

DISTRICT COURT, ELBERT COUNTY, COLORADO 751 Ute Avenue, PO Box 232 Kiowa, CO 80117	DATE FILED: February 17, 2022 11:16 AM FILING ID: CB25EFED461BF CASE NUMBER: 2022CV30016
JENA M. GRISWOLD, SECRETARY OF STATE, STATE OF COLORADO, Petitioner, v. DALLAS SCHROEDER, in his official capacity as Clerk and Recorder, County of Elbert, Colorado, Respondent.	▲ COURT USE ONLY ▲ Case No. _____
<i>Attorneys for Petitioner Jena M. Griswold, Secretary of State, State of Colorado:</i> PHILIP J. WEISER, Attorney General HEATHER K. KELLY, #36052* First Assistant Attorney General JENNIFER H. HUNT, #29964* Senior Assistant Attorney General Colorado Department of Law Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, Colorado 80203 *Counsel of Record Telephone: (720) 508-6000 Email: heather.kelly@coag.gov ; Jennifer.hunt@coag.gov	
PETITION FOR ENFORCEMENT OF ELECTION ORDERS PURSUANT TO §§ 1-1-107(2)(d) and 1-1.5-104(10)(d), C.R.S.	

Jena M. Griswold, Colorado Secretary of State, hereby seeks an order pursuant to §§ 1-1-107(2)(d) and 1-1.5-104(10)(d), C.R.S., requiring Respondent, Dallas Schroeder in his official capacity as Elbert County Clerk and Recorder, to comply with Secretary of State Election Orders 2022-02 and 2022-04.

PARTIES

1. Petitioner Jena M. Griswold is the duly elected Colorado Secretary of State. The Secretary of State is an elected constitutional officer and is Colorado’s chief state election official. Colo. Const. art. IV, § 1, §§ 1-1-107(1)(e), 1-1.5-101(h), C.R.S.

2. Respondent Dallas Schroeder is the duly elected Clerk and Recorder for Elbert County, Colorado. His office is located at 440 Comanche Street, Kiowa, Colorado 80117, within Elbert County, Colorado.

3. The Secretary and Respondent are “election officials” charged with duties and functions under the Election Code. *See, e.g.*, §§ 1-1-104(10), 1-1-107, 1-1-110, 1-5-616, -617, -621, and -623, and 1-7.5-104, C.R.S. In this context, the Secretary is charged with supervision of Respondent and Respondent is charged with compliance to the Secretary’s orders. *See* §§ 1-1-107(1)(a), 1-1-110(1), C.R.S.

VENUE AND JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to § 1-1-107(2)(d), C.R.S.

5. Venue is proper in this Court under C.R.C.P. 98(b)(2) and § 1-1-107(2)(d). C.R.S.

LEGAL BACKGROUND

6. The Uniform Election Code of 1992, §§ 1-1-101, *et seq.*, C.R.S. (2021) (“Election Code” or “Code”), authorizes the Secretary of State to certify electronic and electromechanical voting systems, which are used to cast, record, and tabulate votes cast in Colorado elections, if they are compliant with standards and conditions of use imposed by state and federal law and, once certified, requires that such systems be maintained securely by County Clerks and Recorders who serve as their custodians.

7. The County Clerk and Recorder serves as the chief designated election official for a county. § 1-1-110(3), C.R.S. In carrying out their duties and functions under the Election Code, County Clerks and Recorders must follow the rules, conditions of use, and orders promulgated by the Secretary of State pursuant to the Code. §§ 1-1-110(1), 1-7.5-104, C.R.S.

8. A “voting system” is “a process of casting, recording, and tabulating votes using electromechanical or electronic devices or ballot cards and includes, but is not limited to, the procedures for casting and processing votes and the operating manuals, hardware, firmware, printouts, and software necessary to operate the voting system.” § 1-1-104(50.8), C.R.S.

9. The County Clerk and Recorder is the custodian of the voting system in a political subdivision and may appoint deputies necessary to prepare and supervise the voting system before and during elections. § 1-5-605.5, C.R.S.

10. Due to the integral role voting systems serve in conducting elections, access to “voting equipment”—which “means electronic or electromechanical voting systems, electronic voting devices, and electronic vote-tabulating equipment, as well

as materials, parts, or other equipment necessary for the operation and maintenance of such systems, devices, or equipment,” § 1-1-104(50.7), C.R.S. — is strictly limited by the Secretary of State’s Elections Rules. *See* 8 CCR 1505-1, Election Rules 20.2 (prohibiting the installation of unapproved software); 20.3 (requiring chain-of-custody evidence be maintained); 20.5 (restricting access to secure areas to certain employees who have passed background checks); 20.6 (limiting users who have electronic access to voting equipment); 20.10 (setting minimum standards for equipment maintenance procedures; and 20.19 (setting conditions for use of voting systems).

11. As an important security measure, Colorado’s voting systems are prohibited from being connected to the internet. Election Rule 20.19.1. As a result, updates to the software on voting equipment must be done manually and in person. These updates, called a “trusted build,” are essential to maintaining the security of voting systems.

12. A software build is a process where source code is converted to machine readable instructions for the voting system. A trusted build is a software build performed with security measures intended to ensure that the software installed on the machine is exactly the software created by the voting system provider and approved by the Department of State.

13. The Department of State conducts the trusted build installation process and limits participation to designated staff of the Colorado Department of State, authorized employees of the County Clerk and Recorder’s Office, and the voting system provider. All such personnel must have cleared criminal background checks prior to being present, and each must be identified to the Department of State prior to the trusted build. These select individuals are present to ensure the trusted build securely and faithfully creates the necessary code in the voting system equipment, and must pass background checks to be present.

14. As the state’s chief election official, the Secretary of State has the authority “to inspect . . . and review the practices and procedures of county clerk and recorders, their employees, and other election officials,” compel testimony and production of documents, and to inspect voting system components. §§ 1-1-107(2)(B), 1-1.5-104(2)(a)(I), 1-5-621(4), C.R.S.

15. The Secretary may inspect voting systems to determine whether they comply with applicable standards and issue orders specifying actions to remedy defects, prohibit or limit the use of a non-compliant voting system, or decertify a system. § 1-5-621(4), C.R.S.

16. The Secretary may enforce the provisions of the Code and its administrative orders by injunctive action in state district court. §§ 1-1-107(2)(d), 1-1.5-104(1)(d), C.R.S.

FACTUAL ALLEGATIONS

17. In April 2021, the Department of State notified all county clerks and recorders in Colorado that county voting systems would be scheduled for a trusted build to prepare the systems for the next election cycle. Elbert County's trusted build initially was scheduled for May 2021.

18. Respondent cancelled the originally scheduled trusted build and repeatedly refused to accommodate requested COVID safety precautions. As a result of these delays, the Elbert County trusted build was completed on August 27, 2021. The Department of State did not find any anomalies in the Elbert County voting system at the time of the 2021 trusted build.

19. On January 12, 2022, the Department of State learned of an affidavit signed by Petitioner on January 7, 2022, stating that he made a "forensic image of everything on the election server" prior to the Department's 2021 trusted build of voting system equipment in Elbert County and "saved the image to a secure external hard drive that is kept under lock and key in the Elbert County elections office."

20. After learning of this affidavit, the Department initiated an investigation to determine whether Respondent violated Election Rules 20.2, 20.6.1(d), 20.6.1(f), 10.10.1, 10.19.1, 20.19.2, or any other rule or law during the unauthorized imaging. On January 13, 2022, the Department sent Respondent an email requesting information regarding the unauthorized imaging of the voting system. Respondent did not respond to the Department's email.

21. On January 19, 2022, the Secretary issued Election Order 2022-02 under the authority granted in §§ 1-1-107, 1-1-110(1), 1-1.5-104(2)(a), and 1-5-621(4), C.R.S. The order, attached as Exhibit 1, directed Respondent to, among other things:

- a. Explain when and how the "image of everything on the election server" was created.
- b. Identify who was present when the image was created.
- c. Identify who provided assistance or instruction regarding the creation, maintenance, storage or distribution of the image.
- d. Identify how many copies were made and who had access to them.
- e. Describe the chain of custody for the image and any copies.
- f. Describe the specific security measures put in place to keep Elbert County's election server secure from future inappropriate access.

- g. Identify and provide any video recordings of the physical process of making the image.
- h. List any person who has had access to voting equipment who does not appear in the voter system logs or who is not authorized to have such access.

The order required a response within 48 hours.

22. Respondent, through legal counsel, provided a written response on January 24, 2022, attached as Exhibit 2. The response did not fully answer the questions posed in Election Order 2022-02, and presented potential evidence of additional violations of election security.

23. The response indicated that two copies of the voting system hard drives had been made and that those copies were provided to Respondent's counsel, John Case, and an unidentified "private attorney." The Department was unable to determine whether either of these individuals are authorized to access any components of the voting system, raising the concern that their possession of images of the hard drives violates Election Rule 20.5.4. The response explained that Respondent created the first copy of the voting system hard drives by physically opening the cases of the voting system components, manually detaching the hard drives from the machines, and making the copies of the hard drives while they were disassembled from the machines in which they had been installed. The response also indicated that the voting system components from which these hard drives were extracted were not sealed with tamper-evident seals until September 2, 2021, five days after the trusted build on August 27, 2021.

24. The response also indicated that a Logic Cube Forensic Falcon Neo device was used to create the images of the voting system equipment's hard drives, potentially violating Election Rule 20.6.2 (prohibiting the use of certain removable storage media) and Election Rule 20.5.4 (restricting access to copies of the hard drives of voting system components).

25. In addition, it appears likely, based on the description of the method by which the images were made, that the copies of voting system hard drives also contain scans of voted ballots. The uncontrolled dissemination of unredacted copies of voted ballots would violate § 24-72-205.5(b), C.R.S., and could constitute a violation of certain voters' constitutional and statutory rights to ballot anonymity.

26. On January 27, 2022, the Secretary issued Election Order 2022-04, attached as Exhibit 3, requiring Respondent to comply with the following:

- a. Provide any information and documents establishing that John Case and the "private attorney" are authorized to access voting systems components.

- b. In the absence of such authorization, retake possession of all copies of the voting system hard drives.
 - c. Place all copies of the voting system hard drives in a secure location with tamper evident seals and a chain of custody log.
 - d. Provide proof to the Department that the actions have been completed within 48 hours of the order.
 - e. Confirm, in writing, that the individuals who had access to the images of the hard drives have not accessed the images and have not disseminated the images to anyone else.
 - f. Provide the Logic Cube Forensic Falcon Neo device to the Department for examination.
 - g. Provide the brand and serial number of the external hard drive devices connected to the Logic Cube Forensic Falcon Neo device and provide them to the Department for Examination.
 - h. Provide information about the hard drives and any reformatting done.
27. Election Order 2022-04 also directed Respondent to, among other things:
- a. Provide identifying information for the devices used to make copies of hard drive images.
 - b. Provide copies of access logs.
 - c. Identify the “private attorney” referenced in the response.
 - d. Describe the chain of custody for the external hard drive containing the images.
 - e. Provide the video recording referenced in the prior response.
 - f. Turn over all external storage drives or any other device that contains images of any voting system component over the last year.
 - g. Provide any and all communications with Shawn Smith, Mark Cook, and any other persons involved in the planning and imaging of voting system components and the storage, maintenance, examination, or copies of those images.

Again, Election Order 2022-04 required a response and compliance within 48 hours.

28. On February 3, 2022, Respondent, through legal counsel, provided a written response to Election Order 2022-04. This response, attached as Exhibit 4, purported to assert multiple objections and provided very limited, incomplete answers to the questions posed in the order.

29. On February 7, 2022, the Secretary sent a letter to Respondent notifying him that his responses to the orders were incomplete, attached as Exhibit 5. The notice specifically identified responses to the following requests and requirements as insufficient:

- a. Election Order 2022-02, questions 1(e), (f)
- b. Election Order 2022-04, items 1(2), 2(1), 2(2), 3(6), 3(9), 3(11)

The notice advised Respondent that failure to provide full and complete responses and compliance on these items would result in the initiation of an enforcement proceeding.

30. On February 10, 2022, Respondent, through legal counsel, informed the Secretary that he would not provide any further responses or compliance with the items listed in the February 7 notice. Exhibit 6.

31. Respondent is required to comply with all rules and orders of the Secretary related to the security of voting systems.

32. Respondent's refusal to provide any information about the identity of the "private attorney" who has possession of voting system components, retrieve the unauthorized copies of voting system components from this unidentified and unauthorized individual, retrieve and produce the Logic Cube Forensic Falcon Neo device, or to produce any communications related to the imaging of the voting system components with unauthorized individuals (including Shawn Smith and Mark Cook) directly interferes with the Secretary's ability to ensure that Elbert County voting systems comply with standards and conditions of use imposed by state and federal law. These failures also create an ongoing risk that the copies of the voting system hard drives, which are now outside the possession of Respondent, are being exploited by unknown actors to uncover system vulnerabilities that might be used to undermine voters' confidence in Colorado's secure elections.

RELIEF REQUESTED

The Secretary of State respectfully requests that this Court:

1. Order Respondent, pursuant to §§ 1-1-107(2)(d) and 1-1.5-104(1)(d), C.R.S to provide supplemental responses to Election Orders 2022-02 and 2022-04 within seven (7) days, including complete information and responsive documents to Election Order 2022-02, questions 1(e), (f), and Election Order 2022-04, items 1(2), 2(1), 2(2), 3(6), 3(9), 3(11).

2. Order Respondent, pursuant to §§ 1-1-107(2)(d) and 1-1.5-104(1)(d), C.R.S., to retrieve any voting system components in the possession of third parties, including but not limited to the storage drives containing the images made before the August 2021 trusted build in the possession of the unidentified private attorney, and ensure that any such copies are stored in strict compliance with current requirements of the Election Rules

Respectfully submitted this 17th day of February, 2022.

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s/ Jennifer H. Hunt

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