

December 7, 2011

Mr. Judd Choate  
Colorado Director of Elections  
Denver, Colorado

**RE: Appeal of Agency Determination - Complaint #00-11-0010**

Dear Mr. Choate:

Attached is a copy of Complaint #00-11-0010, October 27, 2011, and a copy of Agency Determination, November 30, 2011.

We take issue with the staff's determination of this complaint because:

1. Staff has misunderstood or mischaracterized the Colorado Constitutional requirement for anonymous votes/ballots – attempting to create an unconstitutional exemption for government and their designees.
2. Staff has misunderstood or mischaracterized the complaint – actually dropping charge #2.
3. Staff has denied our request to participate in the processing of the complaint, and set itself up as both investigator and adjudicator of the complaint – a potential ethical lapse

We are very disappointed both in the process and the result and cannot understand why government officials prefer to invade a voter's rights to anonymous votes/ballots rather than to fix defective election systems.

We identify, below, a number of fatal flaws in the agency determination. Based on these flaws we respectfully request that the merits of our complaint be reconsidered, with our participation, and that the reconsideration be administered by a mutually agreed upon neutral third party.

**A. There is no record of any investigation of charge #1:**

*Some Colorado County Clerks have implemented an election system that enables election officials, and perhaps others, to determine which voter cast a specific vote and/or a specific ballot. For example see Doyle Charts enclosed.*

1. No record of Problem Analysis – (i) What is the root cause(s) of the problem? (ii) Where and when does the problem occur - Every contest? Every county and municipality? Before ballots are cast? (iii) Where and when does it not occur? (iv) What is the historical frequency of occurrence of the problem by county/municipality? (v) Who/what is accountable for the problem?
2. No record of Decision Analysis – (i) What alternatives were identified and/or considered as legal solutions? (ii) Why are known solutions not considered? (iii) Where is the Analysis documenting selection of the proposed remedy over alternates?

- B. The “Election Rule or statutory change”, cited in the determination as being considered, (i) would violate the Colorado Constitution, Article VII, Section 8 and (ii) does not solve the problems identified in the charges.**

There is no explanation offered for why workable solutions were not considered or recommended.

There is no description of how the proposed solution would repair the constitutional violation.

- C. The determination fails to address, and the Agency did not excuse itself from investigating, charge #2:**

*The Colorado Department of State has not prohibited the use of these election systems.*

Because the Agency is the accused, it appears to be an ethical lapse for the Agency to “neglect” to investigate this charge against itself.

- D. The rejection of our request to participate in the investigation of this complaint is not fair to the electorate.**

1. There is a very good chance that past and future elections, including the 2012 presidential election, can be successfully nullified in court if this problem is not satisfactorily resolved.
2. It appears that inadequate professional analytical and problem solving skills were assigned to the complaint.
3. The Agency is wasting valuable time needed to devise and implement a legal and workable solution.
4. The solution to the problems identified in the charges is required in order to ensure that the public is not deprived of its rights to anonymous votes/ballots.
5. The solution to the problems identified in the charges is required in order to ensure that the public is not deprived of its rights to election oversight and open records laws.

What must we do to get a fair reconsideration of this complaint?

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