

## Marilyn R. Marks

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Dear Clerk Reiner:

Thank you for your response of August 12, which I have attached for reference.

I would ask that you review the existence of EL68A with your technology specialist or ESS&S. EL68A is an audit log (system log) automatically generated and presumably cannot be suppressed, so it likely exists on the server. (a sample copy is attached from Greenville, SC.)

The EL152 report would be far more efficiently reviewed electronically. Because this file is originally created and saved electronically, prior to paper printing, it is conveniently transferred by email. See all of South Carolina's EL155 files at [http://www.scvotes.org/2011/08/03/2010\\_general\\_election\\_audit\\_files](http://www.scvotes.org/2011/08/03/2010_general_election_audit_files). The original electronic files also contain metadata not contained on a paper copy.

I respectfully submit that it is highly inefficient and expensive and environmentally unfriendly to require me to personally visit to inspect an incomplete paper copy of an electronic record, and have staff oversight time and costs and paper copying time and costs, when the electronic file could be easily emailed within a few minutes. Please make an electronic copy of the file, and email or mail in a DVD to both produce a complete file and save considerable time and money.

The EL155 report should also be produced electronically, as it is originally created and maintained in electronic format. I also object to your denial based on the incorrect assertion that disclosing precinct results with less than 10 ballots cast would violate the Constitution's alleged mandate of "voter secrecy." I would respectfully remind you that there is no Constitutional requirement for "voter secrecy." In fact, the laws very much reinforce the fact that the public should know who the voters are, and when and whether they vote. Thankfully, "voter secrecy" is not an acceptable American democratic norm. Instead the state Constitution provides for "secrecy in voting." [*Quoting from the Constitution—"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."*]

I fully honor the protection of election records which inadvertently disclose how any individual voter voted. Therefore, if there are precincts or precinct splits with a single voter, I am happy for you to withhold that specific data, or combine it with other such records, or another precinct, to allow me to inspect the vast majority of the anonymous records. I do not seek any single ballot data which can identify a voter a single voter. Alternatively, I will be happy to take an oath like

that of an election official to remind me of my existing legal obligation to keep confidential any such information which I might encounter.

I must challenge your statement that, "It is also public expectation that their ballot is secret." From my extensive work in the area, I find that the public knows that their ballots are not "secret," and instead are anonymous and counted in public, --as the law requires. The voter identities are not known to election officials except in very limited exceptions.

With respect to your position that "releasing ballots or ballot images is a violation of the public trust," I would direct your attention to the recent order by Judge Gonzales in the Gessler v Myers case, where he clearly reinforces the fundamental philosophy of citizen-driven elections in stating that anonymous ballots are public documents. [*An election record, including a voted ballot, may be disclosed as long as the identity of the voter is not disclosed.*

*This interpretation is not inconsistent with Colo. Const. art. VII, § 8. A ballot cannot "be marked in any way whereby the ballot can be identified as the ballot of the person casting it." Id. An election official cannot "disclose how any elector shall have voted." Id. This provision does not prohibit disclosure of ballots if the identity of the person who cast the ballot cannot be discerned.] Case posted on SOS website at*

<http://www.sos.state.co.us/pubs/pressrel/2011/20110811SaguacheOrder.pdf>

I would ask that you review your position on disclosure of anonymous cast vote records (EL155) in light of the court's ruling. You have written that releasing ballots or images is, in your opinion, "a violation of public trust," with your first obligation being to "protect the right to a secret ballot and preserve election records." Let me reassure you that I do not seek to do anything that would negatively impact the preservation of the election record. In fact, I am asking for an electronic copy which creates no risk of preservation problems at all. I would also remind you that our long democratic history fortunately prevents a "right to a secret ballot." "Secret ballots" counted in secret by election officials is indeed a dangerous concept, and that would be a "violation of the public trust." Perpetuating such a system is inconsistent with the transparent, verifiable elections the public demands.

Please recall that the EL155 records in South Carolina have been publicly available for months, --even posted on the internet, with no known claims of "identified voters." Voted ballots in many other states such as Florida and Connecticut have been reviewed by the media and citizens for years with no known complaints of identified ballots. I don't find it credible that Mesa County voters' ballots are at higher risk of being personally identifiable.

Please reconsider your position and prepare an electronic copy of EL155 as well as EL152 and forward by email or DVD. Please let me know the cost of reproducing and mailing the electronic copies of those files. (Again, if there are single voters in a precinct split or style whose record can be identified, please either combine or withhold those individual records. I do not seek identifiable voter ballot records. Alternatively, I can execute an oath of confidentiality if there are such files. )

Please accept this as a notice of intent to file application under 24-72-204 (5). I hope that you will reconsider your position so that we may both avoid costly and unnecessary litigation. That

litigation would pit the interest of the public in transparent and verifiable elections against Mesa County's specious claims of "secret ballots" and "secret counting" and collecting non-anonymous ballots.

Please feel free to contact me if you wish to discuss this matter.

Marilyn Marks