

December 22, 2011

Dear Mr. Choate:

This is Addendum (4) to Complaint #00-11-0010

We are submitting a December 21st email from Boulder County as evidence. In part it acknowledges that Boulder County is violating voter rights to an anonymous vote/ballot.

“If the Clerk were to refrain from redacting the images, the voter’s identity could be discerned from the content of the ballot. This is so because a person could take the information that was redacted from the images and combine them with other publically available documents and would then be able to tie a ballot to a voter.”

Please add Boulder County to the list of counties that have admitted to collecting data that can be used to identify the person who cast a particular vote/ballot. This is a violation of voter rights.

The following documents are included in this addendum:

1. December 19, 2011 – email below Kolwicz to Hall. Transmittal of an objection to materials provided in response to CORA – “Analysis of CORA DVD”
2. December 19, 2011 – transmitted as an attachment to this email - Analysis of CORA DVD
3. December 21, 2011 – email below Kolwicz to Hall. Reminder.
4. December 21, 2011 – email below Bailey to Kolwicz. Boulder County [partial] responses to objection questions.

Please add Boulder County to the complaint.

Al Kolwicz

Colorado Voter Group

2867 Tincup Circle

Boulder, CO 80305

303-494-1540

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<http://coloradovoter.blogspot.com>

From: Bailey, Shelley [sbailey@bouldercounty.org]
Sent: Wednesday, December 21, 2011 1:34 PM
To: Al Kolwicz
Cc: Hall, Hillary
Subject: RE: CORA request - Objection to non-compliance

Dear Mr. Kolwicz,

The basis for redaction of ballot images is the Colorado Open Records Act C.R.S. 24-72-204. This section provides that “The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds . . . (b) Such inspection would be contrary to any state statute.” In the Marks v Koch, the Colorado Court of Appeals faced a similar argument. There, the court cited the relevant section of the Colorado Constitution:

All elections by the people shall be by ballot, and in case paper ballots are required to be used, no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it. The election officers shall be sworn or affirmed not to inquire or disclose how any elector shall have voted. In all cases of contested election in which paper ballots are required to be used, the ballots cast may be counted and compared with the list of voters, and examined under such safeguards and regulations as may be provided by law. Nothing in this section, however, shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, provided that secrecy in voting is preserved.

In that case Marks argued, and the court agreed, that “because the secrecy in voting requirement extends only to protect the identity of a voter and not the content of his or her ballot – assuming the voter’s identity could not be discerned from the content of the ballot – it does not bar the [ballot images] from release under CORA.” The court further went on to explain that the constitutional provision “clearly indicates that the identity of an individual voter, and any markings on the ballot that could identify that voter, are to be kept secret.”

If the Clerk were to refrain from redacting the images, the voter’s identity could be discerned from the content of the ballot. This is so because a person could take the information that was redacted from the images and combine them with other publically available documents and would then be able to tie a ballot to a voter.

Finally, regarding the images provided to you, these were printed directly out of Ballot Now and from the election database.

Regarding your question concerning the cast vote records, the Clerk does not have the ability to export actual cast-vote-records from Ballot Now, as you describe it. The tally reports provided are the records that exist.

The Colorado Open Records Act does not require that the Clerk provide you with a document in the format that you request, simply that she provide the document. Tax Data Corp. v Hutt, 826 P2d 353 (Colo. App 1991)

Lastly, the Clerk selected the ballots randomly, which apparently did not include any City of Boulder ballots. You did not specifically request City of Boulder ballots, if you would like to request City of Boulder images we can arrange for that at an additional fee.

Sincerely,
Shelley Bailey
Assistant County Attorney

From: Al Kolwicz [mailto:AlKolwicz@alkolwicz.onmicrosoft.com] **On Behalf Of** Al Kolwicz
Sent: Wednesday, December 21, 2011 8:20 AM
To: Hall, Hillary
Cc: Bailey, Shelley; 'Colorado Voter Group'; Scott.Gessler@SOS.STATE.CO.US; jfryar@times-call.com; Burnett, Sara; bennstere@aol.com; wayne.laugesen@gazette.com
Subject: RE: CORA request - Objection to non-compliance

Dear Ms. Hall,

It is our understanding that you are obliged, as custodian of records, to respond before tomorrow to the specific questions asked in our attached "CORA request - Objection to non-compliance" sent early Monday morning.

We impatiently await your answers.

Al Kolwicz

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From: Al Kolwicz
Sent: Monday, December 19, 2011 7:19 AM
To: Hillary Hall (hhall@co.boulder.co.us)
Cc: Shelley Bailey (sbailey@co.boulder.co.us); 'Colorado Voter Group'; Scott.Gessler@SOS.STATE.CO.US; jfryar@times-call.com; Burnett, Sara; bennstere@aol.com; wayne.laugesen@gazette.com
Subject: CORA request - Objection to non-compliance

Dear Ms. Hall,

Attached please find an objection to the materials produced by the County in response to our September 30, 2011 CORA request, and a request for the legal basis for non-compliance.

Al Kolwicz
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