

State of Colorado

Department of State

HAVA DIVISION



SECRETARY OF STATE
STATE OF COLORADO
SOS-39-03-0001

IN RE:

**REPORT OF AUDIT/INVESTIGATION OF MESA COUNTY ELECTION
PROCESS—AUGUST 2002 PRIMARY ELECTION**

February 23, 2004

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REPORT OF AUDIT/INVESTIGATION	}	
OF MESA COUNTY ELECTION PROCESS	}	SOS-39-03-0001
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I. STATEMENT OF THE CASE

On July 14, 2003, the Office of the Secretary of State received a formal written complaint filed by Tom Bjorklund alleging specific violations of the Colorado Open Records Act and other certain violations of the Colorado Election Code in the conduct of the August 2002 Primary Election in Mesa County, Colorado. On July 17, 2003, in response to the formal written complaint, the Mesa County Clerk and Recorder and the Mesa County Treasurer requested that the Secretary of State perform a complete and thorough audit of the August 2002 Primary Election conducted in Mesa County, Colorado.¹ A written request from this office instructing the office of the County Clerk and Recorder of Mesa County to segregate and secure all election records of the August 2002 Primary Election was delivered to the Mesa County Clerk and Recorder on July 17, 2003.² On July 29, 2003, this office received a written notice from Janice Ward, County Clerk and Recorder of Mesa County, indicating that said records had been segregated and secured. On August 4, 2003, this office requested that the office of the County Clerk and Recorder of Mesa County file a written response to the allegations made in the original complaint. On August 4, 2003, the Mesa County Clerk and Recorder filed her response to the allegations contained in the complaint. On August 7, 2003, Mr. Bjorklund filed his rebuttal to the response filed by the Mesa County Clerk and Recorder. This office took custody of the complete election records for the August 2002 Primary Election on August 11, 2003. The election records were contained in 32 boxes.³ On August 25, 2003, the Mesa County Clerk and Recorder filed sur-rebuttal to Mr. Bjorklund’s rebuttal. Since that time, the Mesa County Clerk and Recorder has sought injunctive relief against certain open records requests made by Mr. Bjorklund in the district court of Mesa County.⁴ Mr. Bjorklund has on occasion provided this office with additional submissions

¹ The purpose of a recount and audit of a contest on the ballot is to ensure:

- That all valid ballots have been tabulated and reported;
- That ballots have not been counted and reported more than once;
- That there have been no processing errors or omissions; and
- In the case of a paper based voting system that questions of voter intent/voter error are resolved, the votes recorded on paper have been correctly read by the equipment, converted to a digital format, and reported.

² It should be noted that election records are required by state law to be securely maintained for a statutory period of time subsequent to the election. The request to segregate and secure is for the purposes of collecting and inventorying the election records for packing and transfer of said records to the Secretary of State. Therefore, it is not imputed that, at the time of the request, such records are not being stored according to state law.

³ See Packing List Receipt dated August 11, 2002 attached hereto as “Exhibit 1”.

⁴ The Bjorklund complaint contains a number of allegations that pertain to the Colorado Open Records Act (Section 24-72-101, et seq., Colorado Revised Statutes (2002)). An adjudication of open records claims was commenced in the District Court of Mesa County, Colorado, Case No. 03 CV 408, styled “In re: The Request of Thomas Bjorklund for Certain Records Pursuant to the Colorado Open Records Act”. On

to substantiate claims made in his original complaint. For purposes of these findings, both the request of Mr. Bjorklund and of the County Clerk and Recorder will be consolidated. Further, inasmuch as the allegations arise from actions taken in 2002, election laws in place in 2002 will be applied.

II. JURISDICTION

Jurisdiction of the Office of Secretary of State is vested pursuant to Article 1-1-107(2)(b), Colorado Revised Statutes,⁵ which authorizes the Secretary of State to review the practices and procedures of the County Clerk and Recorder of Mesa County, its employees and other election officials in the conduct of a primary election.

III. AUDIT OF THE MESA COUNTY PRIMARY ELECTION--AUGUST, 2002

A. PROCESS

The office of Secretary of State took into its custody thirty-two boxes of official elections records from Mesa County. These boxes contained all election documentation, including, but not limited to: ballots, provisional ballots, returned ballot envelopes, duly executed signature cards for election day, spoiled ballots, absentee ballots, unused ballots, signature cards (purple) that are used by precinct election officials to help election flow, and the official abstract of all votes cast.

(a) Ballots. Voters used one of four types of ballot processes during the election in question: (1) early voting by electronic voting, (2) absentee ballot, (3) polling place ballot, or (4) provisional ballot. This office⁶ completed the following process in preparing the polling place ballots for audit: (1) receiving the box; (2) removing all election materials from the box; (3) separating provisional ballots, absentee ballots, and polling place ballots; (4) taking the polling place ballots and dividing them into individual precincts as noted on each ballot; (5) counting ballots to obtain the total number of polling place ballots cast; (6) separating polling place ballots into the specific races in question; and (7) counting the polling place ballots for the race for the State House of Representatives, District 55 and the race for the Mesa County Clerk and

December 9, 2003, the Honorable Nicholas R. Massaro, District Court Judge for the District Court of Mesa County, Colorado, made rulings with regard to the open records issues raised in this complaint filed with the Secretary of State. Adjudications of these issues in that venue are the proper remedy. The Secretary of State has no jurisdiction over open records disputes and rightfully defers to the court of proper jurisdiction.

⁵ Article 1-1-107(2)(b) authorizes the Secretary of State:

(2)(b) To inspect, with or without the filing of a complaint by any person, and review the practices and procedures of county clerk and recorders, elections commissions, their employees, and other election officials in the conduct of primary, general, and congressional vacancy elections and the registration of electors in this state.

⁶ Three individuals employed by the office of the Secretary of State commenced the recount. Subsequently, two recounts occurred involving a fourth employee. An additional two more employees of the office of Secretary of State performed a final recount that was reviewed and reconciled against the original recount numbers.

Recorder. Absentee ballots were treated in the same fashion. Absentee ballots were: (1) segregated from provisional ballots; (2) counted to obtain the total number of absentee ballots cast; (3) separated into the specific races in question; and (4) counted for the two races in question. Provisional ballot counting procedures mirrored the handling of the polling place and absentee ballots. Provisional ballots were: (1) counted to obtain the total number of provisional ballots cast; (2) separated into the specific races in question; and (3) counted for the two races in question. Direct Recording Electronic Voting Systems (DREs) were used in the Early Voting process. As a result, comparisons were made between the final tabulation report of the DREs and the Early Voting signature cards.⁷

(b) Executed Signature Cards.⁸ The executed signature cards were separated and independently counted precinct by precinct for early voting, polling place, and provisional voting. The undersigned personally went through each polling location associated with a voter listed in the attached exhibits of Bjorklund. The results of that search are reported in Section IV, Paragraph 1, of this report.

(c) Returned Envelopes and Purple Signature Cards. All returned envelopes for absentee voting and purple signature cards⁹ were separated by precinct and counted individually.

(d) Unused Ballots. All unused ballots were separated and counted individually by precinct.

(e) Spoiled Ballots. All spoiled ballots were separated and counted individually by precinct.

(f) Logic and Accuracy Test Results, Test tape, and stubs. The Logic and Accuracy Test Results (and accompanying ballots and other documentation), test tapes, and stubs were removed from the boxes and examined. For specific details regarding Logic and Accuracy Tests, see Section III, Paragraph E of this report.

(g) Absentee Ballot Applications. Absentee Ballot Applications were removed from each box, separated, examined and counted.

(h) Absentee Ballot Application Envelopes Rejected or Received After The Election. Absentee Ballot Applications were removed from each box, separated, examined, and counted.

⁷ Individuals who voted by the Early Voting method were required to execute signature cards. These cards were counted and examined by four individuals.

⁸ A voter is required to execute a signature card prior to entering the voting booth. These cards represent each voter who voted at the polling place on August 13, 2002.

⁹ Election judges use the purple signature cards to help control the flow of the election at a polling place. These cards are used in addition to the official signature cards representing the official poll book.

(i) Provisional Ballot Envelopes Rejected. Provisional Ballot Envelopes that were rejected by the election judges were removed from the boxes, examined and counted.

(j) Certificates of Registration, Voter Registration Change Forms, And Emergency Registration Affidavit/Certificate of Registration Forms. Certificates of Registration, Voter Registration Change Forms, and Emergency Registration Affidavit/Certificate of Registration Forms were removed from the boxes and examined.

B. COUNTING

Six individuals from the Secretary of State's office independently counted the ballots at least eight different times to obtain an accurate count. Polling place ballots, early voting reports, absentee ballots, and provisional ballots were each counted in the same manner. Signature cards were counted twice by two individuals to ensure a correct count. Returned envelopes, executed purple signature cards, unused ballots, and spoiled ballots were counted twice by individuals, recorded twice, and their totals compared to ensure accuracy.

In short, the task for the Secretary of State was to re-count votes already tabulated and certified pursuant to state law. The election judges that participated in the 2002 Mesa County Primary Election counted these same votes once. Thereafter, the results had been proofed and tabulated by the Mesa County Canvassing Board.

C. INTERPRETATION OF VOTER INTENT¹⁰

Inasmuch as the method employed in the recount is the hand count method, questionable ballots (as to voter intent) were set aside and reviewed by six members to determine voter intent. Interpretation was conducted by consensus of three individuals.

An *overvote* occurs when a race, question, or issue contains more votes than the maximum number of candidates or responses for a ballot question or issue allow.¹¹ An *undervote* occurs when the voter did not vote for a candidate, question, or issue, or when there was more than one candidate available and the voter did not vote for the maximum number of votes allowed.¹² Virtually all overvotes are thought to be errors, whereas

¹⁰ Rule 27.2 of the Election Rules of the Colorado Secretary of State (2002) requires that judges counting ballots on election day shall take into consideration the intent of the voter. Colorado maintains the distinction of being one of the first states in the United States to determine, as a uniform rule, what constitutes a vote.

¹¹ See Rule 27.1.5, Election Rules of the Colorado Secretary of State (2002). If a ballot contains markings for more than the maximum votes allowed in a candidate race or for a ballot issue or question, no vote shall count for that race, question, or issue. Judges shall take into consideration any notation by the voter that would clearly indicate the choice of the voter. Rule 27.2.1, Election Rules of the Colorado Secretary of State (2002).

¹² See Rule 27.1.6, Election Rules of the Colorado Secretary of State (2002). If an issue, question or candidate race contains no markings by the voter, no tally will be made for that race, question or issue, but all other candidate races, issues or questions properly marked by the voter on the ballot shall be counted. Rule 27.2.2, Election Rules of the Colorado Secretary of State (2002).

undervotes are often thought to be intentional. For example, if the voter does not prefer any of the candidates, the oval is left blank and counted as an undervote. An undervote can also result from voter error.

D. FINAL AUDIT REPORT

The following is the final determination of the audit:¹³

State House of Representatives District 55¹⁴

Republican:

Gayle Berry 3,517
Shari Bjorklund 2,862

Democratic:

John Redifer 1,211

Mesa County Clerk and Recorder¹⁵

Republican:

Barbara Brewer 4,802
Janice Ward 5,203

Democratic:

Vickie Diane Harris 2,094

E. EXPLANATION OF RESULTS

The audit/recount of the subject races done by the Secretary of State was by hand count. Results tabulated by the Mesa County Clerk and Recorder were the product of an optical scan counter. Due to the amount of time it takes to review each ballot, note it, and count each vote, hand counting of ballots extends the uncertainty of the results of the races involved. In the process of conducting the recount, it is interesting to note the difference of opinion in the interpretation of voter intent where voting instructions were not followed. (This issue will be discussed in greater detail later in this report.) As a result, a “ballot resolution board” was required in order to determine a consensus as to interpretation. While this recount was a microcosm of an election procedure, it is clear that paper ballots and the hand counting thereof, is complex and always subject to the interpretation and training of the election judges. It should also be noted that in the tedium of counting each ballot by hand, reviewers became prone to mistakes in notation of votes and the counting of votes. In short, because of the human element of fatigue and the extended time periods in which to hand count the ballots, errors were made not so much in the interpretation of the voter’s intent, but more in the record-keeping and

¹³ This determination is the sum of all precinct tallies. Precinct tallies are individually set forth in Exhibit 2.

¹⁴ The precincts in Mesa County eligible to vote for the House District 55 race, whether Republican or Democratic, were precincts 36 through 82.

¹⁵ The precincts in Mesa County eligible to vote for the Mesa County Clerk and Recorder race, whether Republican or Democratic, were precincts 1 through 82.

tabulation. These mistakes resulted in multiple attempts to reconcile counts, which resulted in an extended time taken to prepare this final report.

Exhibit 3 reflects discrepancies between the official abstract filed by the Mesa County Clerk and Recorder and the recount conducted by this office. Exhibit 4 sets forth the individual results by precinct for each race and type of ballot of the hand recount conducted by this office in detail, the total by precinct, a grand total, and the official results by precinct as reported in the abstract prepared by the Mesa County Clerk and Recorder. This office has reviewed and recounted all precincts on eight separate instances, attempting to determine voter intent regarding each ballot in each precinct and to count each vote, and to measure its effect on the entire race. This office is satisfied with the accuracy of its count.

During the 2002 Primary Election, the Mesa County Clerk and Recorder employed electronic voting systems for early voting. Prior to electors casting their votes, the electronic voting system undergoes “Logic and Accuracy” testing.¹⁶ Sample votes are cast on the equipment and these totals are verified. At the conclusion of this testing phase, the units are put into “election mode”. This mode prints out a “zero totals report” to insure that no votes have been recorded in any race. Touch screen terminals are then put under lock and seal until they are placed into service on election day. This office has reviewed the Logic and Accuracy testing done by Mesa County both prior to and subsequent to the election and can find no malfunction within the voting equipment.¹⁷ Three Logic and Accuracy tests were run.¹⁸ Notice was given to the proper parties that Test 1 was to be performed at or about 3:00 p.m., Monday, August 12, 2002 at the Elections Warehouse at 565 25 Rd., Unit 105A, Grand Junction, Colorado. Test 2 was to be performed at or about 10:00 a.m., Tuesday, August 13, 2002 at the same location. Test 3 was to be conducted immediately following tabulation on the date of the Election at the same location. The test ballots of each of the three representatives were used in

¹⁶ Logic and Accuracy testing examines system features, insures that votes cast are properly recorded, and assures that all candidates and questions for each ballot style in each precinct are properly loaded onto the system. Logic and Accuracy differs from the previous rounds of examination because the testing uses the actual memory card that will be used in a specific precinct on election day.

¹⁷ Section 1-5-610, Colorado Revised Statutes (2002) requires that prior to an election in which an electronic voting system is to be used, the designated election official shall have all system components prepared for voting and shall inspect and determine that each vote recorder or voting device is in proper working order. *Also, see* Rule 11.4, Election Rules of the Secretary of State for a detailed description of the requirements for testing of electronic voting systems.

¹⁸ Representatives from the Mesa County Clerk and Recorder’s Office, the Democratic Party, and the Republican Party were mandated to mark no less than 50 test ballots collectively. The County Clerk and Recorder designee was required to mark 50 ballots consisting of 25 Democratic ballots and 25 Republican ballots. These test ballots were tabulated on the 650 Central Counters for the purpose of testing the Absentee and Provisional tabulation system. Skip Motram, representing the Democratic Party, marked 25 ballots consisting of the Democratic Party ballots. These test ballots were run through the iVotronic Touch Screen Units, for the purpose of testing early ballot tabulation systems. Ray Schuster, representing the Republican Party, marked 25 ballots consisting of the Republican Party ballots. These ballots were run through the multiple M100 Precinct Scanners for the purpose of testing the precinct tabulation system. Each representative was required to mark at least one paper ballot that contained overvotes. It should be noted that the iVotronic Touch Screen Units do not permit overvoting. Therefore, no test was conducted on such equipment using ballots marked with an overvote.

each of the three tests. After the tests were run, the results of the test were compared with the results prepared by each of the representatives. In addition, this office has reviewed the processes followed by the election judges in testing the individual machines to ensure that the counters on each machine were set at “0” prior (“Zero Totals Report”) to the inception of the election. Test results reflect that all voting equipment were properly tested, properly locked and sealed, and functioned appropriately.

F. EXPLANATION OF DIFFERENCES

Differences between recount and abstract figures may be attributed to the following reasons:

- Voter error in completing ballots correctly
- Tabulating machine or ballot construction errors
- Execution of manual procedures within the county’s election office
- Recount procedures at the Department of State
- Human error associated with manual recount.

1. Voter Error in Completing Ballots Correctly

Aside from the cries of fraud—which make good headlines but have only the slightest basis in fact—the disparity in the results lays squarely upon the doorstep of the paper ballot. The paper ballot failed in its only purpose: to enable registered voters to accurately record their preferences. Paper ballots do not accurately record a voter’s preference at the polls. This is not a condemnation of the use of paper ballots, but is intended to shed light on discrepancies that can occur between voter intent and the interpretation of their vote. Election judges are charged with the responsibility of interpreting and tabulating the ballots in an election when ballots are improperly marked by the voter or not counted by optical scanning voting systems.¹⁹ Discrepancies can occur, but are easily explained.

Optical scanning voting systems separate ballots for an irregularity. For example, if a ballot appears to have an overvote or is completely blank, the Mesa County optical scanning voting system will “inform” the election judges by stopping. A prompt message is displayed that reads “sort overvote” (for overvotes) or “sort undervote” (for undervotes). The election judge then removes the ballot in question from the tray. The resolution board then reviews the ballot to determine voter intent and makes one of the following determinations consistent with interpretation of the voter’s intent.

¹⁹ Section 1-7-309(1), Colorado Revised Statutes (2002), mandates that votes cast for an office to be filled shall not be counted if an elector marks more names than there are persons to be elected to an office or if for any reason it is impossible to determine the elector’s choice of candidate. A defective or incomplete designation on any ballot in the proper place shall be counted if no other designation appears on the ballot indicating an intention to vote for some other candidate. See Section 1-7-309(2), Colorado Revised Statutes (2002).

“True overvotes” occur when the voter truly intend to fill in more ovals than allowed (e.g., votes for both candidates in a single race). In such cases, the vote in that race is not counted.

In circumstances where the voter mistakenly filled in both ovals, but evidenced intent to correct the ballot (e.g., writing “no” next to the candidate they did not wish to vote for), the result is an “enhanced overvote”. If voter intent can be established, a removable sticker is placed over the oval that the voter indicated was not the candidate for which the vote was cast.

“True blanks” are blank ovals and are read as an undervote. “True blanks” occur when the voter did not place or mark anywhere so as to evidence intent to cast a ballot for either candidate.

An example of an “enhanced ballot” is one where the voter circled the names of the candidates instead of filling the ovals. In another example, the voter made marks with an instrument that could not be picked up by the voting system. There were several of these found by the recount team. Upon discovery of an “enhanced ballot”, the resolution board enhances the mark by making a mark through the center of the oval preserving the original mark made by the voter.

Exhibit 5 is attached to give examples of instances described above.

Testing conducted by statutorily designated individuals, and votes recorded by the voting system cast by the “test decks” were accurate because the equipment functioned properly. Recount results show that many voters do not follow the instructions written on the face of the ballot. Each ballot contains instructions to the voter as to how to mark a ballot. The instructions read:

INSTRUCTIONS TO VOTER

- 1. To vote you must completely blacken the oval to the left of your choice.***
- 2. Please use only a blue/black pen or pencil. Make the mark clear and distinct.***
- 3. To vote for a candidate blacken the oval to the left of their name.***
(Emphasis added.)

During our recount, we encountered numerous occasions where irregularities in voter ballot marking occurred. There were instances where the voter punched a hole in the oval area rather than blackening it. There were also instances where the voter circled the oval, checked the oval, “x’d” the oval, circled the candidate’s name, or underlined the candidate’s name. These irregularities had a dramatic impact on Election Day after the polls closed and the votes were being tallied. Because all ballots with the exception of early voting were paper ballots, the paper ballots were run through an optical scanning voting system to “read” and tabulate each ballot. Ballots that were “unreadable” by the voting system were “rejected” by the voting system. The ballot resolution board whose

duty was to interpret voter intent using the described process examined rejected ballots. (See Exhibit 6.) These examples are taken directly from the ballots reviewed during the recount; however the candidate name of “John Doe” has been substituted in place of the actual candidate’s name. These examples are only a sampling and are not the sum total of all methods of marking the ballot employed by the voters in Mesa County in the race in question.

In order to properly cast a ballot consistent with state law and the rules of the Secretary of State, electors must cast their ballots in accordance with the instructions on the ballot as noted above. (Examples of properly marking a ballot are attached as Exhibit 7.)

2. Tabulating Machine or Ballot Construction Errors

After discussing issues with the Election Division of the Mesa County Clerk and Recorder’s Office, we learned that the optical scanning system they used to tabulate votes will accept and count a ballot where any mark that is discernable or “readable” as evidence of voter intent.²⁰ In instances where the voter blackened only one, or more, but not all of the ovals in the races, the system would only count those races where ballots were clearly blackened within the oval. Therefore, individual voters who cast a ballot for candidates in each race and who marked some of the ovals within the confines of the ovals, but marked outside of the ovals in other races did not have the improperly marked votes count.²¹ Also, ballots that were very lightly marked may not have been read by the tabulating system. An issue arose as to whether or not the voter properly “blackened” the oval area or the tabulating machine was not sensitive enough to read it. Ballots that fall within this category would be picked up and tabulated in a hand count, but would not be picked up and tallied by the voting system. Some may argue that the inability of a voting system to read votes cast versus votes cast inconsistent with the instructions on the face of the ballot undermines voter intent and is, therefore, proper justification to require that all ballots be hand counted. We respectfully disagree. With a General election occurring this fall, would it be proper for the voters of the jurisdiction to wait for five months to determine who their elected officers are? Increased staffing (and costs) would be assigned to tasks on Election Day; however, the public’s demand for same day results could result in voter frustration. With the advent of provisional ballots being due twelve days after the election, there would be public dissatisfaction with a delay. Second, the

²⁰ Optical scanning voting systems are programmed to “look” at targeted areas that equate to the location on the ballot where the ovals are positioned to the left of the candidate’s name. This focal point is necessary as extraneous markings, blemishes, or smudges outside of the oval should not be interpreted as evidence of voter intent to cast a vote.

²¹ This interpretation is consistent with Rule 21.1.7, Election Rules of the Secretary of State (2002) which states:

A correctly voted optical scan ballot occurs when a voter, using a readable marker, fills in or connects the minimum number of ovals/arrows per race, question, or issue, not to exceed the maximum allowable votes per race, question or issue, *without extending the vote mark beyond the parameters of the instructions.* (Emphasis added.)

right to vote is one of the most sacrosanct of our constitutional rights. However, with these rights come responsibilities. Registered voters have a responsibility to assist election judges by marking their ballots according to instructions. This statement is not intended to be critical of voters; rather, they must be aware of the complexities in conducting an election. Our election laws and regulations go into painstaking detail on the subject of blackening of an oval or of making an “X” mark—and very few voters have read the laws or the regulations and are not aware that a careless mark could discount their vote. Third, there are statutory laws and regulations promulgated pursuant to state law that create infrastructure intended to protect the votes from mistakes made by honest voters. As noted above, this infrastructure was in place and did catch mistakes made. Fourth, while, perhaps, not all mistakes were caught, the few mistakes that escaped detection did not vary the outcome of any races involved in the election cycle. Fifth, in the event of a close race, the losing candidate may request a recount where all ballots cast are again recounted.²² Therefore, the statutory infrastructure provides a proper recourse and protects candidates in close races.

To address these observations, we recommend that prior to any election, “mock elections” or workshops be held for the public in order to instruct voters on the methods of marking ballots. By being trained to properly mark the ballot, a voter can be confident that the vote cast will be counted according to the markings made. Nevertheless, even though voter training may reduce these instances further, it is unlikely that this problem can be entirely eliminated. Statutory law provides some assistance for voters at the polling place. Section 1-5-504, Colorado Revised Statutes (2002) requires that instruction cards for the guidance of voters in preparing their ballots be posted in each polling place upon the day of the election. The instruction cards are printed in large, clear type and contain full instructions that inform voters on how: (1) to obtain ballots for voting; (2) to prepare the ballots for deposit in the ballot box; (3) to obtain a new ballot in the place of one spoiled by accident or mistake; (4) to obtain assistance in marking ballots; and (5) to vote for a write-in candidate.

Ballot construction can also impact the tabulating process. Discussions with the Mesa County Clerk and Recorder’s office revealed that the ballots used for provisional voting were not adequately constructed to be read consistently and accurately by their tabulating system. In fact, election staff indicated that a ballot printer was replaced subsequent to the election in question because of problems encountered in printing provisional ballots that were not “readable” by the tabulation system. Since the defective system could not be changed during the election cycle in question, remedial action was taken subsequent to the primary election to replace the system with properly functioning equipment.

3. Execution of Manual Procedures Within the County’s Election Office

Whether an election is conducted using paper ballots for hand counting or by use of computers to tabulate results, it is incumbent that poll workers be well trained in order to ensure voter confidence and trust in elections. The required correction of ballots due

²² See Article 10.5, Title 1, Colorado Revised Statutes (2002).

to ballot construction and examination of voter errors by the election judges produces the potential for human error. In Mesa County, for example, many of the provisional ballots had to be duplicated onto other ballots in order for the tabulating system to properly read and record the ballot votes. In some cases the recount team could not find the replacement ballot for a voided provisional ballot.²³ In other instances where the total ballots counted did not match the total on the abstract report, we questioned whether a few ballots could have been misfiled or were not included in the many boxes delivered to the Department of State. Ultimately, these questions were resolved with complete certainty that all of the election records were in our custody with the exception of the unsigned signature cards.

We recommend improved poll worker training— along with more successful and sustained poll worker recruitment campaigns as two critical steps in the process. Electronic elections systems have significantly altered traditional training programs for poll workers, and we recognize that difficulty. Consequently, we recommend an entirely new and comprehensive training program to be developed and implemented for poll workers. Without proper and adequate hands-on training and instruction, we cannot expect to accomplish our goal of an election in which every effort is made to ensure that every vote is counted, every polling place is opened on time, and every eligible voter is given the unfettered opportunity to exercise their right to vote. Consistent with our recommendation, we note that the current Mesa County Clerk and Recorder and her staff have taken measures prior to the inception of this review to attend professional development election training and seminars sponsored by the Secretary of State. These seminars are designed to promote the kind of recommendations we outline in this report.

4. Recount Procedures At The Department of State

Normally, recounts occur under the auspices of a statutory recount, which requires the recount to be conducted in the same manner as the original election was conducted. Therefore, Department of State personnel rarely engage in manual ballot recounts. The procedures and experience of these personnel could result in errors during the manual recount. As mentioned earlier, the ballots from Mesa County were counted numerous times by different personnel. Procedures were enhanced during the Mesa recount process to improve the recording and accuracy of the count. We increased facilities and space to arrange the ballots properly during the recount effort. Overvotes and undervotes had to be tabulated separately since reports generated by the electronic recording devices used in Early Voting were not programmed to report undervotes and overvotes. We recommend that the electronic recording devices be programmed to include the number of overvotes and undervotes along with the votes for each candidate to assist in documentation of results for recounts.

²³ Ballots that are not “accepted” by the optical scanning tabulator are required to be duplicated on a replacement ballot by the duplicating board. The original ballot is then voided and the replacement ballot, marked according to voter’s intent, is sent through the tabulator to be read and counted.

5. Human Error Associated With Manual Recount

Many circumstances during a manual recount can lead to human errors. A partial list of these include:

- Two ballots tightly stuck to each other can result in only one of the two ballots being counted.
- The counting activity is very monotonous and can result in one ballot being counted twice when the manual counter cannot remember whether the ballot was just counted or not.
- Error can occur when the phone or a co-worker interrupts a counter.
- Since ballots aren't in any particular order, it takes longer to record results because a notation is needed every time the vote switches from one candidate to another.
- A counter can erroneously enter a vote on the worksheet for the wrong candidate.
- A counter can make an error when adding numbers on the worksheet.

The outcome of the original tabulation conducted by the Mesa County Clerk and Recorder's Office and the hand count performed by the Department of State reflects a difference of votes for both races—Republican and Democrat—to be within 31 votes. A summary of the results of the Department of State hand recount and a comparison to the election abstract count is attached as Exhibit 3. This exhibit reflects that the vast majority of those 31 votes were found in the Democratic races. Irrespective which candidate received votes, the total of all 31 votes being cast in favor of either candidate in the races in question would not alter the outcome of either race. This net increase of 31 votes for the six candidates combined represents less than two-tenths of one percent (.00157) of the total votes cast for all of the candidates.

No balloting system is perfect. Traditional paper ballots, as became evident during the 2000 presidential election, are prone to overvotes, undervotes, "hanging chad," and other mechanical and human errors that may thwart voter intent. Meanwhile, touchscreen voting systems remedy a number of these problems, albeit at the hypothetical price of vulnerability to programming "worms". Mesa County employed paper ballots tabulated by electronic voting systems in the conduct of this election. Nevertheless, the system employed by Mesa County does not leave Mesa County voters without any protection from mistakes or fraud, or any means of verifying votes, or any way to audit or recount. The unfortunate reality is that the possibility of electoral mistakes can never be *completely* eliminated, no matter what type of ballot, voting equipment, or system is used.

During testing conducted by statutorily designated individuals, the voting systems recorded the "test decks" and the equipment functioned properly. Further, the results of our recount affirm the accuracy of the original counting and tabulating of the ballots done by the equipment used and the integrity of the election judges in Mesa County. The differences in the original count and the recount reflect differences in interpretation of voter intent on individual ballots and are not evidence of wrongdoing or ill intent. Most

importantly, the differences of interpretation of voter intent do not equate to a sufficient number of votes to affect the outcome of the electoral races involved. Finally, with regard to the tabulation of votes cast in the 2002 Primary Election, we find no evidence of efforts to undermine voter intent or to influence the outcome of the election.

Having reported the results of the recount and explained the reasons for the differences in the results in the original election, the complaint filed by Thomas Bjorklund can now be addressed.

IV. STATEMENT OF THE COMPLAINT

Thomas Bjorklund (“Bjorklund” or “Complainant”) is a citizen of Colorado and resident of Mesa County, Colorado.²⁴ Bjorklund alleges that the Mesa County Elections Office (which operates under the auspices of the Mesa County Clerk and Recorder’s Office) (“Mesa County Clerk and Recorder’s Office” or “Respondent”) did not properly execute its duty while supervising the election process before, during, or after the Mesa County Primary Election for August 2002. Specifically, Bjorklund alleges failure of the Mesa County Clerk and Recorder’s office to execute statutory duties in two races: (1) the race for state house of representatives for District 55 and (2) the race for Mesa County Clerk and Recorder.²⁵ In a multi-page document, Bjorklund’s complaint encompassed four (4) main issues, to-wit:

- (1) Whether multiple names of registered, eligible voters who claim to have participated in the Mesa County Primary Election held in August 2002 are missing from official Primary Participation Records;
- (2) Whether a Mesa County Employee who supervised and actively participated in all phases of the election process directly and financially benefited from the outcome of the Mesa County Primary Election;
- (3) Whether an employee that benefited, and the newly elected Clerk and Recorder denied repeated requests for open records pertaining to the integrity of the election process, and whether County employees made misleading statements regarding requests of official election documents.
- (4) Bjorklund contends that multiple occurrences of incompetence documented in his complaint cause one to question why the person

²⁴ Mr. Bjorklund is the husband of Shari Bjorklund, who was an unsuccessful candidate for State House District No. 55 in the August 2002 Republican Party Primary Election.

²⁵ It should be noted that at the time of the August 2002 Primary Election, Monika Todd was the Mesa County Clerk and Recorder and was therefore responsible for the administration of the election. Janice Ward was one of two Republican candidates for the office of Mesa County Clerk and Recorder. Gayle Berry was a candidate for the State House of Representatives for District 55 running against Shari Bjorklund. It should be noted that Bjorklund does not allege misconduct on behalf of the candidates, Berry or Ward. Further, the examination of the records finds no evidence of wrongdoing with regard to actions taken by either candidates, Berry or Ward. Janice Ward did not take office as the Mesa County Clerk and Recorder until January 2, 2003.

who supervised the running of the election would be given such a promotion. Further, that the alleged incompetence undermines the integrity of the election process in Mesa County.

For purposes of documenting the four issues, Bjorklund alleges sixteen separate allegations. In order to properly respond, each of the sixteen allegations will be discussed separately.

1. Multiple Individuals Who Claimed They Voted, But Are Not Reflected As Having Done So On The Primary Participation List.

Bjorklund argues that, through statistical sampling of the politically active voters of Mesa County, large numbers of individuals are missing from the Primary Participation Lists. The sampling list is composed of individuals who initially indicated they would be voting prior to the election, as well as individuals who contributed to various campaigns in the contested races impacting Mesa County.

Bjorklund employed two independent research firms, Bristlecone of Lakewood, Colorado and Third Sector Innovations of Grand Junction, Colorado. Six questions were asked:

- (1) Did you vote in the August 2002 Primary Election?
- (2)(a) If you answered “yes” above, please indicate the method you used to vote.
- (2)(b) If your response to #1 is “no”, please indicate your reason.
- (3) Have you voted in past primary elections before this one?
- (4) Did you vote in the November general election?
- (5)(a) If your answer to #4 was “yes”, then what method did you use?
- (5)(b) If your answer to #4 was “no”, please indicate your reason.
- (6) Have you voted in past general elections before this one?

According to Bjorklund, fifty-four individuals responded to surveys performed by the research firms. Bjorklund avers that individuals signed an additional 12 written surveys. It is Bjorklund’s assertion that 67 individuals who were polled via telephone or written surveys indicated that they participated in the primary election of 2002, but that Mesa County voting records do not reflect that these individuals voted in the August 2002 Primary Election. From this analysis, Bjorklund infers that “a true estimate of people missing from the voter participation lists and from the official ballots could be substantial.” In response to these assertions, the Mesa County Clerk and Recorder’s office replied that the surveys were conducted beyond a reasonable period of time for most of the respondents to recall any specific election. For example, the Mesa County Clerk and Recorder’s Office alleges the Bristlecone survey (dated February 11, 2003) was completed after the November 2002 general election with a voter turnout of 62.23% which was, indeed, a contested gubernatorial election. The Third Sector Innovations survey (dated June 18, 2003) was completed not only after the November 2002 general election, but also subsequent to the April 2003 City of Grand Junction election. As a result, the Mesa County Clerk and Recorder’s Office alleges that since the surveys were

conducted several months after more than one of these elections, it is possible that some of the people polled in these surveys may have been confused about which election(s) they actually voted in. Further, it is averred that it is possible that respondents to the surveys were confused by the fact that at least two of the candidates on the primary election ballot were also on the general election ballot for a different office.

As to the accusations of “missing votes,” an examination of the election records of the named individuals pursuant to the audit provides some probative value as to the actions of such individuals in this election cycle. Exhibit 8 reflects the “electoral record” of the individuals (as evidenced by the election records) who either executed affidavits or responded to surveys affirming that they voted in the August 2002 Republican Primary election in Mesa County. Each spreadsheet indicates the name of each individual (including previous election record name designations); the precinct in which they are eligible to vote; whether they voted in the 2002 Primary Election, the manner of vote (Early Voting (EV), Absentee (A), Polling Place (PP), or Provisional Voting (PV); if they did not vote; and remarks consistent with what was found in the election records. In addition, the list has been separated into individuals who responded to the surveys (respondents) and individuals who executed affidavits (affiants). In support of Exhibit 8 is also attached Exhibit 9, which reflect xerographic copies of the actual documents with redactions to protect identifying information to protect the confidentiality of the voter, and, where applicable, the election official who witnessed the action of the voter named in the document.

It is worthwhile to look at copies of actual individual “electoral records” at the end of this report. It is evident from the executed signature card that Mr. McKay did vote a provisional ballot in the August 2002 Primary Election. Robert M. McKay (who signed an affidavit presented by Bjorklund) changed his party affiliation from “Democrat” to “Republican” on August 13, 2002 (the day of the election). McKay was permitted to vote a provisional ballot. (See Exhibit 10.)

Another respondent, Steven Verketis, noted on his survey response form that he had “never had a problem, except in this last Nov. general election.”²⁶ Apparently, he did not experience any problem in the August primary. His problems lay in the November general election of 2002. A close examination of the official election records discloses that there is no evidence that Steven Verketis voted in the August primary. James Zimmerman,²⁷ a respondent in the survey, noted in his response: “We voted for the medical use of pot. Why can’t I find any doctors to help me get it?” It is uncertain as to whether he is asserting that the medical use of pot was on the ballot or whether he was making a comment. State ballot questions are not placed on primary election ballots, but are required by law to be on the ballot for the ballot issue election held on the first Tuesday in November of odd-numbered years.²⁸ In fact, the ballot issue for legalization

²⁶ Neither the official election records, nor the records of the Secretary of State, reflect that Mr. Verketis voted in the August 2002 Primary Election.

²⁷ Neither the official election records, nor the records of the Secretary of State, reflect that Mr. Zimmerman voted in the August 2002 Primary Election.

²⁸ Section 1-41-102, Colorado Revised Statutes (2002).

of marijuana for medical use was on the November 2000 general election ballot. Regardless of this issue, the official election records reflect that Mr. Zimmerman did not vote in the August 2002 Primary Election.

A close review of the election records supports the assertions of the Mesa County Clerk and Recorder's office. The records reflect no executed August 2002 Primary Election signature cards for early voting or polling place, applications for absentee ballots, or provisional ballots, of the named affiants (individuals who executed affidavits rather than responded to the survey) other than Mr. Robert M. McKay.

Other individuals, Clark D. Hackley,²⁹ Sylvia Greasley,³⁰ Anthony Iuliano,³¹ Mary Janes-Martin,³² Angela (Raser) Allen, Kimberly Rodabaugh, John Anderson, John Barron, John Mall, Patrick Metoyer, Charles Miller, and Douglas Norcross who either signed a survey form or affidavit are all reflected as being residents within House District 54, not House District 55.

According to state law, any eligible elector who has not declared an affiliation with a political party or political organization is required to be designated on the registration records as "unaffiliated".³³ Any unaffiliated eligible elector may declare a political party affiliation when the elector desires to vote at a primary election, as provided in section 1-7-201(2), Colorado Revised Statutes (2002), or the elector may declare his or her political party or political organization affiliation at any other time during which electors are permitted to register by submitting a letter or form furnished by the County Clerk and Recorder, either by mail or in person.³⁴ Voters, Jeanine Brown,³⁵ Mary Pickens,³⁶ Mary Bevan, Judith Shue, and Richard Godwin³⁷, have a declared affiliation as "Democrat" according to the Secretary of State voter registration database. As a result, none would be able to vote in the Republican primary absent changing their affiliation (which the records reflect they have not). Therefore, inasmuch as the focus of

²⁹ Neither the official election records, nor the records of the Secretary of State reflect that Mr. Hackley voted in the August 2002 primary.

³⁰ Sylvia Greasley filed a Change in Voter Registration Record on August 13, 2002, to correct the spelling of her last name from "Gresley" to "Greasley".

³¹ Mr. Iuliano did file a name change to his voter registration record on August 13, 2002 in order to correct the misspelling of his last name. On the form he listed his affiliation as "Republican".

³² Ms. Janes-Martin executed a change of address on her voter registration record on August 13, 2002, but did not change her party affiliation. Subsequently, Ms. Janes-Martin changed her party affiliation to "Republican" on August 15, 2002, two days *after* the August 13, 2002 Primary Election. Therefore, she would not be able to legally vote in the "Republican Primary" absent a designation of party change (which the official records reflect she did not do). In addition, Ms. Janes-Martin resides in House District 54, not House District 55.

³³ Section 1-2-218.5(2), Colorado Revised Statutes (2002).

³⁴ *Ibid.*

³⁵ It should be noted that Jeanine Brown is also a resident of House District 54, not House District 55. Therefore, the vote of Jeanine Brown would not affect the outcome of the Berry-Bjorklund race.

³⁶ Mary Pickens declared her affiliation as "Democrat" on July 10, 2002. Ms. Pickens' name was not on the eligible elector list. Therefore, the election judge had her sign a Voter Sign-In Card and allowed her to cast a provisional ballot.

³⁷ Mr. Godwin changed his party status to "Democrat" on August 13, 2002, which was Election Day.

this inquiry is the Republican primary, their votes would not have an impact on the outcome of the election.

The statewide voter registration database of the Secretary of State affirmatively confirms changes in affiliation on Election Day (which provides some evidence that the named individuals voted at the August 2002 Primary Election).³⁸ For example, Janet Prell, one of Bjorklund's affiants, changed her party affiliation on Election Day to "Republican". Another elector, Debra O'Donnell changed her party affiliation on Election Day to "Republican". John O'Donnell also chose to change his party affiliation on Election Day to "Republican". Pat O'Brien,³⁹ Leanna Gearhart,⁴⁰ Kathleen Jones-Anderson, and Kristine Goldsworthy, all affiants, changed their party affiliation to "Republican" on Election Day, August 13, 2002.

Electors who signed affidavits (Lawrence Blank, Robert Bliel, Ida Nierman, Garry B. Nave, Bernice Ratcliff, John Grimsley, Carl Burley, Regina Brewster, Walid Boumatar, Don McGuire, and Rodney Beynon) were not found in either the official election records⁴¹ or the records of the Secretary of State as having voted in the August 2002 Primary Election. It is very possible that these electors were confused by the questionnaire and their participation in the primary election in question.

Comments taken from the affiants show that there was confusion as to the election in question. With the passage of time, the human memory is tested and the remembrance of whether one voted or not in an election becomes blurry. In addition, there is a human tendency when questioned to accede or deny in order to not embarrass themselves or the questioner, or to promote feelings of good will. Therefore, nothing in the surveys or by affidavit can be shown to be credible evidence of wrongdoing. To the contrary, there is sufficient evidence contained in the official election records to refute the assertions made by the affiants/respondents to the surveys. We do believe that the affiants/respondents acted in good faith in their responses. However, the official election records reflect more positively and credibly due to the documentation of action or inaction taken, rather than the memory of the individuals. As evidenced by the foregoing, we find sufficient documentation that substantiates the claims of the Mesa

³⁸ This confirmation substantiates and evidences further action taken by the Mesa County Clerk and Recorder's office necessitated by official election records filed for the election cycle in question. Attention is called to Section 1-2-222, Colorado Revised Statutes (2002), which provides that, in order to change party affiliation, the voter must contend that an error has been made in the recording of the elector's affiliation on the registration book or that the affiliation has been unlawfully changed or withdrawn. As a result, absent such contention, voters who have affiliated with a political party are unable to change affiliation on election day. Therefore, unaffiliated voters may change their affiliation on election day. The official election records do not show reasons why the named electors changed their affiliation or whether they offered the statutory contention. Nevertheless, each elector did sign an oath as proscribed by law. This office will not go behind the oath of the electors involved.

³⁹ On August 13, 2002, Mr. O'Brien changed his party affiliation from "unaffiliated" to "Republican".

⁴⁰ Ms. Gearhart is also a resident of House District 54, not House District 55. On August 13, 2002, Ms. Gearhart changed her party affiliation to "Republican" from "unaffiliated".

⁴¹ The term "election records" includes preprinted signature cards executed at the time of voting, returned mail for absentee ballots, official forms requesting change of name, address, or party affiliation, and provisional ballot records.

County Clerk and Recorder's Office. Furthermore, as noted above, the assertions made once compared with the records reflect that such actions, if they were taken, would not affect the outcome of the race. As mentioned earlier, many of the affiants/respondents were registered Democrats or lived in House District 54. The focus of this audit/investigation is the Republican Primary races and, specifically, House District 55 and the Mesa County Clerk and Recorder. Therefore, the vote cast by each of these individuals would not have sufficient impact to change the outcome of either race.

The election records provided by Mesa County do reflect that Karen J. O'Connor voted in the 2002 primary election. In addition, there is documentary evidence that Ms. O'Connor requested a name change to "Karen J. O'Connor" from "Karen J. O'connor" on August 13, 2002. Stella Marie Garcia, a resident of precinct 74, changed her party affiliation from "Democrat" to "Republican" on election day, August 13, 2002. Due to her change of party affiliation on election day, Ms. Garcia was allowed to vote a provisional ballot. On the face of the provisional ballot envelope of Ms. Garcia was a handwritten notation "wrong party affiliation—this ballot sent through machine." The determination of the eligibility of that provisional ballot reflects that it did not count. Another voter, Sandra Hartley, changed her party affiliation on election day from "Unaffiliated" to "Democratic," and was allowed to vote a provisional ballot. On the face of Ms. Hartley's provisional ballot envelope was written: "Put in M100." As noted, the election judges made errors in the administration of the election, but it is only when the number of errors has the direct effect of altering the outcome of an election that the magnitude of errors raises to the level of impropriety. Human errors have been made in practically every election held in the world. Humans administer and conduct elections, and humans make mistakes. Nevertheless, the impact of Ms. Garcia's vote in the election contests in question here would not have any impact on the outcome of the race. Ms. Hartley's ballot was cast for the Democratic candidates for the offices. Since the object of this investigation involves two races for the Republican ticket, her vote, counted or not, would have no impact on the races in question. This recount is based upon actual ballots cast. The findings of this recount have been published and reflect that few errors occurred and possible reasons why the official count and the recount results do not correspond.

In submissions made to this office by the Mesa County Clerk's Office in response to the complaint, the current Mesa County Clerk and Recorder provided a spreadsheet that contained the names of the individuals who responded to the surveys provided by Bjorklund. This spreadsheet provided whether the individual named executed an affidavit or responded to a survey; the voter's name (with variations of spelling found in the election records); primary election participation credit (whether the voter was given credit for voting in the primary, e.g., evidence that they voted by early vote, absentee, polling place, or provisional); general election credit; precinct; absentee application (whether the named individual made an application for absentee ballot); and comments. This office used the spreadsheet and compared it against the election records, the Secretary of State database, and the Mesa County election records to confirm the accuracy of the information. Accessing the statewide voter database housed in the office of the Secretary of State, this office was able to validate voter name, party affiliation,

affiliation date, status, precinct, and house district.⁴² Armed with this information, this office then searched the official election records for evidence of whether a voter voted in the election in question, the method of voting, and any other change made to their voting records (such as change of name or spelling of name.) This office then cross-checked the independently found documentation with the list prepared by the Mesa County Clerk and Recorder. Because the election records are for the primary election and not the general election, this office had no way of checking general election participation by the named voters. This comparison determined that the spreadsheet prepared by the Mesa County Clerk and Recorder was totally accurate with no discrepancies with the official election records. No misstatements or misrepresentations were found. Reference is here made to Exhibits 9 and 11, which is derived from that search.

The Mesa County Clerk and Recorder's work product, as verified by thorough examination of the official election records, provides credible evidence towards the professional conduct during the 2002 Primary Election. Other than the discrepancies reported herein, we affirm the accuracy of the work performed by the then Mesa County Clerk and Recorder, the office staff, election judges, resolution board, and canvassing board.

2. Official Documents and Statistics Transmitted To The Secretary of State Have Glaring Inconsistencies.

Bjorklund asserts that both primary participation data from Mesa County and the Secretary of State reflect more names than the actual vote count.⁴³ The Mesa County Clerk and Recorder's Office responds that the primary participation data reflects voter participation credit given to anyone to whom a ballot is mailed or delivered in a partisan election. As a result, the voter participation data only reflects those who asked for and received a ballot to vote in the August 2002 Primary Election. This data is not limited to those who voted. According to State law, any inactive elector shall be deemed "active" if the elector updates his or her registration records, or votes in any election conducted by a county clerk and recorder or any election for which the information has been provided to the county clerk and recorder, or *applies for an absentee ballot for any election which the county clerk and recorder conducts, regardless of whether or not the ballot is returned,*

⁴² This criteria is germane to determine eligible voters in the election races in question, precinct, house district, which party voters are affiliated with, when the affiliation commenced, etc.

⁴³ Immediately after the official abstract of votes cast has been certified and no later than the sixteenth day after an election, Section 1-10-103, Colorado Revised Statutes (2002) requires the county clerk and recorder to transmit to the secretary of state the portion of the abstract of votes cast that contains the statewide abstract of votes cast. In addition, the secretary of state is required to compile and total the returns received from all counties for all candidates, ballot issues, and ballot questions certified by the secretary of state no later than the twenty-second day after an election. (*See* Section 1-10-103(2), Colorado Revised Statutes (2002)). In addition, Section 1-2-305, Colorado Revised Statutes (2002), requires not later than sixty days after a state election that each county clerk and recorder transmit to the secretary of state, in a media format acceptable to the secretary of state, a list of electors showing who voted and who did not vote in the election. The list shall contain the information provided for in section 1-2-301(1). For electors who voted, the list shall show such elector's method of voting, whether by early voting, absentee ballot, mail ballot, polling place voting, or otherwise.

or the elector completes, signs, and returns the confirmation card.⁴⁴ (Emphasis added.) Therefore, it is easily explainable that the primary participation data provided by the Mesa County Clerk and Recorder's office may exceed the number of actual ballots voted and returned.

3. Candidates or Representatives of Campaigns Not Allowed To Observe Ballot Counts.

Bjorklund asserts that two weeks prior to the primary election, the then County Clerk and Recorder, Monika Todd, gave approval for a campaign representative from the Shari Bjorklund campaign to observe the tabulation of votes on election night, August 13, 2002. Subsequently, Mr. Bjorklund alleges that he was contacted by Ray Schuster, Republican Party Chair for Mesa County, and informed that neither he nor any representative of the campaign would be allowed to observe the vote count. While Mr. Bjorklund argued that both candidates should have representation at the vote count, the argument was not persuasive for Mr. Schuster who reported that he was "only the messenger." The evidence reveals that Mr. Schuster represented the Republican Party as a watcher.

State law provides guidance in this area.⁴⁵ Each political party participating in a primary election shall be entitled to have a watcher in each precinct in the county.⁴⁶ In addition, candidates for nomination on the ballot of any political party in a primary election are entitled to appoint some person to act on their behalf in every precinct in which he or she is a candidate.⁴⁷ The candidate is required to certify the persons appointed as watchers on forms provided by the County Clerk and Recorder.⁴⁸ There is reasoning for limiting the number of watchers at the polling place or at central tabulation. It is increasingly difficult for election judges to do their assigned statutory tasks when a large number of people are present. A multitude of watchers representing multiple candidates of the various parties would only serve to interrupt or disrupt the processing and counting procedures. Furthermore, pursuant to state law, neither the candidates, nor members of their immediate families by blood or marriage to the second degree, may be poll watchers for that candidate.⁴⁹ Mr. Schuster, who had no family connections by blood or affinity to either candidate and who served as the Republican Party County Chair, was duly qualified to serve in the capacity as a watcher for the Republican Party candidates on the ballot. Therefore, we find that the Mesa County Clerk and Recorder acted in accordance with the law in requiring only one representative from each political party to observe the processing and counting procedures conducted at the August 2002 Primary Election.

⁴⁴ Section 1-2-605(4)(a)-(d), Colorado Revised Statutes (2002). *See also*, Rule 27.2.3, Election Rules of the Secretary of State (2002).

⁴⁵ *See* Section 1-7-105, et seq., Colorado Revised Statutes (2002).

⁴⁶ Section 1-7-105(1), Colorado Revised Statutes (2002).

⁴⁷ Section 1-7-105(2), Colorado Revised Statutes (2002).

⁴⁸ *Ibid*.

⁴⁹ Section 1-7-108(2), Colorado Revised Statutes (2002).

4. Important Statistical Information Not Provided To Campaigns After the Election Took Place.⁵⁰

The authority of the Secretary of State is limited to review of election processes. Bjorklund's assertions of improper denial by the Mesa County Clerk and Recorder of requested "statistical breakdowns of the number of votes cast by precinct for each category" fall within the Colorado Open Records Act ("CORA").⁵¹ Therefore, alleged violations of the Colorado Open Record Act do not fall within the ambit of authority of the Secretary of State.

5. Repeated Requests for Non-Confidential Public Information Denied.⁵²

Bjorklund's assertions of improper denial by the Mesa County Clerk and Recorder of Colorado Open Records Act requests for information are beyond the pale of authority of the Secretary of State. Therefore, the Secretary of State has no legal authority to make any determinations of law or fact. The adjudication of these issues is properly before the District Court of Mesa County.

6. Information That Was Already Promised Under One Clerk & Recorder Denied Under the Newly Elected Clerk & Recorder.⁵³

Bjorklund asserts that the former County Clerk and Recorder, Monika Todd, agreed to make a microfilm record of the "Absentee poll book" (the signed affidavit and registrant name of ballots returned). Bjorklund further alleges that he subsequently made the following request: "Please make available the microfilm record of the Absentee poll book, this should include the signed affidavit and registrant name of ballots returned." Originally, such latter request was denied; however, subsequently, access was given to microfilm records for review. Unfortunately, the requestor was required to review the microfilm on a machine that was antiquated and did not work properly. These are matters that fall within the purview of the Colorado Open Records Act, and, therefore, do not fall within the jurisdiction of the Secretary of State. As a result, this office cannot make findings of fact or interpretation of the law.

7. Information That Was Specifically Requested To Be Preserved Was Purged.

Bjorklund alleges that in a conversation with Amy Storm-Farley, he requested certain records that were contained in the data records on the Mesa County Clerk and Recorder's office computer system. Bjorklund further alleges that Ms. Storm-Farley indicated to him that the requested records were on data files in the computer and that the records were scheduled to be purged within 60 days subsequent to the primary. In a letter dated August 28, 2002, Bjorklund stated: "Please be advised that if you cannot provide this information to me, do not purge the record I have requested pending further

⁵⁰ See footnote 2, supra.

⁵¹ Section 24-72-101, et seq., Colorado Revised Statutes (2002).

⁵² See footnote 2, supra.

⁵³ See footnote 2, supra.

correspondence.” Subsequently, in a letter dated March 31, 2003, Bjorklund requested specific names and addresses of all people who voted via absentee ballots, and the names and addresses of those who requested absentee ballots, and filled out their request, but did not return the ballot. In response to this written request, Donna Ross, the new director of the Elections Division of the Mesa County Clerk and Recorder’s office, wrote:

Ballot tracking information is purged from our computer system once the Secretary of State accepts the voter participation report. Therefore, Elections is unable to determine from our computer information that actually voted via absentee ballot in the August 2002 primary election.

Bjorklund alleges that such ballot tracking information is an “election record” and that the information should not have been purged pursuant to his request. Bjorklund cites C.R.S. 1-11-208(2), as authority for retention of such records. Specifically, he cites the following language in C.R.S. 1-11-208(2):

(2) The contestor, within ten days after the completion of the official abstract of records votes cast, shall file in the office of the secretary of state a verified statement of intention to contest the election, setting forth the name of the contestor, that the contestor is an eligible elector of the district, the name of the contestee, the office being contested, the time of the election, and the particular grounds for the contest and shall serve a copy upon the contestee. The contestor shall file with the secretary of state a bond, with sureties, running to the contestee and conditioned to pay all costs in case of failure to maintain the contest. The secretary of state shall determine the sufficiency of the bond, and, if it is sufficient, approve it.

While this office will not invade the purview of the district court with regard to open records, it will address the argument cited by Bjorklund. While it is true that Colorado statute provides a statutory time period, a time period that applies to election contests. In the case at bar, no contest was filed in either election. No contestor filed within the statutory time limits a verified statement of intent to contest the election, nor was a bond, with sureties, filed with the Secretary of State pursuant to state statute. As a result, the requirements of Section 1-11-208(2), Colorado Revised Statutes (2002) are not relevant and binding upon the office of the Mesa County Clerk and Recorder.

8. Exorbitant Fees To Be Charged For Access To Public Records.⁵⁴

Bjorklund asserts that the Mesa County Clerk and Recorder charge as much as \$25.00 per hour for every hour a document is looked at and by charging \$1.25 per page for any document that needs to be copied deliberately discourages anyone from verifying what they claim are the election results. References in Mr. Bjorklund’s allegations to excessive charges for “open records” fall outside the legal authority of the Secretary of State. Therefore, no findings of fact or interpretation of law can be made.

⁵⁴ See footnote 2, supra.

9. Appointment By Newly Elected Clerk & Recorder Has The Appearance of Impropriety.

Bjorklund alleges that the appointment of Amy Storm-Farley from Director of Elections to the position of Chief Deputy Clerk by the newly elected County Clerk & Recorder has the appearance of impropriety. This office has no authority to review hiring practices of county officials.

10. Social Security ID's Were Divulged In Mass to A Campaign That Did Not Request Such Data.

Bjorklund alleges that on July 24, 2002, the Shari Bjorklund campaign was provided a computer disk with a list of affiliation changes of voters that included the social security numbers of each voter on the list. Bjorklund states that he informed the clerk's office of the mistake and returned the disk immediately. Any social security number or the last four digits of a social security number obtained by the county clerk and recorder from an elector is required to be held confidential and not published or open or available to public inspection.⁵⁵ While the confidentiality of social security numbers is paramount, it is clear that the actions of the Mesa County Clerk and Recorder's office were not intended to affect the outcome of any electoral race. It is clear that the intent was to respond in a prompt fashion to an open records request. The release of the eligible electors' personal information was unintentional and does not indicate neglect of office, but does indicate human error. Bjorklund acted responsibly by immediately returning the information for a redacted version in order to ensure the confidentiality of the social security numbers. The county clerk and recorder is required by law to develop appropriate security measures to ensure the confidentiality of social security numbers.⁵⁶ In face of the unfortunate disclosure of confidential information, the Mesa County Clerk and Recorder should immediately institute appropriate security measures to ensure confidentiality of all social security numbers of the electors.

11. Non-Notification of Ballots Being Picked Up At Long Term Care Facilities.

Bjorklund argues that the Mesa County Clerk and Recorder's office was obligated to notify candidate, Shari Bjorklund, as to when large numbers of absentee ballots were being collected at long-term care facilities.⁵⁷ The Mesa County Clerk and Recorder's

⁵⁵ Section 1-2-204(4), Colorado Revised Statutes (2002).

⁵⁶ Ibid.

⁵⁷ Section 1-8-112(1), Colorado Revised Statutes, (2002) states:

When more than five absentee ballots are to be sent to the same group residential facility within a county, which includes, but is not limited to, nursing homes and senior citizen housing facilities, a committee consisting of one employee of the county clerk and recorder, and, where available, a representative appointed by each of the major political parties shall deliver the absentee ballots and return those ballots to the office of the county clerk and recorder.

office asserts that there is no legal obligation for the local election official to advise any candidate of the receipt of absentee ballots from long-term care facilities. Further, the record reflects that the Mesa County Clerk and Recorder's office has never contacted candidates with regard to receipt of absentee ballots from long-term care facilities. There is no statutory authority mandating any election official to give notice to any or all of the candidates of the receipt of absentee ballots from long-term facilities or in any other capacity.

The complainant has raised the issue that some of the rejected absentee ballot envelopes were stamped, "Received August 14, 2002" which was one day after the election. The Mesa County Clerk and Recorder's office in its reply stated that on many occasions, such absentee ballot envelopes are returned either by family members or the facility administrator subsequent to the election. Absentee ballots are required by law to be returned no later than 7 p.m. on the day of the election.⁵⁸ Therefore, absentee ballot envelopes containing absentee ballots that are received subsequent to the statutory deadline for voting cannot be received for purposes of the tabulation in the election. As a result, the County Clerk and Recorder acted correctly in recording the date of receipt on the absentee ballot envelope as being that subsequent to the date of the election.

12. Multiple Applications For Absentee Ballots Mailed To Residents.

It is uncontroverted that as many as 2,500 to 3,250 eligible electors received multiple applications for absentee ballots.⁵⁹ The Mesa County Clerk and Recorder's office admits that there was a printer mistake. However, once discovered, the Mesa County Clerk and Recorder took appropriate steps to correct the mistake including monitoring to safeguard against such errors. The running of elections is highly complicated. There are a large number of forms to be prepared, printed and mailed out to eligible electors. Human error will occur. The issue then becomes how one ameliorates such errors to prevent duplications from recurring. During elections, the Secretary of State is notified of printing errors across the state. Therefore, this problem is not singular to Mesa County. In addition, there are redundancies in process that allow the local election official to discover any error and to track and correct the error to prevent multiple votes by an individual in a single race or multiple races. Neither the complainant nor the respondent alleges that individuals were allowed to vote more than one time as a result of the error. In addition, the election records do not reflect any evidence of such misconduct. We find that the Mesa County Clerk and Recorder's office, upon discovery of the printer mistake, took immediate steps to remedy the error according to State law.

⁵⁸ Section 1-8-115(1)(b), Colorado Revised Statutes (2002).

⁵⁹ Section 1-8-104, Colorado Revised Statutes (2002) requires that an application for an absentee ballot be made in writing or by fax, using the application form furnished by the local election official or the form of a letter that includes the applicant's printed name, signature, residence address, mailing address if the applicant wishes to receive the ballot by mail, and date of birth. For primary elections, the application is required to name the political party with which the applicant is affiliated or wishes to affiliate. The application must be personally signed by the applicant, or in case of inability to sign, the elector's mark shall be witnessed by another person.

13. Requestors Never Received Absentee Ballots That Were Requested.

The complainant alleges that absentee ballot applications were mailed (from the campaign of Shari Bjorklund for State Representative) to individuals who indicated that they would be voting via absentee ballot with postage paid envelopes addressed to Mesa County Elections. Complainant further alleges that a number of people complained that they did not receive their ballot via mail, after having sent in their applications. The Mesa County Clerk and Recorder responds that every eligible elector who presented a valid and timely application for an absentee ballot was sent an absentee ballot.

State law provides a proper remedy for individuals who file a valid and timely application for an absentee ballot. The absentee ballot and other materials are required to be delivered or mailed to the absentee elector within seventy-two hours after the receipt of the application.⁶⁰ If the absentee ballot and other materials are mailed, the envelope shall be marked “DO NOT FORWARD” or by any other similar statement that is in accordance with the United States Postal Service regulations.⁶¹ Upon a request by an eligible elector stating an emergency need, the designated election may authorize one or more deputies or may deputize a courier service to deliver the absentee ballot and return the ballot to the office of the designated election official.⁶² The designated election official may issue a replacement absentee ballot if an eligible elector applied for an absentee ballot but did not receive it or if the elector spoiled the absentee ballot.⁶³ An affidavit completed by either the elector or the designated election official shall give the reason for requesting a replacement absentee ballot and shall state that the original ballot was not received or was spoiled, that the individual has not voted, and that the individual does not intend to vote at the election except by voting the replacement absentee ballot.⁶⁴ The absentee record shall have the notation “Spoiled” entered to indicate the original absentee ballot was not received or was spoiled, and the replacement absentee ballot number shall be entered in the absentee record.⁶⁵ If the original absentee ballot is returned to the designated election official after the issuance of the replacement absentee ballot, the original ballot shall be marked “Spoiled” and shall not be counted.⁶⁶ A careful examination of the election records submitted for examination to this office reveals no evidence to support that those individuals who requested replacement ballots or emergency ballots were denied the opportunity to vote.

There was one individual, Gregory Edward Walcher who mailed an Application for Absentee Ballot; however, the Mesa County Clerk and Recorder’s Office did not receive the application until August 12, 2002—1 day before the Primary Election.⁶⁷

⁶⁰ Section 1-8-111(1), Colorado Revised Statutes (2002).

⁶¹ Ibid.

⁶² Section 1-8-111(2), Colorado Revised Statutes (2002).

⁶³ Section 1-8-111(3), Colorado Revised Statutes (2002).

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ The records pertaining to Mr. Walcher were not included in the original submission of the official election records, but copies of the application were provided upon request by this office directed to the Mesa County Clerk and Recorder.

Section 1-8-104(3), Colorado Revised Statutes requires an application for absentee ballot to be filed no earlier than January 1 immediately preceding the election and no later than the close of business on the Friday immediately preceding the election; except that, if the applicant wishes to receive the absentee ballot by mail, the application shall be filed no later than the close of business on the Tuesday immediately preceding the election. Inasmuch as Mr. Walcher failed to meet the time constraints, he was unable to vote by absentee ballot. However, had an absentee ballot been mailed or delivered but not returned to the designated election official, Mr. Walcher could have voted a provisional ballot at the voter's polling place in lieu of returning an absentee ballot.⁶⁸ The election records do not reflect any provisional ballot affidavits, ballots, or envelopes executed by Mr. Walcher. John A. Mall is an example of an individual who requested and received an absentee ballot, but had not delivered or returned it to the designated election official as required by state law. Mr. Mall voted a provisional ballot.

14. Absentee Ballots Envelopes Were Double Stamped.

Bjorklund alleges that upon viewing rejected absentee ballot envelopes, multiple ballot envelopes that had been date stamped with one received date only to have the receipt date scratched out with a pen and a new date stamp (August 14, 2002, the day after the election) applied to these envelopes.⁶⁹ The Mesa County Clerk and Recorder responds that clerical errors occur as part of the human element of running elections. Further, the response points out that elections staff may have inadvertently date stamped received ballot envelopes before changing the date stamp. An examination of the election records submitted verifies what Bjorklund alleges. However, the mere fact that the error is clearly documented on the face of the envelope does not prove wrongdoing. To the contrary, it proves human error. An effort to willfully thwart the legitimacy of the outcome of an election would entail knowledge of how the voter voted in advance which is not possible in this case because the envelopes remain closed and sealed. An additional step would be required by the perpetrator to change the date stamp to an earlier date, mark through the date entry, and then reset and stamp the date of delivery to the election official to a date after the date of election. There is no evidence of such wrongdoing. A close examination of all rejected absentee envelopes reveals that the envelopes are and have remained sealed. The condition of the envelopes, as well as the documentation on the face of the envelopes, reflect that human error in failing to set the current date on the date stamp occurred. The evidence further shows that upon finding of

⁶⁸ In 2002, provisional ballot laws of Colorado permitted a voter to whom an absentee ballot had been mailed or delivered and had not been returned to the designated election official to cast a provisional ballot at the voter's polling location in lieu of returning an absentee ballot. (See Section 1-9-304, Colorado Revised Statutes.) In 2003, the General Assembly of Colorado repealed this provision; however, since the election in dispute occurred in 2002, Mr. Walcher had an opportunity to cast a provisional ballot, but did not. (See also Rule 26.2, Election Rules of the Secretary of State (2002)).

⁶⁹ As noted in paragraph 11, absentee ballot envelopes must be received by the local election official by 7 p.m. on Election Day. As a method of accounting for absentee ballot envelopes, the local election official date stamps all envelopes received on the date of receipt of the actual absentee ballot envelope. Therefore, absentee ballot envelopes received after that date and time are, nevertheless, received by the clerk and a notation is made by a date stamp reflecting the actual date of receipt. Based upon the date and time of receipt, the election judges then either count or deny the count of the ballot. Ballots received after 7 p.m. on Election Day are not counted.

human error, corrective documentary steps were taken to correctly reflect the disposition of the absentee ballot envelopes.

15. Provisional Ballots Inconsistently Accepted or Rejected.

Bjorklund asserts that upon inspection of provisional ballot envelopes, many of the envelopes were reflected as being rejected for not having the person's name printed in the affidavit where it states: "I, _____, do solemnly affirm", however, the voter executed other required fields in the affidavit. (See Exhibit 12.) The official records affirm Bjorklund's assertion. There is also evidence in the official records that some votes were counted in other precincts reflecting the same deficiency. (See Exhibit 12.) (Note: These exhibits constitute the total record with regard to all ballots showing a disparate treatment of the interpretation of votes.) The Mesa County Clerk and Recorder responds that the August 2002 primary election was the first time provisional ballots were allowed in any election in Colorado. As a result, the office may not have adequately provided standardized procedures and training for staff to follow in processing provisional ballots. The Mesa County Clerk and Recorder's office acknowledges the receipt of the Election Rules of the Secretary of State and Attorney General Opinions that provide guidance in the treatment of provisional ballots and has taken the positive role of training election judges and staff on the laws and rules pertaining to provisional ballots. Therefore, internal procedures have been established to prevent any future discrepancies in treatment of provisional ballots.

At all primary and November coordinated elections conducted pursuant to Title 1 of the Colorado Revised Statutes, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the registration list for the precinct or upon examination of records on file with the county clerk and recorder shall be entitled a provisional ballot upon completion of the provisional ballot affidavit.⁷⁰ Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot shall be secured and deposited in a ballot container.⁷¹ All provisional ballots voted are required to remain sealed in their envelopes for return to the county clerk and recorder or designated election official.⁷²

Upon receipt of a provisional ballot, the county clerk and recorder or designated election official is required to verify the information contained in the provisional ballot affidavit using the procedures that apply to absentee ballots.⁷³ If the information cannot be verified, the ballot shall be rejected.⁷⁴ In order to determine the validity of the provisional ballot affidavit (before opening any provisional ballot envelope) one of the receiving judges, in the presence of a majority of the receiving judges, is required to inspect the affidavit on the provisional ballot envelope. The election judge then

⁷⁰ Section 1-9-303, Colorado Revised Statutes. It should be noted that in 2003, substantial changes were made to provisional voting statutes. Inasmuch as the complaint arises from an election prior to the new enactments, all legal references are to the laws in effect in 2002.

⁷¹ Ibid.

⁷² Section 1-9-301(2), Colorado Revised Statutes (2002).

⁷³ Section 1-9-303, Colorado Revised Statutes (2002).

⁷⁴ Ibid.

compares the signature on the self-affirmation with the signature of the eligible elector on file in the county clerk and recorder's office.⁷⁵ (Emphasis added.) The provisional ballot affidavit is valid if: (1) the affidavit was completed by the elector or a person acting in the elector's behalf, (2) the affidavit was signed by the elector or, if the person was unable to sign, marked by the elector with or without assistance and witnessed by another person, and (3) in a coordinated election held by the county clerk and recorder, the signature on the affidavit matches the signature on file in the county clerk and recorder's office, or the eligible elector's mark on the application and the self-affirmation was witnessed by other persons.⁷⁶

The Uniform Election Code of 1992 is statutorily required to be liberally construed so that all eligible electors may be permitted to vote and those who are not eligible electors may be kept from voting in order to prevent fraud and corruption in elections.⁷⁷ Substantial compliance with the provisions or intent of the Uniform Election Code of 1992 shall be all that is required for the proper conduct of an election to which this code applies.⁷⁸

As noted above, an applicant for a provisional ballot was required to fill out a provisional ballot envelope. The applicant was required to print the elector's name in full; the elector's date of birth; the elector's residence address; the elector's sex; the elector's party affiliation; the elector's previous address, including the county in which the elector was previously registered to vote; the elector's deliverable address if different from the residence address; whether the elector is native-born or a naturalized citizen of the United States; the agency where the elector registered to vote if registered at a designated agency pursuant to the National Voter Registration Act of 1993; the elector's social security number (optional); the elector's Colorado Driver's License Number (optional); and the Colorado Photo ID number (optional).⁷⁹ Thereafter, an affidavit containing a blank for the name of the elector to be filled out by the elector and a place for signature and date of execution were required to be filled out. Several provisional ballot envelopes were received that reflected a failure of the elector to fill in his or her name in the provisional ballot affidavit. Nevertheless, on each occasion, the elector filled out all of the personal data and affixed his or her signature and date of execution. (See Exhibit 13 for examples.)

⁷⁵ Section 1-8-304(1)(a), Colorado Revised Statutes (2002).

⁷⁶ Section 1-8-304(1)(b), Colorado Revised Statutes (2002).

⁷⁷ Section 1-1-103(1), Colorado Revised Statutes (2002).

⁷⁸ Section 1-1-103(3), Colorado Revised Statutes (2002).

⁷⁹ See Rule 26.4, Election Rules of the Colorado Secretary of State (effective January 1, 2002). (Section 10-1-107(2)(a), Colorado Revised Statutes (2002) authorizes the Secretary of State to promulgate such rules as the Secretary of State finds necessary for the proper administration and enforcement of the election laws. Section 1-9-301(3), Colorado Revised Statutes (2002) requires that the provisional ballot envelope affidavit be printed with instructions on the voting and handling of provisional ballots drafted by the Secretary of State. Furthermore, Section 1-1-109(1), Colorado Revised Statutes (2002) authorizes the Secretary of State to approve all forms required by Title 1, which forms shall be followed by county clerk and recorders, election judges, and other election officials.)

The ballot of any provisional voter may be challenged by written oath or affirmation signed by the challenger under penalty of perjury setting forth the name of the person challenged and the basis for the challenge. Therefore, provisional ballots that are incomplete are subject to challenge.⁸⁰ However, in this case, there is no evidence of challenge to any provisional ballot.

State law requires substantial compliance for the proper conduct of an election and a proper safeguard of challenge to provisional ballots. It appears that, insofar as the Republican primary (which is the scope of this inquiry), the aforementioned provisional ballot envelopes were disparately treated and counted by the Mesa County Clerk and Recorder.⁸¹ In each circumstance, the elector provided adequate sufficient personal information to assist the election judge in the verification of the eligibility of the elector to vote a provisional ballot. Furthermore, in cases where the elector signs his or her signature affirming under oath that the information provided by the elector is true and correct under penalty of criminal prosecution and the elector does not fill out the blank containing his or her name in blank meets the substantial compliance requirement of the law. Furthermore, any qualified person wishing to challenge the provisional ballot could have done so, but did not. The inclusion or exclusion of the counting of these ballots did not change the outcome of the election. Finally, the actions taken by the Mesa County Clerk and Recorder in creating proper procedures in accordance with the rules and regulations promulgated by the Secretary of State and Attorney General Opinions should remediate and prevent future disparity in the treatment of provisional ballots cast in Mesa County elections in the future.

16. Other Alleged Errors

Finally, Bjorklund alleges that a review of signature cards and returned envelopes of absentee ballots revealed many errors including, but not limited to, inconsistent counts with numbers reported to the Secretary of State's office. According to Bjorklund, signature cards appeared to be missing in some precincts while in other precincts he claimed there were more signatures than there were signature cards reported. These issues are matters for the canvass board. The canvass board is required to reconcile the ballots cast in an election. They are to confirm that the number of ballots counted does not exceed the number of ballots cast in that election.⁸² In addition, the canvass board is required to certify the abstract of votes cast in any election. Evidence reflects that the

⁸⁰ Section 1-9-208, Colorado Revised Statutes (2002).

⁸¹ It is true that a number of provisional ballots were not counted by reason of an "incomplete affidavit" by reason of the failure to fill in the name of the voter even though the voter's signature was subscribed to the affidavit. In these specific circumstances, the election judges opined that the voters' failure to fill in his/her name, but still executing the affidavit by providing his/her signature, were insufficient. Such decisions made by election judges are subject to challenge by interested parties. The records do not reflect any interested party challenging this construction of the law by the election judges. An adequate remedy was available at law, but was not exercised. Challenges are permitted by law in order to review the determination and judgments made by election judges. While no challenge occurred, the rejection of this ballot would not influence the outcome of the Republican primary races involved since the number of ballots disparately treated do not overcome the difference in the final vote tally.

⁸² Section 1-10-101.5, Colorado Revised Statutes (2002).

canvass board prepared and approved a reconciliation of votes and certified the abstract according to statute in the 2002 primary election. After certifying the official abstract of votes cast, the Mesa County Clerk and Recorder transmitted to the Secretary of State's office the portion of the abstract of votes cast that contains the statewide abstract of votes cast.⁸³ While the Secretary of State has express authority to determine the method of making or certifying returns that do not conform to the requirements of state law, this office has no authority to determine how the board reconciles ballots.⁸⁴ The canvassing board made an accurate and verifiable determination of and certification of the count. Thereafter, according to state law, the Secretary of State certified the results of the election of the candidates and races involved.

17. Did The Mesa County Clerk and Recorder's Office Properly Execute Its Duty Before, During and After The Mesa County Primary Election for August 2002?

The County Clerk and Recorder of each county is required by law to take and subscribe a solemn oath or affirmation to support the constitution of the United States and of the state of Colorado, and to faithfully perform all the duties of the office upon which he or she is about to enter.⁸⁵ The standard of construction for Title 1 of the Colorado Revised Statutes requires county clerk and recorders to liberally construe the Uniform Election Code of 1992 so that all eligible electors may be permitted to vote and those who are not eligible electors may be kept from voting in order to prevent fraud and corruption in elections.⁸⁶ Substantial compliance with the provisions or intent of the Uniform Election Code of 1992 shall be all that is required for the proper conduct of an election to which the code applies.⁸⁷ Therefore, this office is bound to review the election processes employed by the Mesa County Clerk and Recorder using the statutory requirements as a measure.

As noted, multiple applications for absentee ballots were erroneously sent to individuals. The Mesa County Clerk and Recorder's office admit to this mistake. However, redundancies are built into the election process to bring errors to light for correction and can arguably protect the integrity of the election. For example, the request for an absentee ballot is logged and entered into a record. Multiple applications would be caught when individuals attempt to deliver multiple applications. When discovered, the individual would only receive one absentee ballot because the return of the request is logged and checked against the requests. Human fallibility creates error, but because safeguards and procedures are written into the law, voters may have confidence in the election process. The elections records in Mesa County clearly reflect that when errors were found, the errors were corrected consistent with state law.

There are times, however, when the law lends little assistance or instruction. Bjorklund alleges that the Mesa County Clerk and Recorder's office did not retain the

⁸³ Section 1-10-103, Colorado Revised Statutes (2002).

⁸⁴ Section 1-10-104, Colorado Revised Statutes (2002).

⁸⁵ Article XII, Section 8, Colorado Constitution. (2002).

⁸⁶ Section 1-1-103(1), Colorado Revised Statutes (2002).

⁸⁷ Section 1-1-103(3), Colorado Revised Statutes (2002).

unsigned signature cards for the primary election in 2002 and that this violates the retention of records requirement in statute.⁸⁸ The Mesa County Clerk and Recorder's Office argues that unsigned signature cards do not fall within the statutory definition of "election records". "Election records" include a list of all eligible electors in that district. The purpose of a poll book is to assist election judges in determining eligible electors who are permitted to cast their votes at an election. State law permits the use of preprinted signature cards in lieu of a poll book. As such, the pre-printed signature cards serve as a poll book. The statutory definition of "election records" offers two constructions that are consistent with regard to signed and unsigned signature cards. This issue was ultimately resolved in the case of "In re: The Request of Thomas Bjorklund For Certain Records Pursuant To The Colorado Open Records Act, C.R.S. 24-72-201 et seq.", Case No. 03-CV 408, District Court of Mesa County, Colorado. In this case, the court concluded that even though unsigned signature cards do not constitute a poll book, they were nevertheless "election records" and therefore were required (by statute) to be retained for a period of twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later. The term "poll book" is defined as "the list of eligible electors to whom ballots are delivered or who are permitted to enter a voting machine for the purposes of casting their votes at an election conducted" under Title 1, Colorado Revised Statutes.⁸⁹ Section 1-7-109, Colorado Revised Statutes (2002), sets the parameters for a "poll book." A poll book shall contain one column headed "names of voters" and one column headed "number on ballot".⁹⁰ When a preprinted signature card is provided for each eligible elector containing the elector's name, address, birth date, and, for primary elections, the elector's affiliation, the use of a poll book is not required.⁹¹ Therefore, preprinted signature cards may also constitute the computer list of eligible voters.⁹² As a result, preprinted signature card systems may be used in lieu of usual poll books. Section 1-7-110(3), Colorado Revised Statutes (2002), provides that the *completed* signature cards shall be returned with other election materials to the designated election official. (Emphasis added.) If the General Assembly intended that the unsigned signature cards be maintained in safe keeping, it would have stated that all signatures cards should be returned with other election materials. The term "election records" is defined in statute⁹³ to:

Include *but not limited to* accounting forms, certificates of registration, pollbooks, certificates of election, *signature cards*, all affidavits, absentee voter applications, absentee voter lists and records, absentee voter return envelopes, voted ballots, unused ballots, spoiled ballots, and replacement ballots. (Emphasis added.)

First, the fact that the General Assembly used the terms "but not limited to" means that the list is not all-inclusive, but could include other items consistent with

⁸⁸ Section 1-7-802, Colorado Revised Statutes (2002).

⁸⁹ Section 1-1-104(27), Colorado Revised Statutes (2002).

⁹⁰ Section 1-7-109(1), Colorado Revised Statutes (2002).

⁹¹ Section 1-7-109(2), Colorado Revised Statutes (2002).

⁹² *Ibid.*

⁹³ Section 1-104(11), Colorado Revised Statutes (2002).

documents to be used in the conduct of an election. All signature cards, whether signed or unsigned, are considered “election records”. In addition, preprinted signature cards, executed or unexecuted, constitute an “election record” for purposes of the retention of election records statute. Had the General Assembly intended that only executed signature cards be considered part of an “election record”, the statute would have so stated, but it did not. In short, signature cards, both signed and unsigned, are considered an “election record” as defined by Section 1-1-104(27), Colorado Revised Statutes (2002).

Section 1-7-105, Colorado Revised Statutes (2002), requires the election judge to prepare a return in duplicate showing "the number of eligible electors, as indicated by the poll book *who have voted* in the precinct, the number of official ballots or ballot cards received, and the number of spoiled and unused ballots or ballot cards received." (Emphasis added.) There is no statutory reference to the counting of "unused signature cards" as a proper method of vote tabulation. After vote tabulation, election judges are required to deliver to the election official, among other things, "paper tapes, "proms" or other electronic devices, the registration book, poll books, accounting forms, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, *and other election papers* and supplies.⁹⁴ (Emphasis added.) Therefore, election judges are required to return all election records including unsigned signature cards to the election official. The reason for the return of election records is to verify election results and to have proper documentation for purposes of an election challenge even though there is no statutory authority to use unsigned signature cards in the tabulation of votes.

Section 1-10-104, Colorado Revised Statutes (2002) authorizes the canvass board to make corrections of imperfect returns that "are sufficiently explicit in showing how many votes were cast for each candidate, ballot question, or ballot issue, and requires the canvassing board to “reconcile the ballots cast in an election to confirm that the number of ballots counted in that election does not exceed the number of ballots cast in that election.”⁹⁵ A similar perspective is offered in the preparation of the abstract of election. Section 1-10-105, Colorado Revised Statutes (2002), requires the abstract to refer to "the total number of votes received, with the subtotals for each county in which the candidate was on the ballot." Also, the abstract must include the "reconciled total number of active, registered voters in each county on election day" and "the percent of voter turnout in each county".⁹⁶ As such, these records pertain only to those who executed signature cards and cast a ballot. It does not pertain to unsigned cards. The law reflects similar treatment in the recounting of votes.

Even though the counting, canvassing, and preparation of the abstract rely on actual votes cast versus the actual votes counted, the destruction of unsigned signature cards indicates that the “election records” are incomplete. That is, the Mesa County election records do not, and cannot, provide an affirmative record of who did not vote. Only by retaining all cards (whether signed or unsigned) is there assurance that everyone eligible vote is accounted for.

⁹⁴ Section 1-7-701, Colorado Revised Statutes (2002).

⁹⁵ Section 1-10-101.5, Colorado Revised Statutes (2002).

⁹⁶ *Ibid.*

Pursuant to state law, the designated election official is responsible for the preservation of any election records for a period of at least twenty-five months after the election or until time has expired for which the record would be needed in any contest proceedings, whichever is later.⁹⁷ Mesa County election officials do not dispute that the unsigned signature cards were destroyed prior to the expiration of the twenty-five month period. Inasmuch as the court has held that the unsigned signature cards are “election records,” they should have been retained for the statutory period of time for all election records as prescribed by Section 1-7-802, Colorado Revised Statutes. Since we had no case law or judicial interpretation regarding the destruction of the unsigned signature cards at the time of the 2002 Republican primary, it must be pointed out the county clerk and recorders of this state, in good faith, believed that unsigned signature cards did not constitute “election records” as defined by law, and, therefore, did not need to be retained. It is nowhere evident that the Mesa County Clerk and Recorder intentionally destroyed the signature cards so as to alter the outcome of any race in the election cycle. Further, the District Court of Mesa County has interpreted this issue. It is possible that the General Assembly will ultimately settle this issue by legislation.

Mr. Bjorklund’s complaint did not have any effect on the results of the election since there is no statutory basis for any proceeding to challenge the results. The purpose of conducting an audit is to instill confidence in the election process. The voters of Mesa County have every right to expect that the August 2002 Primary Election was conducted in a lawful manner and that the lawful exercise of their rights to vote and to have their ballots counted did occur. In this case, no party has provided credible evidence to prove the willful destruction of such records. The official records reveal that of the approximately fifty-six names provided to this office either through affidavits, responses to surveys, or by reference from Bjorklund, 39 voted.⁹⁸ The remaining seventeen individuals simply did not vote in the August 2002 Mesa County Primary Elections. There is absolutely no documentary evidence to support that they did vote or that if they did vote, their votes were not counted for any reason. Comparing the number of ballots used, ballots cast, ballots spoiled, and ballots counted with the number of executed signature cards does not reflect an inconsistency. We can find no breach in the statutory and regulatory framework that creates a system of checks and balances, as well as an audit log, of all election activities on that day. We do find errors, but these errors, as stated hereinabove, do not derive from or relate to the individuals named by Bjorklund, they derive from marking of ballots and the interpretation thereof. Further, these errors do not impact the outcome of the race. These voters are not missing. Only the unsigned signature cards of those who did not vote are missing. Bjorklund would have one believe that because of the destruction of the unsigned signature cards, there was a corollary destruction of signed signature cards and resultant ballots, but there is absolutely no evidence to support this allegation. The canvassing board for the election did not find a discrepancy, nor do we. To reiterate the process, this procedure is a recount.

⁹⁷ Section 1-7-802, Colorado Revised Statutes (2002).

⁹⁸ Bjorklund alleges sixty-seven individuals attempted to exercise their right to vote, but were denied. However, in submissions by Bjorklund to this office only fifty-six names were provided. Therefore, only the voters named in the Bjorklund submission have been examined.

Mr. Bjorklund relies on the memory of the elector and upon a computer disk generated by the Mesa County Clerk and Recorder's office pursuant to an open records request ("Voter Participation Primary 08/02 disk") as evidence of wrongdoing, but the date of the generation of that disk is in dispute.⁹⁹ Mr. Bjorklund sought the assistance of Al Kolwicz of CAMBER to compare the data from the Voter Participation Primary 08/02 disk and data provided by the Secretary of State.¹⁰⁰ Mr. Kolwicz prepared a spreadsheet (which was submitted along with the Bjorklund complaint as "Exhibit B") reflecting discrepancies between Mr. Bjorklund's reports and information on the computer disk. As noted, each county clerk and recorder is required to give a monthly update of voter information to the Secretary of State.¹⁰¹ Following the election, this information is used to create a voter history for each active and inactive voter. The record is electronically generated for each election cycle. The role of the electronic data submission cannot and does not supplant or replace the official election records. The official election records speak for themselves and, as a matter of law, are the artifacts used for purposes of recount or election contest. While it is true some typographic errors were made in the preparation of the eligible elector list,¹⁰² it is also evident from the official records that voters in Mesa County requested correction of the misspelling of their names on or prior to Election Day. According to Kolwicz, the Voter Participation Primary 08/02 disk reflects data with regard to specific individuals that does not correspond with the Secretary of State disk. In fact, we found that the Voter Participation Primary 08/02 disk reflects corrections to these misspellings, while the official Secretary of State's disk does not. These variations would tend to indicate either the Secretary of State had not received the updated material or was in the process of updating the information submitted on its database. Nevertheless, the date of creation of the disk is not insignificant; the election records are. Kolwicz did not examine the election records including those that reflect written documentation signed by many of the voters requesting a change of last name or first name.¹⁰³ Many of these changes could have occurred as a result of change of marital

⁹⁹ The disk itself reflects that it was generated Monday, September 16, 2002 at 6:37:10 p.m. Mr. Bjorklund states that he purchased the disk on October 8, 2002. The Mesa County Clerk and Recorder's office argues that it was made prior to the inclusion on the database of "data entry updates from registration activities which took place from 29 days before the election through and including election day." The records of the Secretary of State reflect that the mandatory report was received from Mesa County on September 17, 2002.

¹⁰⁰ The information in possession of the Secretary of State contains the "Master file" and "Historical File" for each voter according to county. An electronic file is generated for each voter. This information is a compilation of the statutorily required reports submitted by the County Clerk and Recorder to the Secretary of State. Therefore, the Secretary of State serves as a repository of voter information for all state elections based upon actual information submitted by the County Clerk and Recorder.

¹⁰¹ In addition to the monthly reports filed by the County Clerk and Recorder, the Secretary of State's office receives corrective information electronic from all of the counties in Colorado.

¹⁰² The official records reflect for correction of misspelled names, as follows: "Sylvia Gresley" versus "Sylvia Greasley", "May Janes-Martin" versus "Mary James-Martin", "Anthony Juliano" versus "Anthony Iuliano", and "Leaanna Gearhart" versus "Leanna Gearheart" and "Zoanne Carson" versus "Zo Anne Carson". These misspellings are certainly not fatal, nor do they expose or evidence a systemic problem. Nor did these mistakes impair this examiner's ability to find necessary information.

¹⁰³ Kolwicz implies that these changes are clerical errors and, therefore, "casts doubts on the quality of the entire process." We emphatically disagree.

status or legal name.¹⁰⁴ Changes in marital status or legal name are beyond the control of the County Clerk and Recorder. In short, they are not clerical errors. Some changes occurred as a result of the required method of input of data.¹⁰⁵ In short, contrary to the representations made by Kolwicz (who admits he made a “trivial inspection”), other than the typographical errors made to the names of approximately six individuals, none of the errors rose to a level that we felt distrust.¹⁰⁶ Any person with election administration experience and who was inclined to thoroughly search all of the election records could determine how errors were made. The errors are obvious, but not systemic. They are typographical in nature, but do not harm the rights of the voter nor hinder the election official. To provide balance, voters make mistakes too. Voters, like election officials, make errors whether marking the ballot or filling out a provisional ballot application. For example, Mary L. Janes-Martin (one of the names of the voters provided by Mr. Bjorklund) filled out in her own handwriting “Mary J. Martin” in the personal information portion of the provisional ballot application and “Mary L. Janes-Martin” in the affidavit. Ms. Janes-Martin also executed the affidavit by signing “Mary L. Janes-Martin.” In addition to voter error in marking ballots, voters also failed to fill out the required information on the provisional ballot application. Many did not fill out and execute the oath. Others did not fill out statutorily required information, such as birth date, gender, and citizenship. (See Exhibit 14 for examples.)

Using the Kolwicz document and comparing it with the official election records, only one voter was not supported by the election records.¹⁰⁷ The records reflect the absence of any indicia of voting by this individual either by early voting, absentee, polling place, or provisional ballots. With the exception of this individual, I found supportive documentation for every other individual within the election records that affirms their voting in the August 2002 Primary election.

¹⁰⁴ For example, the official records reflect changes of names, such as “Jeanine Brake” to “Jeanine Brown”, “Mary Leslie” to “Mary Pickens”, “Louis Miller” to “Charles Louis Miller”, “Angela Raser” to “Angela Allen”, “Beatrice Sheldon” to “Beatrice Sheldon-Aden”, “Sharlene Matheus” to “Sharlene Turcotte”, “Kathleen Jones” to “Kathleen Jones Anderson”, and “Flora Metzner” to “Flora Weaver”.

¹⁰⁵ For example, the official records show changes in spellings of names from “Pat Obrien” to “Pat O’Brien”, “Jack Oconnor” to “Jack O’Connor”, “Karen Oconnor” to Karen O’Connor”, “Debra Odonnell” to “Debra O’Donnell”, “John Odonnell” to “John O’Donnell”.

¹⁰⁶ The current Mesa County Clerk and Recorder admits that John Anderson, John Barron, Mary Bevan, James Blankenship, Maxine Blankenship, Brian Flynn, Richard Godwin, Gayleen Henderson, George Henderson, Bobby Lundsford, John Mall, Patrick Metoyer, Douglas Norcross, Janet Prell, Janet Rowland, Judith Shue, Beverlee Taylor, and Barbara Wein were omitted as electors who voted in the election in question from Bjorklund’s Mesa Disk when the former Mesa County Clerk and Recorder prepared it. However, a search of the current Secretary of State voting records reflects that timely corrections were made to these errors. It is important to stress that the voter participation information serves as a voting history of individual voters and cannot supplant the actual election records. Voter participation records are not “election records” within the definition of the law. Voter participation records are reports generated from the election records. Erroneous or not, the early voting place ballots, absentee ballots, polling place ballots, provisional ballots, signature cards and other election records are the only records used to count and recount votes cast by eligible electors.

¹⁰⁷ The voter’s name is Kathleen Anderson Jones. While Kathleen Anderson Jones requested a change of name on the date of the primary election, her affiliation was “unaffiliated.” Absent a change of party affiliation to either Democratic or Republican on or prior to election day, as a matter of law, she would have been unable to vote for either the Democratic party candidates or the Republican party candidates.

In viewing the Voter Participation Primary 08/02 disk and the Secretary of State records, there are erroneous notations of voting history; however, in reviewing the current state database for the these individuals, we find that their voter status is “active”. Therefore, no harm has flowed from these errors. More importantly, we find there is no evidence to suggest that the votes of those who cast their ballots did not intentionally or unintentionally have their votes counted.

Mr. Bjorklund alleges that voter records (such as executed signature cards, applications for absentee ballots, etc. as well as the ballots of the named individuals who executed affidavits or responded to the survey) could have been destroyed. Examination of the election processes would not support Mr. Bjorklund’s belief. Any efforts to abridge the right to vote of these individuals would require a very large conspiracy that would be unwieldy and unsuccessful in its efforts. For instance, election officials would have to patiently wait for certain voters to make their application to vote and would have to send the absentee ballot knowing the intention of each voter. The absentee ballot would then have to be destroyed adverse to the voter’s wishes, prior to the official count done by the election judges. At the same time, the election official would have to alter the accounting of each absentee ballot or collude with the election judges to alter the outcome of the votes counted and the candidate voted for. All of this would have had to occur in the presence of official watchers of each candidate and party. For early voting, the election judges would need to know how each individual was going to vote on the DRE and somehow electronically erase that specific vote and still have the tally numbers on the DRE match with the early voting signature cards. The election judges would then have to report their actions to the local election official in order to complete the conspiracy and hope that the removed votes and signature card tallies would match. Again, all of this would have to occur in the presence of poll watchers duly designated by the parties and candidates. Provisional ballot envelopes would have to be sorted according to how a voter voted (even though the envelopes are sealed) and then destroyed, along with the signature cards, so that the final vote tally would balance all in the presence of watchers designated by the candidates and the political parties. On election day, each election judge at each polling location would have to make a concerted effort to wait for the named individual to appear, know how they are going to vote, somehow erase their vote, and still have the tallies of signature cards and actual votes cast be equal. Again all of this activity carried out in the presence of poll watchers of the candidates and political parties. Because the voters would vote at different polling locations, the collusion would have to extend to all polling places affected by the race, so that all election judges at each polling location involved in the race acted in concert—all in the presence of poll watchers designated by the candidates and political parties. In short, Bjorklund believes every participant in the election process corrupted the entire system.

The magnitude of this “grand conspiracy” defies logic and is not supported by the evidence. A close examination of the election records does not reveal any evidence of

tampering or destruction of ballots or applications. An audit of the early voting signature cards and the electronic tally; absentee ballot applications requests, returned applications, returned absentee application envelopes, and all absentee ballots; provisional ballot envelopes and ballots; and executed polling place signature cards, purple cards, and polling place ballots do not reflect any evidence of improper conduct.

Human errors that did occur were discovered because legal processes are put in place as a system of checks and balances to ensure transparent and honest elections. Furthermore, because of the statutory procedures in place, these mechanisms remedy mistakes in order to ensure the proper administration of the election. Because of these structures, any mistakes made were quickly discovered and remedied prior to any jeopardy attaching to the outcome of the election. In short, the legal infrastructure found in Title 1 worked.

What is clear, in the words of the actor, Strother Martin, in the movie, *Cool Hand Luke*, is: “What we have here is a failure to communicate.” It is true that had the Mesa County Clerk and Recorder’s office not destroyed the unsigned signature cards, Mr. Bjorklund could have found the names of those who thought they voted but had not. In retrospect, had such destruction not occurred, the filing of the complaint may never have occurred. Failures to properly communicate led to an air of misunderstanding and distrust; efforts to protect the secrecy of the vote led to accusations of alleged “cover-up” and multiple open records requests led to accusations of abuse. As a result, distrust has jaundiced the perspective of election processes and the safeguards and procedures put in place in order to ensure fair, transparent, and honest elections has been compromised. The actions taken by the Mesa County Clerk and Recorder’s office are not unique to that office. Since public policy is made at the polling place, voters must have a better understanding of all election processes, in order to properly exercise the right to vote. Therefore, we encourage all election officials to be more open about the election process. Holding an election is a tremendous undertaking that requires extensive logistical planning and coordination. While the local election official assumes this task as a statutory duty, we think it advisable to inform the public of the safeguards in place to protect the secrecy of each ballot and the security of the election. By doing so, we hope that voters will know and understand the efforts made to hold a fair, transparent, and secure election.

As to the affidavits and surveys presented by Mr. Bjorklund, we offer one personal observation. To ask whether a person voted or not is to infer how that person voted. Any candidate who has stood for election has often been amazed at the final results after having been assured by the voters he or she queried, that the individual: (1) voted and (2) cast their vote in favor of the candidate. The voter seeks the security of the secrecy of the ballot. On Election Day, the candidate has no way of knowing how voters voted or whether they voted at all. That is how it should be. Voters should neither be pressured by candidates or peers to vote a certain way, nor should they be asked to reflect upon how they voted. A safeguard to democracy—secrecy of the ballot—ensures the privacy of the vote.

It is unclear whether Mr. Bjorklund will accept these findings. We hope that this investigation brings closure. We entered this investigation looking for evidence of intentional or negligent misconduct and could find none. Our perspective was not predisposed in favor of either party, but of objectivity. To the parties involved and to the voters of Mesa County, we apologize for the length of time it has taken to conduct this examination. However, in view of the sanctity and integrity of elections, we felt that a thorough review was necessary.

Finally, the citizens of Mesa County should be reminded that the current Mesa County Clerk and Recorder was a candidate in this race and not the election official who administered the election. Since taking office in January of 2003, the current Mesa County Clerk and Recorder has served as an election official in one election. The administration and results of that election clearly reflect professionalism and integrity that should build confidence for the voters of Mesa County that they can freely vote and have their votes counted. In addition, as shown by this report, the administration of the election (which is the focus of this investigation) by the former Mesa County Clerk and Recorder has withstood the scrutiny of this office.

Mr. Bjorklund and the Mesa County Clerk and Recorder will each be provided a copy of this report. The Secretary of State will return the 32 boxes of official election records to the Mesa County Clerk and Recorder upon approval of this report.

RESPECTFULLY SUBMITTED this 23rd day of February, 2004.

Original Document Signed
Drew T. Durham
Director of the Colorado HAVA

APPROVED:

Date: February 23, 2004

Original Document Signed
Donetta Davidson
Secretary of State

This document contains 14 exhibits which are too large for practical access via this web page.

For further information please contact The Colorado Secretary of State at (303)894-2200 extension 6104.