

STATE OF COLORADO
Department of State

1700 Broadway
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Denver, CO 80290



Scott Gessler
Secretary of State

Judd Choate
Director, Elections Division

VIA E-MAIL

December 31, 2012

Boulder County Canvass Board Members:

The Honorable Hillary Hall
R. W. Boehm
Mary C. Eberle
Patricia R. Feezer
Paul H. Geissler
Daniel R. Martin
James E. Remmert

Re: Noncertification of the Boulder County 2012 General Election

Dear Boulder County Canvass Board Members:

On November 26, 2012, the Secretary of State's Office received Boulder County's 2012 General Election Certification Package containing a reconciliation report and certification documentation.¹ That certification packet also contained a letter from the American Constitution Party and Republican Party Canvass Board Members explaining the reasons they could not vote to certify the election.² That letter claims the following reasons for noncertification:

1. The Official Abstract of Votes Cast does not conform to Election Rule 41;
2. There were errors in signature verification because of the "excessive speed of verification";
3. The Bell and Howell equipment is unreliable; and
4. Canvass board members and watchers were improperly denied access to particular election activities.

Thank you for serving on the Boulder County Canvass Board and taking the time to detail your concerns. Because the canvass board did not certify the election results, our office conducted an investigation under Election Rule 41.14.3(b). We have confined our investigation to those matters that relate to the duties of a canvass board as outlined in section 1-10-101.5, C.R.S., and Election Rule 41. Having concluded our investigation, the Secretary of State has determined to accept Boulder County's election totals. This acceptance is limited to the vote totals for the purpose of the preparation of the Secretary of State's statewide abstract. The acceptance is not a certification of the Boulder County abstract.

¹ Exhibit A.

² Three members of the canvass board voted to certify the election. These members included Hillary Hall, Boulder County Clerk and Recorder, and the two Democratic Canvass Board Members, Patricia R. Feezer and Paul H. Geissler.

Investigation of Failure to Certify

1. Official Abstract of Votes Cast

The noncertification letter stated that the Official Abstract in Boulder County did not comply with Election Rule 41 for the following reasons:

- a. It did not include the number of provisional ballots by rejection code;³
 - b. It did not include the number of spoiled and damaged ballots;⁴
 - c. It did not include the results by ballot style, but rather included results by precinct;⁵
 - d. It included the total of all registered electors, but rule requires it to include the total of active registered electors;⁶ and
 - e. It reflected that six precincts had more total votes counted than total ballots cast.
- a. Number of provisional ballots by rejection code

Whether the Official Abstract included the number of provisional ballots by rejection code does not have the potential to affect the outcome of any race or ballot measure. Therefore, it is outside the scope of our investigation.

- b. Number of spoiled and damaged ballots

Similarly, whether the Official Abstract included the number of spoiled and damaged ballots is outside the scope of our investigative authority and will not be addressed in this letter.

- c. Results by ballot style was allegedly improperly not included

For the same reasons as stated previously, whether the results by ballot style was allegedly improperly not included in the Official Abstract is outside the scope of our investigation. As such, this letter will not address the matter.

- d. Total of all registered electors was allegedly improperly included

Whether the total of all registered electors was allegedly improperly included in the Official Abstract does not have the potential to affect the outcome of any race or ballot measure. As such, it is outside the scope of our investigative authority.

While each of the above expressed concerns do not have the potential to affect the outcome of any race or ballot measure and were therefore not considered in our investigation, our office will continue to work with Boulder County to ensure compliance with Election Rule 41.

- e. More total votes counted than total ballots cast

³ Election Rule 41.8.3(g).

⁴ Election Rule 41.8.3(h).

⁵ Election Rule 41.8.3.

⁶ Election Rule 41.8.3(b).

During the Department of State's investigation, we were particularly interested in the six precincts that had more ballots counted than cast.⁷ Based on the information provided and the documentation supplied, there are a number of different scenarios that could account for the discrepancies. For example, it was reported polling place judges gave the wrong ballot style, but in balancing the entire polling place, the number of votes tabulated corresponded to the number of voters that received vote credit. In each instance, our office is satisfied that Boulder County took reasonable steps to correct the discrepancies.⁸ It is our understanding that these particular discrepancies are attributable to human error. Elections are a human-driven process with the potential for mistakes. While mistakes are inevitable, we strive to improve the process. Our office will continue to work closely with each county to mitigate issues as they arise and put procedures in place to prevent the same issues in future elections.

Further, there is sufficient evidence to conclude that the Boulder County Clerk did not properly account for every ballot in Boulder County. However, the discrepancies are administrative in nature in that the discrepancies do not have the potential to change the outcome of any race or ballot measure. Further, the returns are sufficiently explicit in showing how many votes were cast for each candidate and ballot question.⁹ As such, our office accepts the accuracy of the election returns submitted by the Boulder County Clerk.

2. Alleged Errors in Signature Verification

The noncertification letter raised several concerns regarding the signature verification process in Boulder County, including the excessive speed of verification and election judges' failure to reference the codes outlined in Election Rule 29.2.¹⁰ Because these concerns do not have the potential to change the outcome of any race or ballot measure, it is outside the scope of our investigative authority.¹¹ But our office takes these concerns seriously and will continue to develop processes and procedures to ensure uniform signature verification procedures in the future.

3. Bell and Howell Equipment

The noncertification letter also raised concerns regarding the Bell and Howell Equipment. Specifically, it alleged that the Bell and Howell Equipment was not operating properly throughout the election and it has not been certified by the Secretary of State as a voting system component.¹² The certification of the Bell and Howell Equipment is the subject of an official complaint our office received and will be addressed in a proceeding under HAVA procedures.

4. Access to Particular Election Activities

⁷ See Election Rule 41.14.3(b) and Exhibit A, Letter re: Noncertification of the Boulder County 2012 General Election, page 4.

⁸ Exhibit B, Additional Notes on Boulder Ballot Reconciliation.

⁹ See section 1-10-104(1), C.R.S.

¹⁰ Exhibit A, Letter re: Noncertification of the Boulder County 2012 General Election, page 5.

¹¹ See Election Rule 41.14.3.

¹² Exhibit A, Letter re: Noncertification of the Boulder County 2012 General Election, page 9.

The noncertification letter alleges that canvass board members and watchers were improperly denied access to particular election activities, including the ballot printing and mailing, voter intent resolution, early voting, and verification of provisional and UOCAVA ballots.¹³

Whether individuals were improperly denied access to election activities is outside the scope of our investigation and it is not within the purview of the canvass board.¹⁴ Yet watchers play a vital role in the election process and our office is committed to transparency and will continue to develop rules and procedures that provide watchers with a meaningful opportunity to observe election activities.

Again, our office thanks you for your service on the Boulder County Canvass Board and the diligence you brought to the position. Please do not hesitate to contact me with any further questions or concerns you may have.

Sincerely,



Suzanne Staiert
Deputy Secretary of State

¹³ Exhibit A, Letter re: Noncertification of the Boulder County 2012 General Election, page 11.

¹⁴ See section 1-10-101.5, C.R.S. and Election Rule 41.14.3.