IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 12-CV-00370-CMA-MJW

CITIZEN CENTER, a Colorado nonprofit corporation,

   Plaintiff,

v.

SCOTT GESSLER, in his official capacity as Colorado Secretary of State,
SHEILA REINER, in her official capacity as Mesa County Clerk & Recorder,
SCOTT DOYLE, in his official capacity as Larimer County Clerk & Recorder,
PAM ANDERSON, in her official capacity as Jefferson County Clerk & Recorder,
HILLARY HALL, in her official capacity as Boulder County Clerk & Recorder,
JOYCE RENO, in her official capacity as Chaffee County Clerk & Recorder,
TEAK SIMONTON, in her official capacity as Eagle County Clerk & Recorder,

   Defendants.

________________________________________

DECLARATION OF MARILYN R. MARKS

I, Marilyn R. Marks, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a member and founder of Citizen Center, the Plaintiff in this matter.

2. I make this declaration from personal knowledge and a review of the files of Citizen Center maintained with respect to this matter.

3. Attached hereto as Exhibit 1 is a true and correct copy of the PowerPoint presentation referred to in Paragraph 32 of the First Amended Complaint for Declaratory and Injunctive Relief in this matter. [Dkt. #37, at 7 ¶ 32.]
4. Attached hereto as Exhibit 2 is a true and correct copy of the PowerPoint presentation referred to in Paragraph 43 of the First Amended Complaint for Declaratory and Injunctive Relief in this matter. [Dkt. #37, at 9 ¶ 43.]

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on July 5, 2012.

S/ Marilyn R. Marks
MARILYN R. MARKS
Public Ballots & Voter Privacy
HOW VOTER PRIVACY CAN BE COMPROMISED
WHEN VOTED BALLOTS ARE BEING MADE PUBLIC

What resources does one need to identify how a person voted?

1. Voted Ballots
2. Election Materials/Reports
3. Motivation
4. Time

Accounting and Validation

Colorado Constitution – “The election officers shall be sworn or affirmed not to inquire or disclose how any elector shall have voted.”

We don’t and won’t chase it to the face of the ballot

We do ensure that every qualified vote counts
What is the argument?

Unique markings on a ballot are not the only way to identify how someone voted, and by themselves constitute an incomplete argument in favor of releasing ballots for public review.

Based on the computing power available to all, there are LARGER THREATS to voter privacy should ballots be available as open records.

Current Election Transparency
PUBLIC ACCESS OVERSIGHT OF COLORADO ELECTIONS

1. Publicly appointed Canvass Board
2. Publicly appointed Audit and Testing Board
3. Public Resolution and Duplication Board
4. Election Judges
5. Election Watchers
6. Election Observers
7. Election Contest
8. Public Recount
9. Court Ordered Review

What's in place now?
How Far Does CORA Go?
VIRTUAL CORA (WORST CASE):

1. Entire ballot is exposed if voted ballots are available under CORA at any time.

2. Through the virtual CORA of available SCORE reports and batch/audit logs of canvass records it took 15 minutes to identify that Sheila Reiner's (and husband's) ballot style is unique in a specific batch of 24. It presently remains under seal.

3. Voters in Mesa County in Early Voting and Vote Centers are more exposed due to their limited number.

4. State law will require Risk Limited Auditing (2014): Current SOS pilot project reveals that the goal is for a single ballot as a batch.

Accountability vs. Transparency

- REPORTING BY PRECINCT / VOTING METHOD:
  - C.R.S. 1-8-308

- RULE 41.2 DETAILED BALLOT LOG

- TABOR, COLORADO CONSTITUTION, ARTICLE X, SECTION 20
  - Provided for Coordinated local elections, permitting a voter to receive a combination ballot, which created an increased number of unique ballot styles for voters in different districts and municipalities.

What made this possible?
LOW TURNOUTS AT SERVICE CENTERS:

- Found on EV-002 Early Voting List Export
  * Data given out each day during election
- Two Voters came to vote on Day 1
  * Service Center 1
  * 1 voter for Precinct 79
  * First Ballot on Service Center 1's ballots (VVPAT)

MAIL BALLOTS COULD BE TRACKED THROUGH ACCOUNTING PROCESS:

- Able to find actual paper ballot through tracking open records & reports

Down The Rabbit Hole

The following data can be compiled using,
1. The Election Log Report for a particular voter
2. EX-004 Voter History List Export
3. E-032 Absentee List (Public)
4. All of the paper logs created during processing.
5. Ballots in the order they were counted in.

SHEILA REINER
VOTER ID#: 2280737

VOTER PRECINCT:

PRECINCT 23
* Found On SCORE Report E-032
* Data given out daily during an election
SCORE BATCH BALLOT PACKET WAS ACCEPTED IN:

#2 BATCH 75
* Found On SCORE Report E-032
* Data given out daily during an election

VOTER'S VOTING METHOD:

#3 MAIL BALLOT
* Found on SCORE Report E-032
* Data given out daily during an election

VOTER'S BATCH WAS TABULATED IN:

#4 TABULATION 3
* Found on numerous tracking documents, on the ballot header sheet in tab 3 boxes with the ballots themselves

RESEARCH RESULTS:
Sheila's Ballot was one of two (the other belonging to Utah Rainier, residing at the same address) ballots of style 23-1 in SCORE Batch 75 which had 24 ballots in it. Batch 75 was tabulated as part of Tabulation Batch 3.

We could have went to the sealed ballot boxes marked Tabulation Batch 3 and searched for the SCORE Batch 75 header sheet and pulled out the two ballots marked as style 23-1.
CRAIG MEIS
- Precinct: 9
- SCORE Batch: 135 (Batch of 50)
- 1 of 5 of style 9-1 ballot in batch
- Tab Batch: 6

JANET ROWLAND
- Precinct: 66
- SCORE Batch: 570 (Batch of 11)
- 1 of 2 of style 66-1 ballot in batch
- Tab Batch: 29

STEVE ACQUAFRESCA
- Precinct: 45
- SCORE Batch: 132 (Batch of 50)
- Only style 45-1 ballot in batch
- Tab Batch: 6

STEVE KING
- Precinct: 17
- SCORE Batch: 253 (Batch of 23)
- 1 of 2 of style 17-1 ballots in batch
- Tab Batch: 11

LAURA BRADFORD
- Precinct: 82
- SCORE Batch: 134 (Batch of 2)
- 1 of 2 of style 82-5 ballots in batch
- Tab Batch: 6

RAY SCOTT
- Precinct: 32
- SCORE Batch: 295 (Batch of 50)
- Only style 32-1 ballot in batch
- Tab Batch: 11
Further Complications

Ballots received or cured within eight days after the election.
1. Military Ballots
2. Cured Ballots (Signature and I.D. Required)
3. Qualified Provisional Ballots

Additionally, State law will require Risk Limited Auditing (2014) Current SOS pilot project reveals that the goal is for a SINGLE BALLOT as a batch.

Preserve the records

As the Chief Election Official of your county, I have a duty to safeguard election records in the event of a recount, contest, audit, or investigation. We need to honor the intent of preserving the records.

If you doubt the system, contact us or volunteer to be an Election Judge.
## 2011 Coordinated Election
### Resolution Board
### Master Sheet (Unity Room)

<table>
<thead>
<tr>
<th>BATCH #</th>
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<th>OVER</th>
<th>MARGINAL</th>
<th>TOTAL</th>
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<td>60</td>
</tr>
<tr>
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</tr>
<tr>
<td>63</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>50</td>
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</table>
## Table: Results of Ballot Counting

<table>
<thead>
<tr>
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<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balots Counted</td>
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<td>1048</td>
<td>1066</td>
<td>1034</td>
<td>1038</td>
<td>1039</td>
<td>934</td>
<td>30</td>
<td>1033</td>
<td>1104</td>
</tr>
<tr>
<td>Tabled Total</td>
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<td>3100</td>
<td>4134</td>
<td>5172</td>
<td>6211</td>
<td>7145</td>
<td></td>
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</tr>
<tr>
<td>Disk Total</td>
<td>992</td>
<td>1048</td>
<td>1066</td>
<td>1034</td>
<td>1038</td>
<td>1039</td>
<td>934</td>
<td>30</td>
<td>1033</td>
<td>1104</td>
</tr>
</tbody>
</table>

*Note: The table shows the results of a ballot recount from the 2011 Coordinated Election.*
Public Ballots & Voter Privacy

How Voter Privacy Can Be Compromised When Voted Ballots Are Made Public

What resources does one need to identify how a person voted?

1. Voted Ballots
2. Election Materials/Reports
3. Motivation
4. Time
Unique markings on a ballot are not the only way to identify how someone voted and by themselves constitute an incomplete argument in favor of releasing ballots for public review.

Based on the computing power available to all, there are larger threats to voter privacy should ballots become available as open records.

**What is the argument?**
Public Access and Oversight of Colorado Elections Under the Law

- Publicly Appointed Canvass Board
- Publicly Appointed Audit and Testing Board
- Public Resolution and Duplication Board
- Bi-partisan Election Judges
- Election Watchers
- Election Observers
- Election Contest
- Public Recount
- Court Ordered Review
**What is possible?** The following data can be compiled using:
- EX-004 Voter History List Export
- Ballots sorted to precinct/split/ballot style

Finding which voter cast the ballot in a low turnout or small special district:

1. Create a “road map” of votes cast by voting method/special district/precinct (shown below)
2. Sort “road map” by votes (ascending)
3. Filter the EX-004 by the precinct in question
4. Filter by the voting method in question
5. Filter by the special district in question

2010 General Election for the City of Lakewood sorting by precinct, voting method and special district: **1300** voters

2010 General Election for Larimer County sorting by precinct, voting method and special district: **258** voters

<table>
<thead>
<tr>
<th>PRECINCT</th>
<th>RACE/DISTRICT</th>
<th>VOTING METHOD</th>
<th>VOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>4145235214</td>
<td>Poudre Valley Fire 4B</td>
<td>Vote Centers</td>
<td>1</td>
</tr>
<tr>
<td>4145235233</td>
<td>Poudre Valley Fire 4B</td>
<td>Mail In</td>
<td>1</td>
</tr>
<tr>
<td>4145235236</td>
<td>Poudre Valley Fire 4B</td>
<td>Early Voting</td>
<td>1</td>
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<td>4145235240</td>
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<tr>
<td>4145335319</td>
<td>Poudre Valley Fire 4B</td>
<td>Mail In</td>
<td>1</td>
</tr>
</tbody>
</table>
What made this possible?

- Reporting by precinct/voting method: C.R.S. 1-8-308.
- Rule 41.2 Detailed Ballot Log
- Tabor...Colorado Constitution, Article 10, Section 20;
  - Provided for **Coordinated** local elections, permitting a voter to receive a combination ballot, which created an increased number of unique ballot styles for voters in different districts and municipalities.

Accountability vs. Transparency
Virtual CORA (Worst Case):
Entire ballot is exposed if voted ballots are available under CORA at any time.

Through the virtual CORA of available SCORE reports and batch/audit logs of canvass records, it took half an hour to identify that Pam Anderson’s ballot style is unique in a specific box/batch of 1600. *(It presently remains under seal.)*

Voters in Jefferson County in Early Voting and Precinct polling places are more exposed due to their limited number.

C.R.S. 1-7-515 will require Risk Limited Auditing (2014): Current SOS pilot project reveals that the goal is for a single ballot as a batch.

How Far Does CORA Go?
Virtual CORA (Worst Case)
The following data can be compiled using:
- E-032 Absentee List (Public)
- EX-004 Voter History List Export
- The Election Log Report for a particular voter
- All of the paper logs created during processing/counting
- Ballots in the order they were counted in

Finding a voter’s ballot: Scott Doyle (1598678)

- The voter’s precinct: 430 (E-032)
- The voter’s voting method (MI, EV, VC, Prov): MI (Election Log Report)
- The voter’s ballot style: Not Necessary
- Which SCORE batch their ballot packet was accepted in: 71 (E-032)
- Which Tray #/Box # contains that SCORE batch: 1005 (Processing/Counting Logs)
- Which Bundle Letter: I (Processing/Counting Logs)
- Which GEMS Deck: 178 (Processing/Counting Logs)

Based on this research, Scott Doyle’s ballot in the 2010 General Election can be found in box #1005, in bundle I and will be the only ballot in that bundle from that precinct! (It presently remains under seal.)

Down The Rabbit Hole
"Why is a raven like a writing desk?"
"I haven't the slightest idea."
Ballot Processing Logs

Counting

Batching

Mail-In Batching

Location #: VC10
Location Name: La Quinta
Date Received: 11-2-10
Total Ballots: 106
Supervisor’s Initials: X

Sig. Ver.

Mail-In Ver.

Balance Sheet

STEP 1 - Scan/Receive
First Name: Lee
Last Name: Jenell
Date: 11-2-10

A  3177  25
B  3178  25
C  3180  25
D  3182  25
E  3184  25
F  3187  25
G  3191  25
H  3194  25
I  3197  25
J  3200  25
K  3204  25
L  3207  25

Total Envelopes: 300

STEP 2 - Ballot Removal

A  25  -  25  25
B  25  -  25  25
C  25  -  25  25
D  25  -  25  25
E  25  -  25  25
F  25  -  25  25
G  25  -  25  25
H  25  -  25  25
I  25  -  25  25
J  25  -  25  25
K  25  -  25  25
L  25  -  25  25

Totals

Comments:

Removal

ACCUM.VOTE COUNT 74160  WP ADDRESS 160
ACCUM.VOTE SN 74160  WP ADDRESS 160
DUPLICATED TOTALS
DUPLICATED 25  25  25  25
TOTALS

lection

PL.'S FIRST SET DISCOVERY - EX. 3 PAGE 10
## Ballot Processing Logs (Continued)

### Duplication

<table>
<thead>
<tr>
<th>COUNTING BOARD</th>
<th>DUPICATION BOARD</th>
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</thead>
<tbody>
<tr>
<td>BOX #</td>
<td>BUNOLE LETTER</td>
</tr>
<tr>
<td>Ex.</td>
<td></td>
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<tr>
<td>29</td>
<td>J</td>
</tr>
<tr>
<td>1</td>
<td>1273</td>
</tr>
<tr>
<td>2</td>
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<td>3</td>
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</tr>
<tr>
<td>4</td>
<td>1273</td>
</tr>
<tr>
<td>5</td>
<td>1273</td>
</tr>
</tbody>
</table>

**TOTAL DUPLICATED**

White = Duplication  Yellow = Retention Box
Further Complications

It Gets Worse
Ballots received or cured within eight days after the Election:

- Military Ballots
- Cured Ballots (Signature and I.D. required)
- Qualified Provisional Ballots

Each of these are small in number and can only be batched at the end of the election.

DRE/Touchscreen Voting:

- VVPAT naturally prints in sequence
- EX-004 shows voting method (EV – DRE)
- Election Log Report shows location and time of voting

Combining these sources of information allows the sequence of voting to be determined which combined with the original VVPAT could be used to reveal voters’ choices. Larimer County’s voting systems can reprint ballots in random order, but originals remain in voted sequence.
- **State Senate 14**: Bob Bacon – 1519682 (Style 13(2), Mail-In 205, Box # 1021, Bundle B, GEMS Deck 87, pct split = 314-1100, Times Counted = 2)
  The second ballot in this instance is Beverly Jo Schmitt’s ballot, who is registered at the same address as Senator Bacon.

- **State Senate 15**: Kevin Lundberg – 1588492 (Style 180(20), Brookside Gardens 10:20am 11-2-10, Box # 3016, GEMS Deck 41 – 46 – 51, pct split = 424-2021, Times Counted = 44)

- **House District 49**: B.J. Nikkel – 1575901 (Style 186(20), Mail-In 461, Box # 1044, Bundle C, GEMS Deck 181, pct split = 418-2003, Times Counted = 1)

- **House District 51**: Brian DelGrosso – 200012329 (Style 153(4), Westlake Shopping Center 11:51am 11-2-10, Box #3023, GEMS Decks 44, pct split = 538-2200, Times Counted = 1)

- **House District 52**: John Kefalas – 1416229 (Style 75(1), Mail-In 60, Box #1009, Bundle J, GEMS Deck 73, pct split = 206-1100, Times Counted = 5)

- **House District 53**: Randy Fischer – 1530883 (Style 26(2), Mail-In 339, Box #1030, Bundle G, GEMS Deck 118, pct split = 319-1100, Times Counted = 7)
  One of these ballots is Kathryn Ann Fischer’s ballot, who is registered at the same address as Representative Fischer.