

# Myers denies request for ballots

*Published: March 17th, 2011, Center Post Dispatch, Page 2*

BY TERESA L. BENNS

SAGUACHE Late last week, Saguache County Clerk Melinda Myers refused to honor a Colorado Open Records Act (CORA) request by the Center Post-Dispatch to examine ballots from the Nov. 2, 2010 General Election.

Earlier last week, Clerk Myers denied Denver Post reporter Sara Burnett's CORA request for access to the ballots. The Center Post-Dispatch's recent CORA request asked access to the actual ballots themselves, as did Burnett's. An earlier CORA request to Myers by the Center Post Dispatch on Nov. 18, 2010 sought to view photocopies or digital copies of the ballots. Vote integrity advocate Marilyn Marks also was rebuffed by Myers in her attempt to gain access to the ballots.

Myers also initially refused to make the ballots available to the Secretary of State's office last week, according to reports from unconfirmed sources.

In her response to the paper's renewed request, Myers wrote via e-mail: "We have received your CORA request sent via email March 9, 2011, requesting inspection of the voted 2010 Saguache County ballots. Due to the sensitive nature of election materials I cannot allow you access.

"It is my belief that voted ballots are protected from disclosure pursuant to Colorado Open Records Act because of the confidentiality historically afforded to election documents in order to protect voters right to privacy, accepted policy and case law. This view is supported by the report dated January 21, 2010 by expert E. Scott Adler, which was filed in the Marks v. Koch case in Pitkin County, and the subsequent final decision by the court in that case."

According to Marks, court records show that the suit, filed against the City of Aspen, was actually dismissed. She said that the judge in this case rendered the decision to dismiss based solely on the city attorneys' claims that they were basing their arguments on constitutional law, when such law did not exist. This case is now before the Colorado Court of Appeals.

As recently as last August, Marks points out, bipartisan judges performed a citizens vote audit in El Paso County. Boulder sponsors similar citizens activities following elections. In her CORA denial, Myers continues: "C.R.S. 24-72-204 (6)(a): when an official custodian of a public record believes that the disclosure of such content would do substantial injury to the public interest, such official may withhold the records and apply for review by the District Court. In my opinion, the release of documents that are confidential would create distrust of the election process by the voters of Saguache County, whom I am obligated to protect, and cause injury to the overall public interest.

"Information resources in the possession of public agencies, such as election materials, are 'strategic and vital assets belonging to the people of Colorado.' State government has a duty to Colorado citizens that this information is safe, secure and protected from unauthorized access, use or destruction. Reference C.R.S. 24-37.5-401 (1)(a)(b). It is beyond my pay grade to defy the historical precedence that these confidential documents be held secure.

"Furthermore, case law states that 'as a general rule definite allegations of fraud, or allegations that a recount will change the result, and a prima facie showing thereof, are essential to and order to open ballot boxes and recount ballots, and such an order rests in the sound discretion of the court,' (People ex rel. Harper v. City of Pueblo, 109 Colo. 411, 1942).

"If you disagree with this opinion and still insist on viewing the ballots, I will file such a court action at your request, or in the event you provide me required notice of your intent to seek a court's determination pursuant to C.R.S. 24-72-204 (5). Please let me know how you wish to proceed so we can resolve this issue without delay. Please contact us if you have any questions or concerns about this response."

Colorado Press Association attorney Chris Beall is under advisement on the matter.

Contrary to Myers claim, it is impossible for those reviewing ballots to determine who cast the votes since ballots are never identified by voter's names; this per voters' constitutional rights to anonymous (but not secret) ballots. A signature verification sheet was used by Myers' office to

match voters to mail-in ballots after voting stubs were removed prior to mailing the ballots.

This was in direct violation of Colorado election law. Voting stubs are the only way to validate whether voters actually cast votes in the proper precinct.

Email Article

Print Article

Close Window