

Date: August 3, 2022  
Re: Minority Report Recount Larimer County

I would like to confirm that the Clerk and Recorder and staff in the Larimer County Counting Facility were attentive and thorough in answering my questions during the canvass board for the recount. The Clerk and Recorder, and her staff, paid careful attention to the Colorado Election Rules and recount guidance provided by the Colorado Secretary of State Jena Griswold. However, in some instances, the Rules and guidance appear to violate the Colorado Revised Statutes (CRS).

Secretary of State Republican candidate Tina Peters requested a recount and provided justification for using a hand recount. The basis for the recount is that the Dominion counting machines are not reliable, secure, and do not preserve all electronic voting records as required by Colorado and Federal Statutes. This Minority Report documents the failure of Secretary Griswold to conduct the requested recount in accordance with statutory requirements. Because of this failure by Secretary Griswold, I am voting not to certify the 2022 Larimer County Primary Election Recount. The recount as conducted by the Secretary deprived the candidate, Tina Peters, and the citizens of Colorado, the full protections provided by the Colorado Revised Statutes (CRS), to a fair, transparent, and accurate election, including the right to a hand recount. The relevant statutes (in particular the highlighted section) for my decision are addressed below.

During the recount, at my request, the Larimer County election officials provided me with documentation of the 3 primary duties of the canvass board for the recount (as described in Rule 10.3.2) in accordance with section 1-10.5-107 CRS.

1. Selecting ballots for the random test.
2. Observing the recounting of ballots.
3. Certifying the results.

The canvass board was prevented from fulfilling the first 2 duties, as required by the CRS, as follows:

**1. Selecting ballots for the random test.**

Relevant Statute: *CRS 1-10.5-102 (3)(a)(II)*

*(3)(a) Prior to any recount, the canvass board shall choose at random and test voting devices used in the candidate race, ballot issue, or ballot question that is the subject of the recount. The board shall use the voting devices it has selected to conduct a comparison of the machine count of the ballots counted on each such voting device for the candidate race, ballot issue, or ballot question to the corresponding manual count of:*

*(II) For an election taking place in a county on or after the date the county has satisfied the requirements of section 1-5-802 , the voter-verified paper records.*

Interpretation of highlighted text: The canvass board is required to choose at random and test the voting devices, and to use these devices to compare the machine count of the ballots counted on these voting devices for the candidate race, using the voter-verified paper records. The relevant statute was not met for two reasons. During the recount random test, the canvass board was provided with a preselected set of 195 test ballots, which were also used prior to the primary election for the Logic and Accuracy Test. These test ballots were not appropriate for the recount. As a result, the canvass board was not given the opportunity to select the ballots as provided for by statute, and they did not use voter-verified paper records, thus the requirements of this statute were not met.

## 2. Observing Recounts of the Ballots

Relevant Statute: *CRS 1-10.5-107 (3). Canvass board to conduct recount.*

*The canvass board may require the production of any documentary evidence regarding any vote cast or counted and may correct the abstract of votes cast in accordance with its findings based on the evidence presented*

Interpretation of highlighted text: At the recount, I requested the recount Cast Vote Record (CVR) because the recount process does not allow an independent evaluation of the vote tallies, which is done via Dominion software and cannot be viewed or verified by election watchers or canvass board members. This request was denied because the election staff determined that the CVR was not necessary to fulfill the requirements of the canvass board. However, the only processes the canvass board can observe are a count of the ballots scanned, and adjudication of undervotes and overvotes. The use of Dominion software prevents the canvass board from determining the accuracy of the cast vote tallies for each of the SOS candidates, Consequently, I was denied access of this documentary evidence needed to fully observe the recount of the voter-verified paper records.

Relevant Statute: *CRS 1-10.5-102 (3b). Recounts for State offices.*

*If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are identical, or if any discrepancy is able to be accounted for by voter error, then the recount may be conducted in the same manner as the original ballot count. If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are not identical, or if any discrepancy is not able to be accounted for by voter error, a presumption shall be created that the voter-verified paper records will be used for a final determination unless evidence exists that the integrity of the voter-verified paper records has been irrevocably compromised. The secretary of state shall decide which method of recount is used in each case, based on the secretary's determination of which method will ensure the most accurate count, subject to judicial*

*review for abuse of discretion. Nothing in this subsection (3) shall be construed to limit any person from pursuing any applicable legal remedy otherwise provided by law.*

Interpretation of highlighted text: The intent of this candidate-requested recount is to ensure that the results of the manual (i.e., hand count) are not different from the results of the machine count for the voter-verified paper records. Note that test ballots are not appropriate for the random text because “voter error” is not an issue with test ballots indicating that the voter-verified paper records should be used for the test.

Secretary Griswold has an obligation to ensure that the most accurate count is achieved in the recount. Without comparing the results of manual and machine counts, the Secretary cannot determine which is the most accurate, and by refusing the candidate’s request for a hand recount, the Secretary assumes she knows which approach is most accurate without actually verifying that her assumption is correct.

The only method used by the Secretary to evaluate the accuracy of the machine count is the Risk Limiting Audit (RLA). The RLA conducted in this election was controlled by Secretary Griswold, who identified all ballots to be audited, without providing the crosswalk between the pseudorandom number generator and the audited ballots. Consequently, the randomness (and lack of bias) in the selection of audited ballots cannot be independently verified by the canvass board. In Larimer County, approximately 60 Republican ballots were audited during the RLA, which is inadequate to reassure the electorate that the results from the Dominion machines are accurate.

From Lindeman and Start (2012) provided by the SOS on their web page (<https://www.coloradosos.gov/pubs/elections/VotingSystems/riskAuditResources.html>) “Risk-limiting audits address limitations and vulnerabilities of voting technology, including the accuracy of **algorithms used to infer voter intent**, configuration and programming errors, and malicious subversion. Computer software **cannot be guaranteed to be perfect or secure, so voting systems should be software-independent**. ... If a jurisdiction’s procedures for protecting the audit trail are adequate in principle, ensuring compliance with those procedures (possibly as part of a comprehensive canvass or a separate compliance audit) can provide strong evidence that the audit trail is trustworthy. If the **compliance audit does not generate convincing affirmative evidence** that the ballots have not been altered and that no ballots have been added or lost, **a risk-limiting audit may be mere theater**.” (<https://www.stat.berkeley.edu/~stark/Preprints/gentle12.pdf>) (emphasis added).

The Secretary defined RLA process, as observed at the Larimer County Counting Facility, is only sufficient to verify that the paper ballot resembles the computer scan of such ballot, but is not sufficient for election judges, election watchers, or the canvass board to confirm that the audited ballots were correctly tallied. Specifically, the RLA software comparison of ballot and vote tally is controlled by Secretary Griswold, consequently, the electors must take it on faith that the target risk limit (3%) was achieved. In reality, a hand count audit of randomly selected ballots is the only transparent way to audit ballots and votes cast, thus providing elector confidence in the

audit and, in turn, the results of the election. The RLA, as implemented by Secretary Griswold, does not fulfill the responsibilities of the Secretary to the electors of Colorado and could be considered “mere theater.”

In summary, the purpose of the hand recount requested by Tina Peters is to determine the validity of the election outcome based on machine counts. The intent and spirit of Colorado law clearly provides for a hand recount as a potentially preferable method to evaluate the results of machine counting rather than simply repeating a machine recount with the same inherent “limitations and vulnerabilities” as the original count. Further, the law clearly considers the potential abuse of power, or poor decisions, by the SOS, by inviting judicial review (“*subject to judicial review for abuse of discretion*”).

Secretary Griswold is in violation of her duty to ensure safe, secure, and verifiable elections for the citizens of Colorado. The circumstances surrounding this recount present a strong case for judicial review. Because Secretary Griswold is also running for SOS, she has a clear conflict of interest in the outcome of the election and recount. It is hard to understand why Secretary Griswold would refuse the opportunity to demonstrate that the election results from the Dominion machines are accurate, when a hand recount, paid for by Tina Peters, would address this question. The Secretary’s unfathomable refusal to allow a hand recount gives the appearance that she has something to hide or something to gain by running against Pam Anderson.

Additional concerns about the accuracy, transparency, and reliability of the recount: Dominion machines, according to the Federal Elections Commission, Voting System Standards (2002) used in the Colorado elections should:

- a. Be secure (cannot be hacked),
- b. Be reliable
- c. Maintain all electronic records according to State and Federal Statute

The Dominion ICX machines, similar to the ones used to duplicate ballots, have been proven to be hackable (<https://www.cisa.gov/uscert/ics/advisories/icsa-22-154-01>). This is sufficient evidence to call into question the security of all Dominion machines and consequently violates the security requirement of the Federal Elections Commission.

As an election watcher during the Primary Election in the Larimer County Counting Facility, I observed the ballot duplication election judges create a duplicate ballot using the ICX machines. Although the bipartisan election judges verified that the screen image of the paper ballot was duplicated correctly, the procedures failed to verify that the printed duplicated ballot matched the original ballot. Only 1 duplicated ballot was included in the RLA but over 2100 unverified duplicated ballots, not original ballots, were used in the recount. In addition, approximately a dozen valid votes for one candidate were incorrectly identified as “overvotes” by Dominion, demonstrating inaccuracies in determining voter intent by the Dominion software. This violates the reliability requirement of the Federal Elections Commission.

In Mesa County, the "Trusted Build" has been shown to overwrite election files, thus violating the requirement that all election related files be preserved by Colorado law for 25 months after the election or by federal law for 22 months after the election.

As a result, the Dominion machines, as used in Colorado, do not meet the statutory requirements of being secure, reliable and saving all electronic records.

Related concerns:

Additional election records requested by Tina Peters as part of the recount have not been provided prior to the Canvass for the recount:

- Cast Vote Records (CVR)
- Ballot drop box records
- Video surveillance (e.g., for ballot drop boxes, Larimer County Counting Facility)
- Signature verification records
- Voter registration
- Voter history and electronic voting system logs concerning the candidates' race.

On Election Day, June 28, 2022, the Agilis machine jammed (described as a Sort-time out which means there was a lagging in latency of the camera and computer). A hard reboot was needed to clear the memory. The Agilis machine returned to working order after the hard reboot, however, the Signature Verification teams had about 3 hours of time during which they were not working to verify signatures following the sort-time out. Because the Agilis system accesses the internet to share voter information and data with SCORE, security issues are of concern, and a fully verifiable explanation of what occurred with the Agilis system is necessary to alleviate concerns of the voters.

A lawsuit was filed by Judicial Watch against Secretary Griswold because of violations of the National Voter Registration Act of 1993. The judge has allowed the court case to move forward with cleaning up the Colorado voter rolls. Voter rolls need to be rebuilt to identify only legitimate voters. Indeed, there were over 10,000 ballots returned in Larimer County as undeliverable during this 2022 Primary election. This does not include ballot envelopes that were received with "deceased" or "moved" written on the envelope (observed during signature verification). Because signature verification allows a signature stamp or key pad signature to be used and signatures are available online (e.g., on recorded documents), it is impossible to verify that a registered voter was the person who cast a mail-in ballot simply by comparing reference signatures to scanned images of ballot envelope signatures. Furthermore, 1st level signature verification is subject to the opinion of one individual election judge, which is the only time throughout the entire election process that bipartisan teams are not used. Accurate voter rolls are critical to a fair and accurate election, especially when 252,038 ballots were mailed out and the identity of the person casting the mail-in ballot cannot be verified.

As a representative of the Larimer County Republican Party on the recount canvass board, my responsibility is to the electorate of Larimer County. There is increasing

concern and disenfranchisement among voters due to emerging and compelling evidence that our elections are not safe, secure, and reliable. There is well-documented evidence of fraud and illegality from the 2020 elections in half a dozen swing States, as well as Mesa County. Secretary Griswold's actions are not in compliance with the CRS, and consequently she is not meeting her responsibility to the citizens of Colorado.