Exhibit B
Margo Watson

From: Jim Finberg
Sent: Tuesday, October 05, 2010 2:57 PM
To: Margo Watson
Subject: FW: Your requests (Common Cause v. Buescher)
Attachments: Failed 20 day since Nov 2008.10.5.10.xlsx

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From: Melody Mirbaba [mailto:Melody.Mirbaba@state.co.us]
Sent: Tuesday, October 05, 2010 2:42 PM
To: Casey Pitts; Myrna Perez
Cc: Jim Finberg; Jonathan Weissglass
Subject: Your requests (Common Cause v. Buescher)

Counsel,

Attached is the correct list of those people who failed 20 day statute since November 2008 and are currently in that status. As I said in my email yesterday, the accurate number is 2,006 and you should disregard the last number we provided (1,962) as that number was generated using incorrect time-frames.

I am still awaiting word on your request for information concerning persons who failed the 20 day statute and also requested a mail-in ballot. We cannot provide you with a list of people who have requested a mail-in ballot to cross-reference with a list of people who failed the 20 day statute because those that failed the 20 day statute do not appear on the mail-in ballot list. We are working on a resolution and will get back to you as soon as we know more.

I will attempt to respond to the rest of your questions below. I've underlined your questions/statements and provided answers directly following. I apologize in advance for some of the confusion that has been triggered by the numbers we've given you. Part of the problem is simply that this the information is changing minute by minute. We can only provide you with a snapshot. If we go to court, these numbers will be different.

-5,884 voters were in "canceled 20-Day" status. To be clear, we are referring to numbers of records that are CURRENTLY in a failed 20 day status. Your language implies otherwise. This number has changed since we gave you the 5,884 number by virtue of updates to records and new registrations. In addition, we believe it is possible that there was an error with that original number (cannot confirm this yet). The total number of records currently in a failed 20 day status is: 5,938. This number reflects any records currently in that status, irrespective of when they were placed in that status. Therefore, the 5,938 number is inclusive of the below number (of records placed in failed 20 day status since November 2008).

-The state had given 2,580 voters "canceled 20-Day" status since Nov. 4, 2008. This number has changed as well since we provided it to you and as I told you yesterday, the number we provided to you yesterday was incorrect (because the report was run using the wrong time-frames). I apologize for this error and the resulting confusion. Of the total number of records currently in a failed 20 day status (5,938), 2,006 records were placed in that status sometime after the November 2008 election.

-Of those 2,580 voters, 554 voters had subsequently been given active status. This statement is incorrect in several regards. I discussed this once more with my client; my client misunderstood the question when I first raised it. We are unable to run a report for the number of records that were changed from failed 20 day to eligible (active or inactive) based upon when they were initially placed in
the failed 20 day status. The number we can provide of records that have changed from a failed 20 day status to an eligible status (active or inactive) is not tied to when the records were placed in the failed 20 day status. However, we can run a report to indicate *when* the status was changed from failed 20 day to eligible. Since November 2008, the total number of records that have changed status from failed 20 day to eligible is **587**. Thus, the 587 number *may* include records that were placed in a failed 20 day status well before the November 2008 election. Do not subtract the 587 from the other totals provided. It has already been accounted for in these numbers.

Using these numbers, our understanding was that, as of Sept. 21, 2010, there were 5,884 voters who remained in "canceled 20-Day status," 2,026 of whom were given "canceled 20-Day" status after Nov. 4, 2008. This is not correct. The most recent and accurate number of records currently in the failed 20 day status is **5,938** and of that number **2,006** were placed in that status after the 2008 election.

As we discussed on the phone, you have a different understanding. Your understanding is that, as of Sept. 21, 2010, there were 2,580 voters whose registrations were in "canceled 20-Day status" who were given that status after Nov. 2008, that as of today that number is 1,962 voters, and that there was no overlap between the 554 "active status" voters and the 2,580 "canceled 20-day" voters discussed above in connection with the Sept. 21, 2010 registration numbers. Could you confirm with your client that this is the correct understanding of the numbers, rather than the understanding noted above?

These numbers are no longer valid. I've laid out the accurate numbers in response to other questions/comments. However, you are correct that there is no overlap in numbers.

It would be helpful if you could get us the following information:

(1) The total number of voters that have been placed in "canceled 20-Day" status since Nov. 2008 and overall, regardless whether those voters have subsequently been given another status. We cannot gather this information -- this would require an individualized review of every registration record. Any reports that can be run to attempt to gather this information would not be reliable or accurate as it could not account for data migration, voter merge, and archived records.

(2) The total number of voters who are currently in "canceled 20-Day" status, and the number of those voters who were placed in that status since Nov. 4, 2008 (based on your email below and its attachment, we understand the latter number to be 1,962). As stated above, the total number of records currently in a failed 20 day status is **5,938**. The number of records placed in that status since the November 2008 election is **2,006** (list attached).

(3) The number of voters who have been given "active" status after an earlier "canceled 20-Day" status, and the number of those voters who were both placed in "canceled 20-Day" status and then given "active" status after Nov. 4, 2008. The total number of records that were in a failed 20 day status but have since changed to an eligible status (active or inactive) is **1,687**, irrespective of when the changes were made. The number of records that changed from a failed 20 day status to an eligible status (active or inactive) since November 2008 is **587**. Again, this 587 number does not tie to when the record was placed in a failed 20 day status; it ties to when that status was changed to an eligible (active or inactive) status.

Hopefully I have answered your questions and clarified any confusion. If you would like to discuss this further, give me a call.

Regards,

From: Melody Mirbaba [mailto:Melody.Mirbaba@state.co.us]
Sent: Monday, October 04, 2010 11:04 AM
To: Casey Pitts; Myrna Perez
Cc: Jim Finberg; Jonathan Weissglass; Matt Grove; Maurie Knaizer
Subject: Your requests

Counsel,

10/5/2010
Attached is a list of all persons who failed the 20 day statute since November 2008 and who are still in that status. Since the numbers were pulled for you last, they have dropped significantly. In particular, there are now only 1,962 persons in that status (who were placed in that status since November 2008). The prior number, 2,580, is no longer current. We believe the large drop in these numbers is due in large part to the new rules and processes put in place by the Secretary (e.g., sending notice by forwardable mail if a person fails the 20 day statute and giving information on how to correct their registration).

I expect these numbers to change daily as we lead up to the election.

My client is still working on attempting to create a list that cross-references people who have failed the 20 day statute, who are still in that status and who also requested a mail-in ballot. We believe we can gather information on this by Wednesday morning. Unfortunately, we are not sure how helpful the information may be, as it could draw in information that is old and out-dated.

You requested that my client consider: (1) ceasing enforcing the 20 day statute by not placing those who fail the 20 day statute in that status and instead place them in an inactive status; and (2) place anyone who has already failed the 20 day statute into an inactive status. My client does not agree to take such action. I understand you may seek a preliminary injunction. If that is your decision, please let us know when you will be filing your motion. It is in the best interests of the citizens of Colorado to resolve any election dispute before the election, so we prefer to get this in front of the judge sooner rather than later. We will work with you to arrange a hearing date as promptly as possible.

Regards,

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10/5/2010
REMAINDER OF EXHIBIT B

(ATTACHMENT TO E-MAIL)

HAS BEEN FILED UNDER SEAL