

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver CO 80202</p> <hr/> <p>Plaintiffs: Ron Hanks, Amy Mitchell, Gary Moyer, Jeff Rector, individually and as county commissioners; Merlin Klotz, individually and as Clerk and Recorder for Douglas County, Colorado, and Dallas Schroeder, individually and as Clerk and Recorder for Elbert County</p> <p>v.</p> <p>Defendant: JENA GRISWOLD, individually and as Colorado Secretary of State</p> <hr/> <p>Plaintiff's Attorney: John Case, Atty reg. # 2431 John Case, P.C. 5460 S. Quebec St. #330 Greenwood Village CO 80111 Phone: (303) 667-7407 FAX: (303) 648-4786 E-mail: brief@johncaselaw.com</p>	<p>Case No: 2021CV033691</p> <p>Courtroom: 280</p>
<p>PLAINTIFF DALLAS SCHROEDER'S RESPONSES TO DEFENDANT'S ELECTION ORDER 2022-04</p>	

Dallas Schroeder, through counsel, responds to Election Order 2022-04 subject to, and without waiving, all of the fifteen objections below.

FIRST OBJECTION: Rule 20.5.4 exceeds the secretary's statutory authority, and therefore, compliance with the rule cannot be compelled. Rule 20.5.4 is arbitrary and capricious, is an abuse and clearly unwarranted exercise of discretion, violates constitutional rights and privileges of voters under Article VII of the Colorado Constitution, and violates Mr. Schroeder's rights and privileges as clerk and recorder of Elbert County under Article VII of the Colorado Constitution and the Colorado election code.

52 USC § 20701 requires every officer of election, including Mr. Schroeder and the secretary of state, "to retain and preserve, for a period of twenty-two months" from the date of an election, "all records and papers" relating to the election. The materials covered by § 20701 extend beyond "papers" to include other "records." Jurisdictions must therefore also retain and preserve records created in digital or electronic form. See DOJ publication "Federal Law Constraints on Post-Election Audits" 7/28/21, p. 2. The phrase "all records and papers" includes all electronic files related to an election, including log files and all other files on the

computerized election system, that relate to any event that happened on any component of the computerized election system during an election.

C.R.S. § 1-7-802 requires county clerks to preserve “any election records” for a period of twenty-five months.

CCRs, including Dallas Schroeder, do not employ on their staff cyber-security experts with the skills and experience necessary to assist in making a forensic image of election records on the voting system. In order to comply with the above statutes, county clerks and recorders (“CCRs”), including Dallas Schroeder, must engage independent cyber-security experts who can, among other things, assist in preserving election records by making a forensic image of election records on every component of the voting system after an election.

To ensure compliance with the above statutes, all CCRs should be required to make a forensic image of election records on every component of the voting system after each election, and they should be permitted to engage appropriate experts to assist them. Rule 20.5.4 should recognize that CCRs may require the use of independent cyber-security experts to discharge their duties and should encourage them to do so. Instead, Rule 20.5.4 prohibits CCRs from complying with their statutory duties to preserve election records. Rule 20.5.4 forces CCRs to choose between obeying the statutes, or following the rule. The secretary does not have statutory authority to prevent CCRs from preserving election records. Therefore, the rule is unenforceable by the secretary.

SECOND OBJECTION. The term “access” is not defined in the election code definitions C.R.S. §1-1-104, or Colorado Election Rule 1.1. With respect to computers, the Merriam Webster dictionary definition of the verb “to access” is “to open or load (a computer file, an Internet site, etc.)” Statement 1 and Question 1.1 imply that John Case and another attorney were able to look at computer files. This is not true. At all times each of the two hard drives on which forensic images of election records were preserved have remained inside a sealed pouch. After being placed in a secure pouch, the first external drive was then placed inside a metal box, with chain of custody preserved.

THIRD OBJECTION. The phrase “components of the voting system” in Statement 1 and Question 1.2 is misleading and incorrect. The external hard drives are not part of the Elbert County voting system hardware, firmware, or software, and never have been. It is Mr. Schroeder’s understanding that the external hard drives cannot be used to perform any of the functions listed in the definition of “voting system,” Election Rule 1.1.45. Mr. Schroeder has never looked at the images on the external hard drives. He believes that each external hard drive contains a forensic image of the voting system as it existed 8/26/2021. It is Mr. Schroeder’s understanding that the image cannot be altered, modified, or used to perform computer functions.

FOURTH OBJECTION: Rule 20.6.2 concerns “removable storage devices,” a term which is not defined in Election Rule 20.6.2 or Election Rule 1.1. The Logic Cube Forensic Falcon Neo device is not a “removable storage device,” as the term is used in Rule 20.6.2. The Logic Cube Forensic Falcon Neo acts as a read only intermediary that copies the voting system hard drive without being able to alter existing data or write new data. The Logic Cube Forensic Falcon Neo was not inserted into any component of the voting system. The external hard drive that was used to store the forensic image of the voting system was never connected to any component of the voting system. It only received a copy of the forensic image from the Logic Cube Forensic Falcon Neo device. This is the technique for forensic read-only imaging of computer hard drives specified in U.S. Department of Justice guidance such as “Forensic

Examination of Digital Evidence: A Guide for Law Enforcement,” and “Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition” which preserves digital evidence without alteration of the original hard drive or the data it contains. On August 26, 2021, Mr. Schroeder made a forensic image of five hard drives of the Elbert County voting system. His purpose was to preserve records of the November 2020 election as required by 52 USC § 20701 and C.R.S. § 1-7-802. The next day, on August 27, 2021, one agent of the secretary of state and two representatives from Dominion Voting Systems performed the “trusted build” of the Elbert County voting system. Mr. Schroeder believes that during the trusted build, these representatives verified the integrity of the voting system. Prior to the November 2021 election, the voting system was tested according to Secretary of State and Dominion Voting Systems procedural and technical guidance and performed to specifications. The voting system appeared to function normally during the November 2021 election. There is no reasonable basis to claim that making a forensic image of the Elbert County voting system on August 26, 2021, for the purpose of preserving election records of the November 2020 election, interfered in any way with the proper operation of the system, or violated any election rule. Furthermore, the secretary of state instructed county clerks to “backup election projects” before the trusted build, which is what Mr. Schroeder did.

FIFTH OBJECTION. The external hard drives were not “inserted into voting equipment hard drives by the use of Logic Cube Forensic Falcon Neo device.”

SIXTH OBJECTION. The secretary does not have power to compel answers to interrogatories or to compel the production of documents and things unless an election is being conducted. Here, no election is being conducted, so the secretary has no power to compel answers to interrogatories or compel the production of documents or things.

SEVENTH OBJECTION. The requests for answers are improper written interrogatories in the above captioned litigation. They are improper because the case is not at issue and discovery has not commenced. The requests for production of documents and things are improper requests for production in the above captioned litigation. They are improper because the case is not at issue and discovery has not commenced.

EIGHTH OBJECTION. The request is overbroad and ambiguous.

NINTH OBJECTION. The request is oppressive.

TENTH OBJECTION. The request calls for hearsay.

ELEVENTH OBJECTION. Part of the information requested is protected by the attorney client privilege.

TWELTH OBJECTION. Part of the information requested is protected attorney work product.

THIRTEENTH OBJECTION. The secretary has no statutory authority to direct that Mr. Schroeder, or anyone else, not provide the images or copies of the images to any other party, nor to demand knowledge of whether or not he has. Mr. Schroeder’s position is that records of the November 2020 election and other data on the Elbert County voting

system is public information that is subject to the Colorado Open Records Act. Ballots are cast in secret, but the public must know how the votes are counted. If the vote counting process is kept secret, Colorado citizens will not have confidence in the election results.

FOURTEENTH OBJECTION. The secretary has no statutory authority to compel the production of the Logic Cube Forensic Falcon Neo device.

FIFTEENTH OBJECTION. The secretary has no authority to request or compel Mr. Schroeder to comment on any activity unrelated to the immediate conduct of elections and compliance with statute and rule within Elbert County.

1. Rule 20.5.4

The response received on behalf of Clerk Schroeder indicates that two copies of the images made were provided to John Case and a “private attorney.” At this time, the Department of State has no information to indicate that either of these individuals are authorized to access these components of the voting system. In the absence of such authorization, their possession of images of the hard drives of these voting system devices is in violation of Election Rule 20.5.4. Accordingly, I order the following:

1.1 Clerk Schroeder will provide any information and documents establishing that John Case and the “private attorney” are authorized to access these voting systems components.

RESPONSE TO #1.1. Mr. Schroeder incorporates objections 1-3, and 6-7. Mr. Schroeder states that John Case and the private attorney never “accessed” any “voting systems components.”

1.2 If no such information or documents exist, Clerk Schroeder will retake possession of all copies of the images created on August 26, 2021 or at any other time.

RESPONSE TO 1.2. Mr. Schroeder incorporates objections 1-3, and 6-7. Mr. Schroeder states that the two hard drives are subject to his control and have been placed for safekeeping in compliance with 52 USC §20701 and DOJ publication “Federal Law Constraints on Post-Election Audits” 7/28/21.

1.3. Clerk Schroeder will place all copies of the images created on August 26, 2021, or at any other time in a secure location with tamper evident seals and a chain of custody log.

RESPONSE TO #3. Mr. Schroeder incorporates objections 1-3, and 6-7. Mr. Schroeder states that the images made August 26, 2021, are the only images that he made of election records stored on the Elbert County voting system. Those images are stored on an external hard drive that is secure, as explained in the Second Objection and in responses to 1.1 and 1.2 above. On September 2, 2021, Mr. Schroeder copied the images on the external hard drive onto a second external hard drive. The second external hard drive is secure, as explained in the Second Objection and responses to 1.1 and 1.2 above.

1.4. Clerk Schroeder will provide proof to the Department of State that these actions have been completed no later than 48 hours after the issuance of this order.

RESPONSE TO 1.4. Mr. Schroeder incorporates objections 1-3 and 6-7. Mr. Schroeder states that the demand for a response within 48 hours is unreasonable. Mr. Schroeder further states that it was impossible for him to respond within 48 hours. Proof of compliance is stated in responses 1.1, 1.2, and 1.3 above.

1.5. Clerk Schroeder will confirm, in writing, that the individuals who have had access to any images created by the Clerk:

- a. Have not accessed those images in any way, and Clerk Schroeder will provide an explanation of how he knows this; or
- b. Have not provided those images or copies of those images to any other individuals, groups, websites, or the public generally, Clerk Schroeder will provide an explanation of how he knows this.

RESPONSE TO 1.5. Mr. Schroeder incorporates objections 1-3, 6-7, and 13. Mr. Schroeder states that the custodians of the two external hard drives have assured him that nobody has opened the metal box, or the storage pouch, and nobody accessed the images on the external hard drives. Mr. Schroeder believes that the Secretary has no statutory authority to direct that Mr. Schroeder, or anyone else, not provide the images or copies of the images to any other party, nor to demand knowledge of whether or not he has. Mr. Schroeder's position is that records of the November 2020 election and other data on the Elbert County voting system is public information that is subject to the Colorado Open Records Act.

2. Rule 20.6.2

The response received on behalf of Clerk Schroeder indicates that a Logic Cube Forensic Falcon Neo device was used to create images of several voting systems hard drives. The use of this device may be in violation of Election Rule 20.6.2, which prohibits the use of certain removeable storage media. Accordingly, I order the following:

2.1. Clerk Schroeder will provide the Logic Cube Forensic Falcon Neo device to the Department of State for examination.

RESPONSE TO 2.1. Mr. Schroeder incorporates objections 1-4, 6-7, and 14. Mr. Schroeder states that he is not in possession of the Logic Cube Forensic Falcon Neo device, and therefore, he cannot produce it for inspection. The secretary cites no statutory authority to compel the production or surrender of the Logic Cube Forensic Falcon Neo device, and she has no such authority.

2.2. Clerk Schroeder will provide the brand and serial number for the external hard drive devices connected to the Logic Cube Forensic Falcon Neo device, and provide these devices to the Department of State for examination.

RESPONSE TO 2.2. Mr. Schroeder incorporates objections 1-4, and 6-7. Mr. Schroeder states that the external hard drives are not in his immediate possession, but they are subject to his control. Neither Mr. Schroeder, nor the custodians of the hard drives, can view the serial numbers and brand names of the hard drives without removing them from sealed containers. Mr. Schroeder is unwilling to open the sealed containers at this time. Therefore, he cannot provide the brand name and serial numbers of the external hard drives. Mr. Schroeder is willing to provide one or both of the hard drives for examination, provided that they are accessible to him, as required by DoJ guidance and his duty to preserve the election records, and that they are returned to his custody and control immediately after the examination, as described in the proposed stipulations below.

2.3. Clerk Schroeder will provide an answer, in writing, to the following: a. Were these external hard drives, which were inserted into voting component hard drives by the use of Logic Cube Forensic Falcon Neo device, reformatted immediately before their use? If yes, when was that reformatting done? By whom? And with what software?

RESPONSE TO 2.3. Mr. Schroeder incorporates objections 1-7. Mr. Schroeder states that the external hard drives were not reformatted. The drives did not require reformatting, because they were not removable storage devices and they were never inserted into any component of the voting system. The drives were brand new out of the manufacturer packaging.

3. Further Inquiry and Requests for Production of Records

I order the Elbert County Clerk and Recorder to respond in writing to the follow-up questions set forth below:

3.1. Provide the serial numbers and/or service tag numbers for all devices from which hard drive image copies were made.

RESPONSE TO 3.1. Mr. Schroeder incorporates objections 1-9. Elbert County Equipment Inventory with serial numbers is attached as Exhibit 1.

3.2. Provide copies of all access logs under Rule 20.19.2 for these components from August 26, 2021, to the present.

RESPONSE TO 3.2. Mr. Schroeder incorporates objections 1-9. Logs are attached as Exhibit 2. At the time of the imaging, there was not a requirement to have the computers sealed and logged. Exhibit 2 was created when the components were initially sealed. The drives have not been removed since the computers were sealed.

3.3. Provide copies of all access logs for rooms containing these devices from August 26, 2021 to the present.

RESPONSE TO 3.3 Mr. Schroeder incorporates objections 1-9. Logs are electronic. Attached as Exhibit 3 is All Access Log printout from Elbert County IT.

3.4. With respect to the Logic Cube Forensic Falcon Neo Device and any other devices connected to either the Logic Cube Forensic Falcon Neo Device or the voting equipment, provide answers, in writing, to the following:

- a. Where or from whom was the device procured?
- b. Was the device new and unopened when you used it for the first time?
- c. Have you maintained continuous possession of this device since you created this image? If yes, how is it secured today?
- ii. If no, who did you give the device to?

RESPONSE TO 3.4. Mr. Schroeder incorporates objections 1-9 and 14.

- a. Mr. Schroeder borrowed the Logic Cube Forensic Falcon Neo Device from Mark Cook.
- b. No.
- c. No. Mr. Schroeder returned the Logic Cube Forensic Falcon Neo Device to Mark Cook.

3.5. Is Amanda Moore permitted to access voting systems devices in the course of her employment?

- a. If so, submit her background check.
- b. If not, why was she allowed in the room when you took an image of the device?

RESPONSE TO 3.5 Mr. Schroeder incorporates objections 1-9. Amanda Moore is permitted to enter the election room where voting equipment is kept. She is part of elections staff.

3.5(a) Amanda Moore's CBI background check is attached as Exhibit 4.

3.5(b) Amanda Moore came into the room out of curiosity and stayed for a short time.

3.6. The response to Question (e) in Election Order 2022-02 indicates that a "private attorney" received a copy of the image. Provide the name and contact information of that individual.

RESPONSE TO 3.6 Mr. Schroeder incorporates objections 1-15. Mr. Schroeder incorporates his response to 1.2.

3.7. The response to Question (f) in Election Order 2022-02 indicates that an external hard drive containing the images was maintained “under lock and key” when it was in your possession:

- a. Provide a copy of the chain of custody log for this drive, if any.
- b. Provide a copy chain of custody log for the additional copy provided to the private attorney, if any.

RESPONSE TO 3.7 Mr. Schroeder incorporates objections 1-9. Mr. Schroeder incorporates his response to 1.2.

- a. The chain of custody log is attached to the metal box in which the external hard drive is stored.
- b. The chain of custody log is attached to the device.

3.8. Provide the video recording referenced in the response to Question (i) in Election Order 2022-02.

RESPONSE TO 3.8 Mr. Schroeder incorporates objections 1-9. Mr. Schroeder obtained the video from IT. The file is 123 GB. Counsel was unable to view or copy the video on counsel’s computer. Counsel is having the file copied by a commercial vendor. Counsel will provide the video on a thumb drive when copying is complete.

3.9. Provide all external hard drives or any other device that contain any images you took of any voting system component over the last year to the Department of State within 48 hours of retaking possession of the drives.

RESPONSE TO 3.9. Mr. Schroeder incorporates objections 1-7. On a date and at a location to be agreed upon by counsel, Mr. Schroeder will produce for inspection the external hard drives from August 26, 2021, and September 2, 2021, with custody logs, for examination by the secretary, provided that the devices and logs are returned to Mr. Schroeder’s custody and control immediately after the inspection, and only if the procedures proposed in the stipulations below are followed.

3.10. Provide any communications or knowledge you have that other election officials in the state that indicate those officials have, intend to, or facilitated, similar action of imaging components of any voting system, including but not limited to their county’s.

RESPONSE TO 3.10. Mr. Schroeder incorporates objections 1-10 and 15. Except for Tina Peters, Mr. Schroeder has no knowledge of other election officials who have or intend to facilitate similar actions.

3.11. Provide any and all communications, including, but not limited to, text messages, emails, or voicemails with Shawn Smith, Mark Cook and any other persons involved in

the planning and imaging of voting systems components, and the subsequent storage, maintenance, examination, or copies of those images

RESPONSE TO 3.11. Mr. Schroeder incorporates objections 1-15. Mr. Schroeder incorporates his response to 1.2.

PROPOSED STIPULATION TO INSPECT AND COPY EXTERNAL HARD DRIVES

1. On a date and at a location to be agreed upon by counsel, Mr. Schroeder will produce for inspection the external hard drive from August 26, 2021, together with the custody log. Mr. Schroeder will be present with counsel and not more than two cyber-security consultants. The secretary or her designated representative may be present with counsel and not more than two technical consultants. The secretary's representative may inspect the external hard drive. Mr. Schroeder and/or his cyber-security experts will make a forensic copy of the hard drive and provide it to the secretary. The entire transaction will be videotaped.
2. On a subsequent date and at a location to be agreed upon by counsel, Mr. Schroeder will produce for inspection the external hard drive from September 2, 2021, together with the custody log. Mr. Schroeder will be present with counsel and not more than two cyber-security consultants. The secretary or her designated representative may be present with counsel and not more than two technical consultants. The secretary's representative may inspect the external hard drive. Mr. Schroeder and/or his cyber-security experts will make a forensic copy of the hard drive and provide it to the secretary. The entire transaction will be videotaped.

PROPOSED STIPULATION TO INSPECT AND IMAGE ELBERT COUNTY VOTING SYSTEM HARD DRIVES

1. On a date to be agreed upon by counsel, at the Elbert County election center, 440 Comanche St. Kiowa, CO, Mr. Schroeder will make available all components of the voting system. Mr. Schroeder will be present with counsel and not more than two cyber-security consultants. The secretary or her designated representative may be present with counsel and not more than two technical consultants. Using the Logic Cube Forensic Falcon Neo device, or similar technology, Mr. Schroeder and/or his cyber-security consultants will make a forensic image of all hard drives in the Elbert County voting system for inspection by Mr. Schroeder's cyber-security consultants. A copy of all such images will be made by Mr. Schroeder and provided to the secretary. The entire transaction will be videotaped.
2. Following the creation of the images in 1., above, experts for both parties can compare the voting system forensic image of August 26, 2021, to the current voting system forensic image to determine whether election records of the 2020 election or other data that can be identified on the 8/26/21 voting system is missing from the current forensic image and the significance thereof.

3. Following the creation of the images in 1., above, experts for both parties can examine and compare the voting system forensic image of August 26, 2021, and the current voting system forensic image, to determine if the current Elbert County voting system meets 2002 VSS standards as required by state and Federal law.

Respectfully submitted February 3, 2022.

JOHN CASE, P.C.
Counsel for Plaintiff Dallas Schroeder

s/John Case

John Case, #2431

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2022, a true copy of the foregoing was filed with the Court and served on opposing counsel electronically via ICCES (without exhibits) to:

Denver District Court
1437 Bannock St.
Denver CO 80202

Emily Buckley, Assistant Attorney General, emily.buckley@coag.gov
Peter G. Baumann, Assistant Attorney General, peter.baumann@coag.gov
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
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And a copy was served by email with Exhibits 1-3 to:

LeeAnn Morrill
First Assistant Attorney General and General Counsel to the Attorney General
Mike Kotlarczyk
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Denver CO 80203

s/John Case

John Case