



November 23, 2010

Saguache County Canvass Board Members:

Lisa A. Cyriacks  
Ed C. Nelson  
Richard Drake  
Scott Alexander  
Kathy Kulp  
Randell Arredondo

*Via email delivery*

RE: Letter from Canvass Board members regarding the 2010 Certification of General Election Results

Dear Saguache County Canvass Board Members:

My office is in receipt of the official Abstract of Votes submitted by the Saguache County Canvass Board as well as a letter submitted by the five above-named Canvass Board members on November 22, 2010. Thank you for your service on the Saguache County Canvass Board and your attention to the present matter. We take seriously your concerns.

In your letter, you state that you would like to withdraw the certification of the 2010 General Election by the Canvass Board. In your letter you outline the reasons for noncertification as:

1. The Canvass Board was not able to participate in or observe the post-election audit
2. Information requested by the Canvass Board was not provided by the County Clerk and Recorder
3. The Canvass Board was not informed of conditions for use of the ES&S M650 machine
4. The Canvass Board received a written complaint from a Saguache County elector that the Board did not feel was appropriately addressed

This letter does not speak to these specific points but instead addresses the general role of the Canvass Board and how that role has been fulfilled in the present instance – both by your work and through the observations of personnel from my office.

### **The Duties of a Canvass Board**

The Canvass Board is responsible for reconciling the election to ensure that the number of ballots counted does not exceed the number of ballots cast, and that the number of ballots cast does not exceed the number of registered electors (section 1-10-101.5, C.R.S.). In addition, the Board is tasked with certifying the official Abstract of Votes for transmittal to the Secretary of State in accordance with section 1-10-101.5(1)(c), C.R.S.

Section 1-10-101.5(1)(c), C.R.S., provides that the “[w]hen unable to certify the abstract of votes by the majority of the board for any reason, the canvass board shall transmit the noncertified abstract of votes to the secretary of state along with a written report detailing the reason for noncertification.” Although not provided contemporaneously with the abstract of votes, your letter withdrawing certification has been received and will be treated as a statement of non-certification as it is signed by a majority of the Board (section 1-10-101.5(1)(c), C.R.S.).

However, because section 1-10-101.5(1)(c), C.R.S., provides the transmittal of the Abstract of Votes regardless of whether the Canvass Board is able to certify the results, our office shall complete our statutory obligation to compile and total the results for statewide office (section 1-10-103(2), C.R.S.). Section 1-10-104(1), C.R.S., provides that where the canvass process does not strictly conform to legal requirements, that “the returns shall nevertheless be canvassed if they are sufficiently explicit in showing how many ballots were cast for each candidate, ballot question, or ballot issue.” This process must be completed in order for mandatory recounts to be ordered and for non-mandatory recounts to be requested. Moreover, it is our belief that the inspection conducted by our staff November 15 and 16 resulted in a complete resolution of the questions regarding the ballot tabulation process.

### Inspection of the Cast Ballots in the Present Case

Staff members from the Secretary of State’s Division of Elections attended a review of the tabulation processes in Saguache County last week to resolve the discrepancies in the ballot tabulation process and to ensure that all properly cast ballots were tabulated. In the course of verifying the accuracy of the voting equipment tabulation, a member of my staff was sworn in as an election judge who then proceeded to physically count the number of ballot pages. He was then assisted by a representative from ES&S, who explained the discrepancy between the unofficial totals reported on November 2 and the unofficial totals reported on November 5. This process was observed by two members of the Canvass Board, the attorney for the Republican Party, and several watchers.

The error that Saguache County encountered when tabulating their ballots on election night was caused when election results were loaded from the physical M650 machine to the vote tabulation software. It should be noted that the voting system refers to ballot styles as precincts, and therefore although Saguache County contains nine precincts, the system reports totals using Precincts (ballot styles) 1-25. When the county loaded the results from the mail-in tabulation Precincts 13 and 14 had the following total ballot pages cast:

Precinct 13	574 Ballot Pages
Precinct 14	150 Ballot Pages

The error occurred when the county loaded another results zip disk that replaced the mail-in totals for Precincts 13 and 14 with the polling place results, and therefore the Precinct 13 and 14 mail-in results were changed to read:

Precinct 13	401 Ballot Pages
Precinct 14	126 Ballot Pages

This effectively reported the polling place numbers for Precincts 13 and 14 twice while not reporting the mail-in totals for those Precincts. As a result of this error the total number of ballot pages cast represented 197 ballot

pages less than it should have. The correct number of mail-in ballot pages cast is 2,848. The amount reported on November 2 was 2,651, which is 197 ballot pages short of 2,848.

Because the polling place results were duplicated for Precincts 13 and 14 on November 2, these results are not a useful tool for comparison. Below is an example of what could have occurred in a fictional race:

<b>Precinct 1-12</b>	<b>Mail-In</b>	<b>Polling Place</b>	<b>Total</b>
Candidate A	100 Votes	50 Votes	50 Votes
<b>Precinct 13</b>			
Candidate A	50 Votes	60 Votes	100 Votes
<b>Nov 2 Tally (Error)</b>			
Candidate A	$(100+50) = 150$	$(60*2) = 120^*$	270 Votes
<b>Nov 5 Tally (Correct)</b>			
Candidate A	$(100+50) = 150$	$(60+ 50) = 110$	260 Votes

\*The Nov 2 Tally is representative of the polling place votes being loaded twice.

In the example above the actual number of votes for Candidate A decreased when the tally was corrected because the polling place results that were loaded twice contained a larger proportionate number of votes cast than the mail-in votes which should have been counted. This type of result would be especially prevalent for a candidate who received a low number of total votes. For example, in Saguache, Senatorial candidates Miller and Stringer each received fewer votes after the November 5 tabulation because votes they received from polling places associated with Precincts 13 and 14 were disproportionately greater than the number of votes received by mail.

**Conclusion**

I hope this summary is useful in explaining what happened in Saguache County and why we at the Division of Elections are confident that no more ballots were counted than were voted.

At this point, the Secretary of State has no choice but to accept the Saguache County election totals so that this office can fulfill its statutory responsibility to total the results for statewide offices so that recounts can be ordered. If there are challenges to specific races or concerns about equipment, the Secretary of State can address those as a properly filed complaint is made to this office.

As to your plan to recount several races, I would just point out that regarding Amendment Q, the Secretary of State is the only office with the authority to order a recount on a statewide question. Thus, neither the Saguache County Clerk nor the Saguache County Canvass Board may undertake a recount of Amendment Q without approval from the Secretary of State. Obviously, this does not apply to the local races you mention where a recount is governed by county law.

It is my understanding that a recount is scheduled for a local issue and that a recount of the County Clerk and Recorder and County Commissioner races may also be conducted. Following any recount, the Canvass Board is charged with reconvening to prepare and certify an amended Abstract of Votes. If the official results do not change following the recount, the Board must include a statement to that effect. So, you may well have an opportunity to certify or not certify the recount results, as you feel appropriate.

Again, thank you for your service on the Saguache County Canvass Board and your interest in making the election as fair and transparent as possible. Please get back to me if you have any questions or concerns about your role on the Saguache County Canvass Board or this election.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Choate", written in a cursive style.

Judd Choate, Director  
Elections Division  
Colorado Department of State