

ALLEGATIONS BY CAMBER - Citizens for Accurate Mail Ballot Election Results AND RESPONSES By BOULDER COUNTY CLERK'S OFFICE TO ALLEGATIONS

**Hearing conducted by Colorado Secretary of State, Donetta Davidson
Hearing held: December 14, 2001 at 9:00 a.m.**

Attended by a representative of the Colorado Attorney General's office; the Secretary of State's Elections Director; Boulder County Clerk, Charlotte Houston; Boulder County Elections staff members; the County Attorney and Deputy Attorney; a member of the Official Canvass Board; members of the election work teams; and CAMBER representatives.

Content:

- C Communications between CAMBER and Secretary of State**
- C CAMBER's objections to Certification of Boulder County's 11/6/01 Mail ballot election results. Detailed objections filed with Sec. of State on December 11, 2001.**
- C Responses of County Clerk to the allegations detailed in CAMBER's objection**

THE REPORTS ARE NOT ACCURATE

Attached is a Tray Report where we have pulled together the information from the Scanner and associated it with the Batch numbers assigned by the ballot counting system and the number of ballots counted compared to the number of ballots scanned. This accounts for all the ballots scanned or hand entered into the system for trays 1 through 309 which is the highest number assigned.

Ballots that were previously scanned but were pulled out of the tray at either the Sig.Verify station as rejected, the ballot envelope opening station pending a legal decision, or pulled at the vote counting station as unable to be tabulated were counted in separate batches. They were not assigned a tray number because they had already been scanned and were associated with a previously assigned tray number. For our purposes, some voted ballots were called 999 A and 999 B for those items that had been previously scanned and held pending a legal decision allowing them to be counted. Previously scanned ballots that were unable to be tabulated because of over-votes with voter notations of the correct vote, torn, or unable to be counted were sent to the inspection and duplication board. Once duplicated by the duplication teams, they were sent back to be tabulated and for our purposes were called Dups. 1-5. Trays named Multiples were for previously scanned ballots where the voter was issued a replacement ballot. As required by Colorado Election Law, these ballots were held out until all other ballots were counted to make sure no one voted more than once.

At no time would we wish to assign a tray number to these 3 types of ballots because they were already scanned and associated with a previous tray number. We did assign tray numbers to ballots that were unscannable (over the counter replacements on illegible bar codes). These voters were hand entered into the system and assigned tray numbers 213, 264, 290, 302, 304, 305, 306, and 309.

This attached report compiled in the post election cleanup corrects the inevitable human error factor in recording numbers in duplicate; skipped numbers on any of the many logs we required; or transposing numbers, and answers Mr. Kolwicz's concerns about missing tray numbers on the Number of Ballots Accepted and Seal Log, Number of Ballots Counted and Re-Seal Log, and the first pass at indexing these items immediately following the election. This Tray Final Report shows clearly the Scanned Tray Number and associates it with the Batch # of counted Ballots. It also shows the number of accepted ballots scanned and compares it to the number of votes tallied. It shows the number of ballot accepted in those trays that were unable to be scanned and had to be hand entered by elections staff.

There is no tray of scanned envelopes listed more than one time. For each listed scanned tray number, there is a corresponding group of empty envelopes. There is no instance of more ballots being tabulated that were scanned except for tray 199. Mr. Kolwicz was made aware of the fact the envelope openers inadvertently switched 100 ballots from tray 194 to 199. Tray 194 was tabulated with too few ballots while Tray 199 has too many. This was acknowledged and signed off on by the election staff and is supported by the previous 2 logs filled out prior to being opened. Each of the ballots was counted once and only once.

CCR's Response to CAMBER Allegations: Page 5 of 10 (Page 2 of 2)

The last item on page 5 is accounted for by the fact that most of the ballot trays opened early in the process had many envelopes pulled awaiting the legal decision of whether or not to count them (because of a protest filed by Mr. Kolwicz). When the ballots were accepted, they were called 999 A and 999 B for our purposes but the record of their vote is associated with the tray number where it was originally scanned. We were unable to insert the ballots in the original tray because in most cases, these trays had already been tabulated.

Paragraph 1

The Trays listed with different seal numbers are all a variety of 1 digit different usually attributed to the difficulty in reading these small numbers as anyone familiar with the election process knows. They are not substantially different. Tray 14 is recorded with both of the seal numbers Mr. Kolwicz mentions. I have no idea of which seal number the judges decided on other than to accept what the counting judge shows as being attached.

Paragraph 2

We have no idea where or how Mr. Kolwicz calculates his number of ballots but that was not the figure given to the canvass board. The number of ballots counted is NOT 1,251 more than were reported as accepted. The figure of 75,944 ballots tabulated is less than the number of ballots accepted at that time based on the amount of hand entering we had to accomplish. We advised the canvass board that these figures would be refined in our post election clean up. We also addressed those issues in our memo to the Secretary of State attached to our canvass board report that we would be working with Global Election Systems in updating this report as well as assuring the canvass board that we would continue to seek a definite figure of the number of ballots received.

These problems were created by the amount of hand entering of data we had to do. Our original plan was based on having a new voter registration system that would work hand in glove with the ballot receiving and vote tabulation system. Instead, our original vendor, Sequoia Voting Systems, was unable to provide the voter registration system that was to be installed no later than July of this year. Consequently, we were left with no way to issue ballots on-line and communicate with the on-line scanning program provided by Global Election Systems. All of our replacement ballots and ballots to inactive voters as well as emergency registrations had to be issued by hand. We have worked as much as possible to get this data entered but we are a very small staff and as of December 3, our staff was pulled off this project to work with the installation of our new voter registration system. As of December 12, our difference between returned and tabulated ballots is now down to 62. We expect that amount to disappear as soon as we have verified all of the manual data entry against the ballots issued.

We cannot comprehend the figure of rejected ballots as 12,000 times. At no time have we ever had a figure even remotely resembling this. Is he confusing this with ballots that could not be scanned? If they could not be scanned, they certainly could not be rejected. We continued to try to rescan each ballot 3/4 times at which time we gave up and hand entered the information. (See manual trays) A ballot could only be entered once. It is shown as being in a incoming scan tray or a hand entered tray. A ballot could not be shown as being returned more than one time. We have no idea what else he might be referring to. The final number of rejected ballots is 604 and we have the stamped envelopes containing ballots to substantiate this.

CCR's Response to CAMBER Allegations: Page 6 of 10 (Page 2 of 2):

Mr. Kolwicz is incorrect in stating the number of ballots included in the 75,944 counted by AccuVote originated in trays that were not successfully scanned. 213, 264, 290, 302, 304, 305, 306, and 309 were the only tray numbers containing ballots not successfully scanned. Our ballots from our trays for Dups. 1-5, 999 A and B, and Multiples had already been scanned and are associated with previously counted trays.

The Final Results:

The 166,480 figure used as the base number of ACTIVE registered voters on the Statement of Votes and the Election Summary Report for the 11/06/01 Coordinated Mail Ballot Election was set on October 23, 2001. The figure was established after the majority of valid new registrations had been received and processed and the last supplemental file for printing ballots had been generated. The figure had to be set so the ballot counting and reporting programs could be tested and the test decks could be run.

After the registration books close, each elections department in the state receives valid registrations (taken on or before the cutoff date) from the Colorado Driver License Bureaus; from other County Clerk offices; and state agencies authorized to register voters; and previously Inactive voters come into the office and update their records (via Certificate of Registrations), thus becoming Active voters.

From the time the initial file was created on September 21, through November 2, 2001 two thousand, one hundred seventy-six (2,176) new registrations were added to the file and one thousand, one hundred sixty (1,160) registration records were cancelled, for a net gain during this time-frame of one thousand, sixteen (1,016) records of qualified registered electors. This does not include activity on the day before the election or on Election Day.

C The 20,409 count for "undelivered" ballots was the count available on election night. An additional 195 ballots were returned by the Post Office as "undeliverable" after November 6.

We do not know where the figure of 22,000 "undeliverable" ballots came from that CAMBER purports to have been reported by the press. The cumulative hand-count reported to us by the people who counted the envelopes was 20,409. That count was provided to us on 10/23/01 and was the last count recorded on the in-house Ballot Activity worksheet and was the same count generated for the Mail Ballot Statement of Ballots/Canvass Report.

C CAMBER is correct; the undeliverable ballots were not scanned as specified in the original mail ballot plan. At the time the original plan was filed with the Secretary of State, the plan was to scan the undeliverable ballots, however, subsequent to filing the plan, it became apparent that the program to scan the undeliverable ballots and mark the voter's record was not operational. An amended plan was filed with and accepted by the Secretary of State. Therefore, the ballots returned by the Post Office as "undeliverable" were hand counted.

C The only ballots extracted from the trays of "undeliverable" ballots were those that the Postmaster retrieved and had hand-delivered to the voters after it was determined that the route carrier had not been justified in not delivering the ballots.

CCR's Response to CAMBER Allegations: Page 7 of 10 (page 2 of 2)

- C The reference to the 577 rejected ballots (the deficiency could not be cured) was just that, a detailing of the number of rejected ballots. The rejected ballots were scanned and are included in the 75,569 ballot envelopes scanned. The 2,795 ballot envelopes were manually entered by Global into the VoteRemote system.

- C The total number of ballots received but Not returned by the voters will never be known. IF it is improper for any County Clerk to recognize that a voter may choose to not vote his/her mail ballot or, at a polling place election, receive but not vote any or all of the punch cards issued to them, it is presumptuous to allege (without supporting evidence) that because all ballots are not returned by the voters or the Post Office that felonious acts have been committed.

- C We deem the certification statement “that the 75,944 ballots counted for this election does not exceed the number of ballots issued for this election...” to be in compliance with the intent of C.R.S.1-10-101.5 because the number of ballots issued to voters is the control factor when speaking to the number of ballots cast or counted in an election. If the number of ballots issued is the means of determining the maximum number of ballots that could be cast and/or counted at every election. The voter is issued a ballot; the voter casts (votes) the ballot; and the counting of the voted ballot completes the voting cycle.

See separate copy of Mail Ballot Statement of Ballots/Canvass Report.

CCR's Response to CAMBER Allegations: Page 8 of 10 (1 of 2):

We were assured by Global Elections that ballots could be returned for 34-cent postage. However, with the need to insert a paper ballot into ballots being returned from the City of Longmont, we were concerned that this would push postal rates up, also recognizing that not all Longmont voters would chose to return the paper ballot. We made the decision to cover postage due based on this situation and opened an account for this purpose with the USPS. It became apparent during ballot return that individual post offices were applying different standards to these situations. We contacted the Boulder Postmaster, and the situation improved.

Michael Hamann applied for and received a replacement ballot when his ballot was not delivered by the USPS.

Anna Janis applied for and received a correct replacement ballot.

Lori Bernstein did not receive the ballot initially mailed to her. She applied for and was sent a replacement ballot.

Gene Parker chose to rip up his ballot.

Colorado law does not allow voter registration records to be changed based on changes with the USPS.

Colorado law states deceased voters can only be removed from voter records based on official notification.

Once ballots are mailed they become the responsibility of the USPS and are out of the control of the Clerks Office. Of the five (5) names in the report, only two (2) listed apartment numbers on their voter registration forms.

After conferring with other counties and our own county attorney, we made the decision to contact voters whose envelopes were simply missing a birth date or signature or where the birth date was totally illegible. These voters were offered the opportunity to come to our main office, show identification and then be given their voted ballot, still in the sealed returned envelope, to include the missing information. Ballots were not removed from their defective envelopes until after the envelope had been successfully qualified.

After conferring with other counties and our county attorney we made the decision to accept ballots where people residing and registered from the same address returned their ballots in the other persons envelope, because it seemed clear that the voters were unaware they had switched envelopes. We also accepted ballots where the stub number was one or two off from what our records indicated had been mailed to the voter because we were aware that from time to time the insertion machine allowed this kind of error to creep in spite of our spot checking every 50 or so ballots.

CCR's Response to CAMBER Allegations: **Page 8** of 10 (Page 2 of 2)

We realized we would be counting ballots for several days after 7 pm on Election night, November 6 if we waited until the close of voting to begin opening ballots. The intent of CRS 1-7.5-107 (6) and Secretary of State rule 10.13 is to preclude anyone casting more than 1 ballot. No voter cast more than 1 ballot in the November 6 election.

THE ELECTION RESULTS ARE NOT AUDITABLE

The Clerk does not feel that we are without an audit trail. Each step of the process has a separate log and sign-off sheet. This audit trail is very useful in performing standard problem determination and analysis for anyone who is familiar with the election process and election laws. The process is very workable because without this detailed audit trail, we would not have been able to answer all of the questions in Mr. Kolwicz's 10-page questionnaire in the 2 days we were allowed to respond. It is because of the detailed audit trail that we have always kept and will continue to keep that we were able to present these answers in such a short time frame.

We have tried repeatedly to explain to Mr. Kolwicz that it is not possible to have a transaction history on an item that could not be scanned. Yes, we reran envelopes through the scanning process until they either scanned (thereby creating a record) or when unable to scan, we hand entered the ballot with a tray number. It was this process that confused Mr. Kolwicz and led him to assume that "an entire group of voters were assigned the wrong scanned-image block, see John B Adams." There was no wrong scanned image. The trays that were unable to be scanned had to be manually entered and a generic screen (John B. Adams) was inserted into that record. Because we had no scanned image, these trays had to be verified in teams, one person holding up the envelope while the other team member read off the computer information on the screen.

As mentioned earlier, yes we had to authorize our replacement ballots and ballots to inactive voters using our old mainframe application. We had to hand type labels and figure out by hand what type of ballot to issue to voters who moved or did not receive an original ballot. We did not have a system to issue ballots on-line and VoteRemote was never intended to be a means of issuing in-office ballots. VoteRemote in and of itself is only a system of receiving ballots and because we did not have our new voter registration system in place, we were unable to issue ballots with scan lines. Consequently, we had one wrong ballot issued. We had to use our old mainframe application to look up and authorize ballots and figure out by a complicated chart what type of ballot to issue. The fact that the software was changed in a program whose role was only to count the number of returning ballots, scan/capture an image, and collect a record of who voted does not invalidate the results of the election. It has no bearing on the ballot counting system (AccuVote) already Certified by the Colorado Secretary of State. This has made our life complicated in that we have to continue to go through our envelopes to verify that our manual entry is transferred into our new database.

There is no requirement for a formal log of software problems. Our Global project manager dealt with these issues using procedures established by Global. There is no requirement for administrative software such as VoteRemote to be certified.

Global and the Boulder County Clerk's Office anticipated that the voter registration package purchased from Sequoia Pacific would be installed well ahead of the November election. Sequoia Pacific was unable to meet their deadlines and the installation had to be postponed until December 3. Because of this we were unable to update individual records on a daily basis.

As part of our final requirement for testing our new voter registration system, Global will provide to Sequoia Pacific a file record of who voted in this election in the time frame set by the Secretary of State. At such time we will be able to offer these records to parties interested in this purchase.

VoteRemote was not able to scan unvoted ballots. When this became apparent, we filed an amended mail ballot plan with the Secretary of State's Office and it was accepted. There is no statutory requirement for these ballots to be scanned.

Test Decks

Three (3) jurisdictions out of the seven (7) who ran test decks did not follow instructions to cast votes only in their own jurisdiction. When this became apparent, the jurisdictions and Linda Flack conferred and agreed the simplest and most straightforward way to handle the situation was to white out the votes on the few ballots where a jurisdiction had voted for candidates or issues not in their jurisdiction. This was done and the votes cast in each jurisdiction for that jurisdiction were certified as correct by the individuals involved.