnold receives 91,202 votes and Mr. Davidson receives 144,879.

⁵ In this race, Doug Lamborn received 43,929 votes and Robert Blaha received 27,245. Without Teller County, Mr. Lamborn receives 42,466 votes and Mr. Blaha receives 26,629.

responsibilities in ensuring the integrity of the primary election," and stating "the consensus of the party leadership, both locally and at the state level, that [Defendant Jamison] should tender [her] resignation as Teller County Clerk and Recorder." Letter from Pete LaBarre to Judith "JJ" Jamison, 8/13/12, Exhibit 44.

63. The Teller County Primary Election Report concluded: "[T]he Secretary of State is not confident in Clerk Jamison's abilities to administer the 2012 General Election. As such, the Secretary strongly encourages the Teller County Board of Commissioners to employ competent election professionals at the earliest opportunity to assist Teller County in the conduct of the 2012 General Election and subsequent elections." Ex. 39 at 2-3.

64. Despite the Teller County Primary Election Report and request from party leadership, Clerk Jamison has not resigned her position and remains in charge of the November 2012 general election.

Violation of Colo. Const. Article VII, § 8

65. One of the most serious errors in the Teller County primary election was the distribution to all mail-in voters of ballots that were missing a voter affidavit and signature line, a violation of C.R.S. § 1-7.5-107(3)(b.5)(I) which explicitly requires such an affidavit. The envelope affidavit and signature is compared with the ballot stub to ensure that the correct registered voter has voted the enclosed ballot, which is then disassociated from the stub and envelope.

66. The Teller County Primary Election Report calls the mailing of envelopes with no place for signature a "fundamental error" which "cast doubt on the integrity of the election" and "caused a significant amount of voter confusion." Ex. 39 at 2. An internal email to Defendant Gessler calls this a "**COLOSSAL** problem." Email from Judd Choate to Scott Gessler et al., 6/5/12, Exhibit 45 (emphasis in original).

67. On or shortly after June 8, 2012, Clerk Jamison sent a letter to each of the 4,100 voters who received a ballot that was missing a voter affidavit and signature line. Email from J. Wayne Munster to Judith "JJ" Jamison, 6/6/12, Exhibit 46, at 3 (with attached draft letter from Jamison to voters); Email from Judd Choate to Scott Gessler et al., 6/6/12, Exhibit 47 (noting number of ballots sent); Ex. 39, App'x at 7 (election observer's report appended to Teller County Primary Election Report discussing sending of letters to voters). The letter included an affidavit and instructions to return the affidavit by "mail, fax or email" if the voter had already sent in his or her ballot. Exhibit 46 (attachment). The letter was approved by Secretary of State personnel. Exhibit 46.

68. As Secretary of State staff noted, this solution violated Secretary of State Rule 29.1.2, 8 CCR 2505-1(29.1.2), which requires that when a voter fails to sign the envelope of her mail-in ballot, she must sign the affidavit in person, before the county clerk or her designee, in order for the vote to be counted. Election Rule 29, Exhibit 48;

Exhibit 45. It also "puts the burden on the voter" to correct the error. Email from Judd Choate to Richard Coolidge, 6/5/12, Exhibit 49. Thus, they concluded, Defendant Jamison's error in distributing ballots which lacked affidavits and/or signature lines "has no solution that doesn't violate statute, rules, or both." Id.

69. Discussing the plan for the Clerk's office to contact affected voters via mail and phone, Secretary of State staff further noted that "[s]ome [voters] will see this as a dubious request, which they will ignore or (even better) will see as an attempt to create election fraud or steal the voter's identity." Exhibit 45.

70. Of the 922 Teller County voters who had voted by mail as of June 18, 2012, 280 returned their voted mail-in ballots without an affidavit, a signature line, or both. Email from Judd Choate to Richard Coolidge, 6/19/12, Exhibit 50.

71. By June 25, 2012, the day before the deadline, 1,532 completed mail-in ballots had been received. Email from Christi Heppard to Judd Choate et al., 6/25/12, Exhibit 51.⁶ Although the information available to Plaintiffs does not reveal how many of these initially lacked an affidavit, signature, or both, it does show that as of June 25, at least 100 voters had not yet provided an affidavit and signature to verify their ballot. Id. Secretary of State staff made a plan to call each of these voters on the telephone to invite them to submit a signed affidavit at some point after the deadline for voting. Id.; Exhibit 39, App'x at 7.

72. Teller County uses a mail-in ballot design with a stub attachment. Typically, the voter's SCORE BALLOT number, a number assigned by the Secretary of State's SCORE voter database, is printed on both the ballot stub and envelope.

73. In the 2012 primary, Teller County's printing company apparently assigned a unique number other than the voter's SCORE BALLOT number to each ballot, and printed this number on the ballot stub, contrary to the County's instructions. See Exhibit 45; Exhibit 47. However, the printer maintained a list identifying each voter by the number it had assigned. Exhibit 45. The SCORE BALLOT number was printed on each envelope. Exhibit 47.

74. Voters' SCORE BALLOT numbers are public records and may be obtained via request under Colorado Open Records Act ("CORA"). Ex. 10, Marks Aff., ¶¶ 35-36. The SCORE database also keeps a wealth of data on each voter, associated with his or her SCORE BALLOT number: Party affiliation, active voter status, and address, among other things. Id.

75. The Colorado election code requires election personnel to separate the stub from each mail-in ballot once they have reviewed the voter affidavit and verified

⁶ This tally apparently includes some Democratic votes sent in despite the lack of contested Democratic elections. At the end of the Teller County House District 39 recount, Plaintiff Busse and observers were told that 1,488 mail-in Republican votes were cast. Ex. 22, Busse Aff., ¶ 8.

that the correct voter has voted on the ballot.⁷ This must occur prior to the ballot's privacy sleeve being removed and the voter's actual votes being viewed and counted. Otherwise, the official counting the votes can easily see whose they are by checking SCORE.

76. In order to count Teller County mail-in ballots without any signature on the envelope, the Secretary of State's office planned to consult the SCORE BALLOT numbers on the ballot stubs in order to match unsigned ballots with voter affidavits that came in separately. Ex. 45. Later, when Secretary of State employees realized that ballot envelopes contained SCORE BALLOT numbers, the procedure was changed to use each ballot's envelope, instead of its stub, to match the ballot to the name of each voter who submitted an affidavit. Ex. 47.

77. Teller County election staff matched the identities of mail-in voters to their unsigned ballots by (1) consulting the SCORE number on the envelope, (2) looking up the voter's identity in SCORE, (3) matching any affidavit received from that voter to the ballot. Ex. 47; Ex. 50; Email from Christi Heppard to Judd Choate et al., 6/21/12, Exhibit 52.

78. On July 10, 2012, Plaintiff Busse requested a recount of votes cast in Teller and Douglas Counties for House District 39. Exhibit 29. The recount in Teller County occurred on July 23, 2012. Letter from Judith Jamison to Lu Ann Busse & Polly Lawrence, 7/16/12, Exhibit 53. Plaintiff Busse attended.

79. During the recount, Plaintiff Busse observed many ballots whose stubs remained attached to the voters' ballots, allowing election staff to easily match a voter's voting choices with his or her identity merely by consulting the printers' list of numbers assigned to ballots. Ex. 22, Busse Aff, ¶ 7.

80. Upon information and belief, both ballot stubs and ballot envelopes were consulted by Teller County and Secretary of State staff to assist in matching voter affidavits to voted ballots even after the ballots' privacy sleeves were removed.

81. Upon information and belief, empty ballot envelopes with SCORE BALLOT numbers printed on them were maintained and sorted in the same order as completed ballots even after privacy sleeves were removed, so that Secretary of State and Teller County election officials could match late-arriving affidavits with ballots still

⁷ See C.R.S. §§ 1-5-610(2) ("Each ballot or ballot card shall have a serially numbered stub attached, which shall be removed by an election judge before the ballot or ballot card is deposited in the ballot box."); 1-7-304(1) ("Before leaving the voting booth, the eligible elector shall fold the ballot without displaying the marks thereon, in the same way it was folded when received by the elector, so that the contents of the ballot are concealed and the stub can be removed without exposing any of the contents of the ballot, and shall keep the ballot folded until it is deposited in the ballot box."); 1-8-101(2) ("[Mail-in] ballots shall be in the same form as other official ballots for the same election."); 1-8-101(4)(a) ("On the mail-in ballot instruction card and the secrecy envelope or sleeve or on the combined instruction card and secrecy envelope or sleeve, whichever is applicable, shall be printed 'All ballots, both polling place and mail-in, are counted in the same manner.'").

missing affidavits and/or signatures, thus allowing election staff to easily match a voter's voting choices with his or her identity merely by consulting SCORE.

82. The Teller County Primary Election Report noted that despite the presence of Secretary of State staff, "Teller County failed to accurately process mail-in ballots" and that the employee assigned to do so "failed to pay attention to detail, further complicating matters" even after the initial error in mailing. Exhibit 39 at 5.

Violations of Colorado Election Code

83. Retaining ballots with stubs attached is a violation of Colorado election code. See note 7, supra.

84. Based upon the conclusion in the Teller County Primary Election Report that Clerk Jamison would almost certainly be unable to correct the multiple breaches of the election code and Rules observed during the June primary, and upon information and belief, Clerk Jamison is currently in breach of her statutory duties with respect to the November 2012 election.

85. Voters in Teller County have lost confidence in the integrity of the election process in their county, and in the secrecy of their votes, due to the June 2012 primary election. Affidavit of Treon Goossen, Exhibit 54.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **Colorado Constitution Article VII, § 8** **(Against All Defendants)**

86. Plaintiffs restate and reallege Paragraphs 1 to 85 as if fully set forth herein.

87. Article VII, Section 8 of the Colorado Constitution provides, "no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it."

88. By marking all ballots in the June 2012 primary election with unique serial numbers, and maintaining a list or lists which allow these serial numbers to be matched with the name of each voter, Defendant Arrowsmith, under the supervision and by the approval of Defendant Gessler, violated Article VII, Section 8.

89. The rights of Plaintiffs Busse, J. Rosenbaum, and R. Rosenbaum, as well as all other Douglas County voters who voted in the June 2012 primary election, were violated by Defendant Arrowsmith's actions.

90. By linking ballots in the June 2012 primary election to their stubs and/or envelopes, each of which was marked with numbers that could be matched to the name of the voter, Defendants Jamison and Gessler violated Article VII, Section 8.

91. The rights of Plaintiff Goossen, as well as all other Teller County voters who voted in the June 2012 primary election, were violated by the actions of Defendants Jamison and Gessler.

SECOND CLAIM FOR RELIEF

**U.S. Constitution, First Amendment and Fourteenth Amendment Equal Protection
Pursuant to 42 U.S.C. § 1983
(Against All Defendants)**

92. Plaintiffs restate and reallege Paragraphs 1 to 91 as if fully set forth herein.

93. As U.S. citizens, Plaintiffs are guaranteed the right to vote by the First and Fourteenth Amendments to the United States Constitution.

94. By marking Plaintiffs' ballots in a way that enabled them to be connected to Plaintiffs' names, Defendants Arrowsmith and Jamison, under the supervision and by the approval of Defendant Gessler, substantially and unduly burdened Plaintiffs' fundamental right to vote.

95. This burden was unjustified by any legitimate state interest that could not be accomplished by other means.

96. Defendants' actions were taken pursuant to the custom, policy or practice of the municipal and state government.

THIRD CLAIM FOR RELIEF

**Colo. Rev. Stat. § 1-1-113
(Against All Defendants)**

97. Plaintiffs restate and reallege Paragraphs 1 to 96 as if fully set forth herein.

98. C.R.S. § 1-1-113 provides that "when any eligible elector files a verified petition in a district court of competent jurisdiction alleging that a person charged with a duty under this code has committed or is about to commit a breach or neglect of duty or other wrongful act, after notice to the official which includes an opportunity to be heard, upon a finding of good cause, the district court shall issue an order requiring substantial compliance with the provisions of this code."

99. Defendant Arrowsmith, under the supervision and by the approval of Defendant Gessler, has committed and is about to commit a breach or neglect of duty

with regard to the November 2012 general election, by failing to follow Secretary of State Rule 43, the Douglas County Security Plan, and the Hart Voting System Conditions of Use, which must be followed pursuant to C.R.S. §1-5-616.

100. Defendant Jamison, under the supervision and by the approval of Defendant Gessler, has committed and is about to commit a breach or neglect of duty with regard to the November 2012 general election, by failing to follow multiple Colorado election statutes and Rules.

101. Plaintiffs are eligible electors and may request substantial compliance with the election code pursuant to § 1-1-113.

WHEREFORE, Plaintiffs Busse, Goossen, J. Rosenbaum and R. Rosenbaum respectfully request that judgment be entered in their favor and that the Court award the following relief:

- a. An order declaring the June 2012 primary election in Douglas County "void ab initio."
- b. An order declaring the June 2012 primary election in Teller County "void ab initio."
- c. An order declaring that Defendants' use of marked ballots in the June 2012 primary election violated the federal right to vote and enjoining the use of market ballots in the future.
- d. An order requiring that Defendants substantially comply with Colorado election law.
- d. Attorneys' fees and costs.

PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted this 10th day of October, 2012.

BENEZRA & CULVER, P.C.

s/John A. Culver

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Sarah J. Parady, Esq., #40292
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Plaintiffs' Addresses:

Lu Ann Busse
1440 Yamell Dr., Larkspur, CO 80118

Treon Goossen
80 Hobe Creek Trail, Florissant, CO 80816

John W. Rosenbaum
1440 Yamell Dr., Larkspur, CO 80118

Richard L. Rosenbaum
1440 Yamell Dr., Larkspur, CO 80118

VERIFICATION

State of Colorado)
County of Douglas)ss.
)

I, LU ANN BUSSE, have read and understood the above and swear or affirm that the foregoing is true and accurate to the best of my knowledge.

Frances Busse
LU ANN BUSSE

Subscribed and sworn to before me this 10th day of October, 2012, by Lu
Ann Busse. Witness my hand and official seal. My Commission expires:
6/12/2016.

Suey Damer
Notary Public

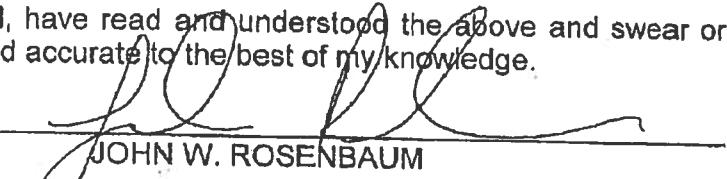


My Commission Expires 06/12/2018

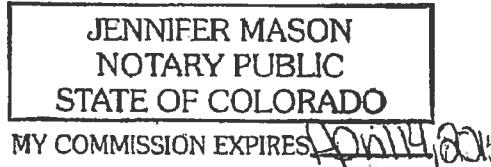
VERIFICATION

State of Colorado)
)ss.
County of El Paso)

I, JOHN W. ROSENBAUM, have read and understood the above and swear or affirm that the foregoing is true and accurate to the best of my knowledge.


JOHN W. ROSENBAUM

Subscribed and sworn to before me this 10 day of October, 2012, by John W. Rosenbaum. Witness my hand and official seal. My Commission expires: April 14, 2015.




Notary Public

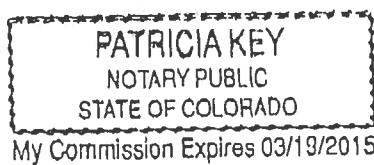
VERIFICATION

State of Colorado)
County of Teller)
)ss.

I, TREON GOOSSEN, have read and understood the above and swear or affirm that the foregoing is true and accurate to the best of my knowledge.

Treon Goossen
TREON GOOSSEN

Subscribed and sworn to before me this 10th day of Oct, 2012, by
Treon Goossen, Witness my hand and official seal. My Commission expires:
3-19-2015



Patricia K
Notary Public

VERIFICATION

State of Colorado)
County of Douglas)ss.

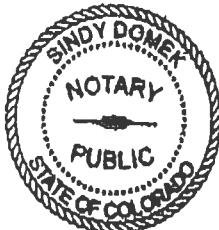
I, RICHARD L. ROSENBAUM, have read and understood the above and swear or affirm that the foregoing is true and accurate to the best of my knowledge.

Richard L. Rosenbaum

RICHARD L. ROSENBAUM

Subscribed and sworn to before me this 13th day of October, 2012, by
Richard L. Rosenbaum. Witness my hand and official seal. My Commission expires:
6/12/2016.

Sindy Domer
Notary Public



My Commission Expires 06/12/2016

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2012, I served the foregoing via LexisNexis File & Serve, upon the following:

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s/Connie M. Parrish
Connie M. Parrish, Paralegal

Pursuant to C.R.C.P. §121 1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

Attachment 12

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Court Address: 1437 Bannock Street, Room 256 Denver, CO 82002</p>	<p>EFILED Document CO Denver County District Court 2nd JD Filing Date: Oct 17 2012 10:19AM MDT Filing ID: 47104548 Review Clerk: Nicole Gawlikowski</p>
<p>PETITIONERS/PLAINTIFFS:</p>	
<p>LU ANN BUSSE, and TREON GOOSSEN, and JOHN W. ROSENBAUM, and RICHARD L. ROSENBAUM v.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>RESPONDENTS/DEFENDANTS:</p> <p>SCOTT GESSLER, in his official capacity as Secretary of the State of Colorado; and JACK ARROWSMITH, in his official capacity as Clerk and Recorder of Douglas County, Colorado; and JUDITH JAMISON, in her official capacity as Clerk and Recorder of Teller County, Colorado.</p>	
<p>John A. Culver, #21811 Sarah J. Parady, #40292 BENEZRA & CULVER, P.C. 274 Union Boulevard, #220 Lakewood, CO 80228-1835 Telephone: (303)716-0254 Facsimile: (303)716-0327 Attorneys for Plaintiffs</p>	<p>Case No. 2012 CV 5322 Div.</p>
<p>STIPULATED NOTICE OF DISMISSAL OF PLAINTIFFS' THIRD CLAIM FOR RELIEF AND MOTION TO VACATE HEARING PURSUANT TO C.R.S. § 1-1-113</p>	

Plaintiffs Busse, Goossen, J. Rosenbaum and R. Rosenbaum, through their counsel, the law firm of Benezra & Culver, P.C., and Defendants Gessler, Arrowsmith, and Jamison, through their undersigned counsel, hereby stipulate to the dismissal of Plaintiff's Third Claim for Relief, as follows:

1. Plaintiffs are voluntarily dismissing the Third Claim for Relief in their Verified Amended Complaint, filed on October 10, 2012. Each party will bear its own fees and costs.
2. The dismissal is authorized pursuant to Colo.R.Civ.P. 41(a)(1).
3. The claim dismissed herein is currently set for a hearing pursuant to C.R.S. 1-1-113 on Wednesday, October 17, 2012 at 1:30 p.m. The parties request that this hearing be vacated.
4. **Certificate of Compliance with C.R.C.P. 121 Section 1-15.8:** The parties have conferred and stipulate to this Notice and Motion.

WHEREFORE, the parties respectfully request that the claims identified herein be dismissed and that this Motion to Vacate Hearing be granted.

Respectfully submitted this 17th day of October, 2012.

STIPULATED BY:

s/Sarah J. Parady

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Sarah J. Parady, Esq.
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Attorneys for Defendant Gessler

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2012, I served the foregoing via LexisNexis File & Serve, upon the following:

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Attorneys for Defendant Gessler

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Treon Goossen , treonelain@aol.com

s/Connie M. Parrish
Connie M. Parrish, Paralegal

Pursuant to C.R.C.P. §121 1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

Attachment 13

District Court, City and County of Denver, Colorado
1437 Bannock Street, Room 256
Denver, CO 80202

FILED Document
CO Denver County District Court 2nd JD
Filing Date: Oct 16 2012 04:40PM MDT
Filing ID: 47096772
Review Clerk: Kathleen J Kelley

Plaintiffs:

Lu Ann Busse and John W. Rosenbaum

v.

Defendants:

Scott Gessler, in his official capacity as Secretary of State of the State of Colorado; Jack Arrowsmith, in his official capacity as Clerk and Recorder of Douglas County, Colorado; and Judith Jamison, in her official capacity as Clerk and Recorder for Teller County, Colorado

▲ COURT USE ONLY ▲

Case Number: 12CV5322

Civil Division, Courtroom 424

**ORDER GRANTING IN PART DEFENDANTS' MOTIONS TO DISMISS
AND GRANTING IN PART PLAINTIFFS' MOTION TO AMEND**

The Court, having reviewed each defendant's motion to dismiss, and plaintiffs' responses thereto, and the defendants' replies, and Plaintiffs' motion for leave to amend the complaint and the response and reply thereto, and its file in this matter, and applicable law, hereby GRANTS IN PART both motions.

Factual Background

Plaintiff Lu Ann Busse ("Busse") was an unsuccessful candidate in the House District 39 Republican primary held June 26, 2012. Both Busse and plaintiff John W. Rosenbaum (collectively, "Plaintiffs") allege that they were residents and eligible electors of Douglas County, and that they voted in the primary. In their Verified Petition for Emergency Relief¹

¹ Despite the petition's title, no party requested a hearing in this case prior to these motions becoming ripe in the normal course. Indeed, Plaintiffs moved for an extension of time to respond to defendants' motions to dismiss. That motion for an extension is hereby granted.

under § 1-1-113(1), C.R.S., and Complaint for Declaratory Judgment, Plaintiffs bring five claims for relief, each against some or all of the defendants.

Claims and Defenses

Plaintiffs bring five claims for relief. The **First Claim for Relief** is filed pursuant to Article VII, §8 of the Colorado Constitution, C.R.S. §1-5-407(7), and C.R.S. §1-1-110(1). It alleges constitutional and statutory violations in Douglas County relating to non-secret ballots. It is filed against defendant Scott Gessler, in his official capacity as Secretary of State of the State of Colorado (“Gessler”) and Jack Arrowsmith, in his official capacity as Clerk and Recorder of Douglas County, Colorado (“Arrowsmith”). The **Second Claim for Relief** is filed pursuant to C.R.S. §§1-1-110, 1-7.5-107(6), and Secretary of State Rule 29.1.1. It alleges that certain voters were disenfranchised due to mishandling of mail-in ballots by Teller County. It is filed against Gessler and Judith Jamison, in her official capacity as Clerk and Recorder for Teller County, Colorado (“Jamison”). The **Third Claim for Relief** is filed pursuant to Secretary of State Security Rules and Procedures and C.R.S. §1-1-110(1). It alleges election security violations in Douglas and Teller counties compromising the right to a secure election process. It is filed against Arrowsmith and Jamison. The **Fourth Claim for Relief** is filed pursuant to Article VII, §8 of the Colorado Constitution, C.R.S. §§1-5-407(7), 1-7.5-107(6), and 1-1-107(1), and Secretary of State Rule 29.1.2. It alleges election violations committed or about to be committed by Gessler in failing to promulgate procedures, allowing violations, and certifying the election. It is filed against Gessler. The **Fifth Claim for Relief** is filed pursuant to the 14th amendment to the United States Constitution. It alleges equal protection violations emanating from disparate handling of mail-in ballots in Douglas and Teller counties. It is filed against all three defendants.

The prefatory paragraph of the complaint also asserts a claim under 28 [*sic*, presumably 42] U.S.C. § 1983.

The three defendants move to dismiss on a number of grounds. All defendants move to dismiss on the ground that Plaintiffs' complaint was untimely pursuant to C.R.S. §1-11-203(2). Each of the defendants alleges, for one reason or another, that the Court has no jurisdiction Under C.R.S. §1-1-113. Various other grounds to dismiss are asserted. Finally, all three defendants also argue that venue is improper under 1-11-203(1), and that, if the case is not dismissed, it must be transferred, because venue exists only in the judicial districts in which the contested election was held.

The Complaint Is Untimely

All three defendants move to dismiss for lack of jurisdiction, alleging that the complaint was neither timely filed nor served under C.R.S. §1-11-203, which regulates contests arising out of primary elections.² Paragraph (1) of that section requires, in pertinent part: "All election contests arising out of a primary election, except contests for national or state offices, shall be summarily adjudicated by the district court sitting for the political subdivision within which a contest arises." Paragraph (2) provides, in pertinent part: "Every contest shall be instituted by verified petition to the proper court, setting forth the grounds for the contest. The petition shall be filed and a copy served on the contestee within five days after the occurrence of the grounds of the contest."

² The Court rejects Plaintiffs' theory, expressed at a status conference held October 16, 2012, that C.R.S. §1-11-201 – not section 1-11-203 – controls. Section 1-11-201 relates to "the election of any candidate *to any office*" (emphasis supplied), while section 1-11-203 applies to primary elections, and clearly applies here.

Defendants allege, *inter alia*, that Plaintiffs failed to file their petition “within five days after the occurrence of the grounds of the contest.” It is uncontested that Plaintiffs did not file within the time limits of C.R.S. §1-11-203(2).³ The Court finds that C.R.S. §1-11-203 is jurisdictional and that Plaintiffs’ election contest claims are barred by the statute of limitations embodied in that section.

Section 1-11-203 parallels C.R.S. §1-11-203.5, which was interpreted by the Colorado Supreme Court in *Cacioppo v. Eagle County Sch. Dist. Re-50J*, 92 P.3d 453 (Colo. 2004). In upholding section 1-11-203.5 against a constitutional challenge, and finding that the claims in that case were time-barred, the *Cacioppo* court stated:

Additionally, we hold that the five-day time limit imposed by section 1-11-203.5 is also not “manifestly so limited as to amount to a denial of justice.” *Dove v. Delgado*, 808 P.2d 1270, 1273 (Colo. 1991) (quoting *Oberst v. Mays*, 148 Colo. 285, 292, 365 P.2d 902, 905 (1961)). Indeed, the legislature appears to have carefully considered all the time requirements imposed on election officials by various statutory and constitutional provisions and carefully balanced those responsibilities with the rights of voters to contest impending elections. Because the legislature is generally trusted with what timelines are reasonable for statutes of limitations, *Mishek v. Stanton*, 200 Colo. 514, 518, 616 P.2d 135, 138 (1980), and because Cacioppo has failed to prove beyond a reasonable doubt that those timelines are manifestly unreasonable, we defer to the legislature’s wisdom in this instance.

Cacioppo, supra, at 464.

The statute of limitations embodied in section 1-11-203 requires quick action by those contesting a primary election, and also provides for “summary adjudication” by the courts. Without such a process, there is a risk that a dispute about a primary election would not be resolved without seriously disrupting the general election. The section is properly applied here,

³ The Petition was filed on August 27, 2012, more than two months after the primary. Plaintiff Busse was obviously aware of the claims at a much earlier date, having complained to the Secretary of State about the same issues in July.

where Plaintiffs waited months to bring their claims. The resolution at this late date of disputes relating to the primary election will disrupt the November general election. Indeed, on October 10, 2012, Plaintiffs filed a motion for a preliminary injunction to do just that. The deadlines in section 1-11-203 exist for a reason; the entire statutory scheme is designed to have such disputes promptly resolved.

Plaintiffs, in their responses, claim that each defendant “fundamentally misconstrues” their claims, which they assert are not brought under C.R.S. §§1-11-201 *et seq.* Plaintiffs argue as follows:

Plaintiff Busse does not seek to be instated as the Republican candidate for House District 39, and Plaintiffs’ Complaint is therefore not an “election challenge” brought under the statutory scheme which would govern such an attempt

The Court rejects this argument for two reasons. First, nothing in C.R.S. §§1-11-201 *et seq.* suggests that its use is limited to challenges by candidates. To the contrary, C.R.S. §1-11-202 provides that the “election of any candidate or the results of an election on any ballot issue or ballot question may be contested by any eligible elector of the political subdivision.” Whether Busse sues as a candidate or as an eligible elector is thus irrelevant.⁴

Second, it is absurd to suggest that a claim that would void a primary election contest is not an election contest, and thus the five-day statute of limitations does not apply. If the election were to be voided and had to be held again, Busse would, presumably, again be a candidate, regardless of the capacity in which she brought this action. If so, this is an election contest. If not, her opponent would run unopposed, and the new election would be held for no reason.

⁴ It is, however, fair to assume that Busse in fact sued as a candidate, because if she did not, there was no eligible Teller County elector to support the claims against that county.

Because the Court lacks jurisdiction, Plaintiffs' argument based on *Taylor v. Pile*, 391 P.2d 670 (Colo. 1964), is beside the point. Surely it is not "the duty of the court to declare the election void," *Id.* at 673, if the Court is without jurisdiction to hear the case.

The Court next considers whether any of the five claims for relief falls outside statute of limitations bar. The first claim attacks the election due to the alleged use of non-secret ballots. The second claim seeks to invalidate the election due to irregularities in mail-in ballots. The third claim seeks to invalidate the election due to ballot security issues. The fourth count related to certifying the election and is moot, as the election has been certified, but also focuses on the primary election. All four counts are barred by the statute of limitations. The fifth count, couched as an equal protection argument, attacks the above-described secrecy and mail-in ballot irregularities described in the prior counts. Its disposition is irrelevant, because it is encompassed within the claims in the Verified Amended Complaint.

Plaintiffs' claims for relief are untimely attacks on a primary election, barred by C.R.S. §1-11-203.

The Motion to Amend the Verified Complaint

As a general rule, motions to amend the complaint are allowed, particularly when filed early in the case. C.R.C.P. 15(a) provides that after a responsive pleading has been filed, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Allowing an amendment is particularly appropriate here, where Plaintiffs filed *pro se* and are now represented by counsel.

Defendants argue that section 1-11-203 provides a complete procedure for adjudicating election contests arising out of a primary election, but does not provide for amendments. They

cite *Abts v. Board of Education*, 622 P.2d 518 (Colo. 1980), as authority for the proposition that no amendments of substance can be allowed due to the expedited nature of election disputes.

Here, where the Court has now dismissed the election contest claims, there is no longer any reason why appropriate new claims may not be raised by amendment. However, those claims in the Verified Amended Complaint that are election contest claims may not be added, as they are futile for reasons expressed hereinabove.

The Verified Amended Complaint contains 85 paragraphs of factual allegations followed by the assertion of three claims for relief and a prayer for five categories of specific relief. All claims for relief are asserted against all three defendants. The First Claim for Relief is asserted pursuant to Article VII, §8 of the Colorado Constitution, and alleges that ballots at the primary election were marked in a way whereby a ballot could be identified as the ballot of the person casting it, violating a constitutional right to a secret ballot. The Second Claim for Relief is asserted pursuant to the First Amendment and Fourteenth Amendment (Equal Protection) of the U.S. Constitution, and alleges that the same secret problems substantially and unduly burdened Plaintiffs' fundamental right to vote. The Third Claim for Relief is asserted pursuant to C.R.S. §1-1-113 and alleges that defendants have committed, or are about to commit, a breach or neglect of duty or other wrongful act with regard to the November 2012 general election. Plaintiffs request the following specific relief: (a) an order declaring the June 2012 primary election in Douglas County "void *ab initio*;" (b) an order declaring the June 2012 primary election in Teller County "void *ab initio*;" (c) an order declaring that Defendants' use of marked ballots in the June 2012 primary election violated the federal right to vote and enjoining the use of market ballots in the future; (d) an order requiring that Defendants substantially comply with Colorado election law; and (e) attorneys' fees and costs.

While none of the three claims for relief in the Verified Amended Complaint is necessarily limited to an election contest, the first and second items in the prayer for relief are hereby found to be election contest remedies, and are stricken from the Verified Amended Complaint as futile.

Date: October 16, 2012



Kenneth M. Laff, District Court Judge