

STATE OF COLORADO
Department of State

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Jena Griswold
Secretary of State

Christopher P. Beall
Deputy Secretary of State

Monday, February 7, 2022

The Hon. Dallas Schroeder
Elbert County Clerk & Recorder
Elbert County
440 Comanche Street
Kiowa, Colorado 80117

Via email to: Dallas.Schroeder@elbertcounty-co.gov, brief@johncaselaw.com

RE: Non-Compliance with Election Orders 2022-02 & 2022-04

Dear Clerk Schroeder,

This letter concerns the responses the Secretary of State's Office has received through your outside private counsel, John Case, of John Case P.C., in connection with Election Order 2022-02, Jan. 19, 2022 ("EO22-02") and Election Order 2022-04, Jan. 27, 2022 ("EO22-04").

Those orders required you to produce information and documents, and take certain actions to ensure the continued security and certification of the Dominion Voting Systems voting equipment in Elbert County. You have provided only partial responses to these orders.

Your counsel has incorrectly treated those Election Orders as discovery requests in the litigation currently pending before the Denver District Court, in the case still captioned as Hanks, et al. v. Griswold, Denver Dist. Ct. No. 2021CV33691 ("Hanks"). This is incorrect.

These orders are not discovery requests in the Hanks litigation. To be clear, the Election Orders are issued pursuant to the Secretary of State's statutory powers under § 1-1-107(2)(b) (power to "to inspect . . . and review the practices and procedures of county clerk and recorders, their employees, and other election officials"), § 1-1.5-104(2)(a)(I) (power to compel testimony and production of documents), and § 1-5-621(4) (power to inspect voting system components).¹

To date, you have not provided complete answers or compliance on the following requests:

¹ Of further note are certain assertions made through counsel. Specifically, contrary to Mr. Case's allusions, these Election Orders are in no way improper under the Colorado Rules of Professional Conduct. And the assertion that the Department of State would in any way tamper with evidence is inappropriate. The Department's honorable and dedicated public servants work tirelessly for free, fair, transparent, and reliable elections in Colorado, and the accusation that these civil servants would engage in illegal tampering is beyond the pale.

EO22-02 –

Q.(1)(e): “[W]ho else has had access to those additional copies?”

- Your response indicates that “a private attorney (not John Case)” has been in possession of a second copy of the images of the voting system hard drives, but your response does not name this attorney. Without his name and contact information, the Department cannot determine whether he or she, like Mr. Case, is unauthorized under the Election Rules to have possession or access to a voting system component.

Q.(1)(f): “[W]here else has the external hard drive with your copy of the server been stored?”

- Your response provides no information on where the copy given to the “private attorney (not John Case)” has been stored. Without such information, the Department cannot determine whether the second copy has been transported across state lines in violation of state and federal law, or has been stored in compliance with the various provisions of the Election Rules. *See, e.g.*, Election Rule 20.7, 20.10.1.

EO22-04 –

Item 1(2): “Clerk Schroeder will retake possession of all copies of the images created on August 26, 2021 or at any other time.”

- Because you have failed to provide documentation that Mr. Case or the “private attorney (not John Case)” have met the requirements for being authorized to have possession or access to voting system components, *inter alia*, a successful completion of a criminal background check, neither attorney is authorized to have possession or access to any voting system components. Because the images contained on both external storage drives are, according to your responses, complete copies of the entire drives of four of the Dominion Voting Systems machines in Elbert County, including their software operating systems, those images are themselves components of Elbert County’s voting systems. You do not have authority to disseminate components to others. As such, you are required to retake possession of all copies of those images wherever they may be. Your response indicates that you have failed to do so.

Item 2(1): “Clerk Schroeder will provide the Logic Cube Forensic Falcon Neo device to the Department of State for examination.”

- Your response indicates that you are not in possession of the device that was used to make the images of the hard drives. You have not, however, provided information on who has possession of that device or where it is located. That device is a “removable storage device” within the scope of Election Rule 20.6.2, and your answer indicates that it was used to store the images of the hard drives of the voting system equipment in Elbert County.

Item 2(2): “*Clerk Schroeder will provide . . . the external hard drive devices connected to the Logic Cube Forensic Falcon Neo device . . . to the Department of State for examination.*”

- Your response indicates that you will provide the two external storage devices with the images of the voting system hard drives if and only pursuant to the proposed stipulation appended to the end of your counsel’s response. That proposed stipulation fails to provide the Department with actual possession of the external storage drives, instead offering only to provide a copy of the copy. In addition, the proposed stipulation would allow unknown, uncleared (and thus unauthorized) third parties to possess the external storage drives and to engage in manipulation of the files on those storage drives.² Moreover, because those files contain not only proprietary software owned by Dominion Voting Systems, but also likely scans of the voted, unredacted ballots cast by Elbert County voters, the proposed stipulation would lead to multiple violations of law and is therefore unacceptable.

Item 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.*”

- Your response again fails to provide the name and contact information of the “private attorney (not John Case)” who has had possession of the external storage drive containing the images of the voting system hard drives.

Item 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.*”

- Your response refuses to provide the Department with the external storage drives except pursuant to the proposed stipulation provided by your counsel. As stated above, that proposed stipulation would lead to violations of law and is therefore unacceptable.

Item 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.*”

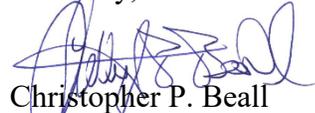
- Your response fails to provide the specified records. Again, your discovery objections are not applicable in this context.

² Of course, when the Department takes possession of these external storage drives, it too will comply with the provisions of Election Rule 20.5.4, including by ensuring that any forensic ediscovery consultant engaged as the Secretary’s designee for this purpose has passed the mandatory criminal background check required by the Election Rules. See Election Rule 20.5.4(a)(4) and (c).

Please be advised that if the Department does not receive full and complete responses and compliance on the foregoing items by close of business on February 10, 2022, an enforcement proceeding will be initiated under § 1-1-107(2)(d) and § 1-1.5-104(10)(d).

This letter is without prejudice to any powers, rights, or remedies available under law.

Sincerely,



Christopher P. Beall
Colorado Deputy Secretary of State

cc: John Case Esq.
Heather Kelly, Esq., and Jennifer Hunt, Esq.