



Jena M Griswold

Colorado Secretary of State

Election Order 2022-04

Re: Additional Request for Information

Date: January 27, 2022

Operative Facts

On Tuesday, January 12, 2022, the Department of State was made aware of an affidavit signed by Elbert County Clerk and Recorder Dallas Schroeder on January 7, 2022 in which Clerk Schroeder states that prior to the Department of State's 2021 trusted build of voting system equipment in Elbert County, he made a "forensic image of everything on the election server" and "saved the image to a secure external hard drive that is kept under lock and key in the Elbert County elections office." As a result of this information, the Department of State must gather information necessary to determine if Clerk Schroeder violated Rule 20.2, 20.6.1(d), 20.6.1(f), 20.10.1, 20.19.1 and 20.19.2, or any other rule or law during the imaging.

For this reason, on January 13, 2022, the Department of State sent Clerk Schroeder an email requesting information regarding the events. That email went unanswered. On January 19, 2022, the Secretary issued Election Order 2022-02 to Elbert County Clerk Schroeder requiring a response within 48 hours of issuance and sent it via email to Clerk Schroeder.

Today, the Department of State learned that attorney John Case provided a written response to Election Order 2022-02 to attorneys representing the Department of State in a separate action but are not representing the Department of State with respect to Election Order 2022-02. See J. Case Response, Exhibit A. No response to Election Order 2022-02 was sent to the Department of State. The Department of State only learned of the response when the Department received it today, January 27, 2022.

The Department of State has reviewed the response to Election Order 2022-02 submitted by Mr. Case on behalf of Clerk Schroeder. The response does not fully answer the questions posed by the Department of State. In addition, the response presents potential evidence of additional violations of election security. For these reasons, the Department of State hereby issues this Election Order, which supersedes Election Order 2022-03.

Order

In accordance with sections 1-1-107, 1-1-110(1), 1-1.5-104(2)(a) and 1-5-621(4) C.R.S., I order the Elbert County Clerk and Recorder to comply with the following requirements:

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

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:

- 1) Clerk Schroeder will provide the Logic Cube Forensic Falcon Neo device to the Department of State for examination.
- 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.
- 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?
 - i. If yes, when was that reformatting done? By whom? And with what software?

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:

- 1) Provide the serial numbers and/or service tag numbers for all devices from which hard drive image copies were made.
- 2) Provide copies of all access logs under Rule 20.19.2 for these components from August 26, 2021 to the present.
- 3) Provide copies of all access logs for rooms containing these devices from August 26, 2021 to the present.
- 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?
 - i. If yes, how is it secured today?
 - ii. If no, who did you give the device to?
- 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?
- 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.
- 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.
- 8) Provide the video recording referenced in the response to Question (i) in Election Order 2022-02.
- 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.
- 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.
- 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.

You are hereby ordered to preserve any and all documents and materials that are or may be relevant to this investigation, and may be ordered to produce them to the Department of State at a later date. Failure to comply with any part of this order may result in further action from my office.

The information requested under this order must be provided within 48 hours of the issuance of this order. Any responses to this order should be provided directly to the Deputy Secretary of State at Chris.Beall@coloradosos.gov and the Legal and Policy Director at Melissa.Kessler@coloradosos.gov.

Dated this 27th day of January, 2022



Jena M. Griswold
Colorado Secretary of State

Attachment:

Exhibit A - J. Case Response



Exhibit A
to Election Order 2022-04

<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 2022-02</p>	

Plaintiff Dallas Schroeder, Clerk and Recorder of Elbert County, responds below to Defendant's Election Order 2022-02. Plaintiff reserves all rights to object to the Order.

First, Plaintiff disagrees with the characterization in paragraph 2 of the Order that "Elbert County cancelled the scheduled trusted build in May 2021 and repeatedly refused to accommodate requested COVID safety precautions-on August 27, 2021." Plaintiff's office informed the secretary that Elbert County employees would not wear masks during the trusted build. The secretary's office made the decision when they wanted to conduct the trusted build.

Question (a) When and how was the "image of everything on the election server" created?

Answer: August 26, 2021, Dallas Schroeder copied images of the hard drives in the election server, two ICC (image cast central) computers, and the adjudication computer, to an external hard drive.

Question (a)(1) What software was used to assist in creating the image?

Answer: Logic cube forensic falcon neo device

Question (a)(2) What removable media was used?

Answer: N/A. No removable media were used.

Question (a)(3) Was the election server's hard drive removed from the server's case?

Answer: Yes. Both hard drives were removed from the election server, one hard drive was removed from each ICC computer, and one hard drive was removed from the adjudication computer. Each hard drive was copied separately, then returned to its case.

Question (a)(4) Were any data ports on the election server accessed in order to make the image?

Answer: No.

Question (b) Who was present - in person or electronically - when the image was created? Was everyone who was physically present during the creation of the image listed on the access log for the location where the server was kept?

Answer: Dallas Schroeder and election manager Rhonda Braun were present in person. Amanda Moore, an employee of Elbert County clerk and recorder, was present in person for a short time. Sean Smith and Mark Cook were not physically present, but they were on the telephone with Dallas Schroeder. Electronic logs were made for the persons who badged into the room.

Question (c) Who provided assistance or instructions regarding the creation, maintenance, storage, or distribution of the image before, during, and after the time the image was created?

Answer: Sean Smith and Mark Cook provided instructions by telephone while Dallas Schroeder made the images.

Question (d) Did anyone ask you to create the image. If so, who asked you to create, or spoke to you about creating, the image?

Answer: Dallas Schroeder does not recall anyone asking him to make an image of the server. Plaintiff had many discussions with constituents about election security. He believes that he has a statutory duty to preserve election records for 25 months after an election. This duty includes preserving electronic election records that are stored on the server. Plaintiff was concerned that the "trusted build," which was scheduled for August 27, 2021, might erase or alter electronic records of the November 2020 election that were stored on the Elbert County election server. To be sure that he preserved election records

as the law requires, Plaintiff decided to make images of the voting system hard drives before the “trusted build.” Plaintiff believed that such images would preserve all election records on the system. Plaintiff believed that in preserving images of the voting system hard drives, he was complying with instructions from the secretary of state to backup election records.

Question (e) How many copies of the image were made, and who else has had access to those additional copies?

Answer: One image of each hard drive was stored on an external hard drive on August 26, 2021. The external hard drive was kept under lock and key in the election office.

On September 2, 2021, using the Logic cube forensic falcon neo device, Dallas Schroeder copied the image on the external hard drive to a second external hard drive. Election manager Rhonda Braun was present. Dallas Schroeder delivered the second external hard drive to a private attorney (not John Case), who promised to safeguard the evidence. The purpose of making the second copy was to prevent the loss of 2020 election records, in case the first external hard drive was damaged by fire or flood, or if the secretary of state or other third parties seized the first external hard drive, as happened to election equipment in Mesa County.

Question (f) In light of your statement that the external hard drive with your copy of the server is now under lock and key at the Elbert County elections office, has that been the case continuously since your copy was made? If not, where else has the external hard drive with your copy of the server been stored? Who else has had access to your copy of the server?

Answer: The external hard drive was kept under lock and key in the election office from August 26, 2021, until January 22, 2022, when Plaintiff transferred possession of the external hard drive to attorney John Case. To preserve chain of custody, the drive was stored in a sealed pouch, and the sealed pouch was placed in a sealed metal box. Mr. Case will seek an order from the court to preserve the external hard drive as evidence in this case, and to make the external hard drive available for examination and copying by Defendant and Plaintiff’s cyber-security experts.

Question (g) Have you shown the image to anyone or has anyone accessed your copy of the image, and if so, when, who, how, with what technology, and for what purpose? If not, how do you know that no one has accessed your copy?

Answer: Plaintiff has not shown the image to anyone. The external hard drive was kept secure in the vault in the election room. Only badged employees of the county clerk and recorder have access to the election room.

Question (h) What specific security measures are in place to keep Elbert County's election server secure from further inappropriate access?

Answer: Plaintiff believes that his access to the server on August 26, 2021, was authorized by law and appropriate under the circumstances to preserve election records of the November 2020 election. To prevent unauthorized access to the election server, there are electronic logs of access to the election room. The election server is kept in a locked cage. The ICC computers are kept in the vault. All data ports have plugs.

Question (i) Are there any video recordings of the physical process of your making an image of the election server, and if so, where is that video recording now? Please provide a copy of this video.

Answer: The video cameras were on August 26, 2021, when Plaintiff made backup copies of the hard drives. Plaintiff believes that Elbert County IT has the video. Plaintiff does not have a copy of the video, but has requested a copy from Elbert County IT.

Question (j) Outside of the image described in the affidavit, including before and after August 27, 2021., when the trusted build process was completed, have you or anyone else attempted to or succeeded in imaging Elbert County's election server again? If so, please answer the preceding questions again with respect to each subsequent image of the election server that was created after the completion of the trusted build?

Answer: No.

Question (k) Do you or any of your employees have any knowledge of any unauthorized person having voting system server passwords?

Answer: No.

Question (l) List any person who has had access to voting equipment who does not appear in the voter system server logs.

Answer: No one to Plaintiff's knowledge.

Question (m) List any person who has had access to voting equipment who is not authorized to have that access.

Answer: No one to Plaintiff's knowledge.

2. Further Requirements

You are hereby ordered to immediately turn on all video surveillance of voting equipment and ensure its continued operation 24 hours a day, 7 days per week until further notice.

You are hereby ordered to immediately require any person entering any room in which voting equipment is stored, including yourself, to be accompanied at all times by a person authorized to

have access to the voting system.

You may be further directed or ordered to preserve and produce other materials that are or may be relevant to this investigation.

Failure to comply with any part of this order may result in further action from my office.

Answer: Plaintiff will comply with the requirements listed in #2 above.

Respectfully submitted January 24, 2022.

JOHN CASE, P.C.
Counsel for Plaintiffs

s/John Case

John Case, #2431