September 21, 2009

<u>VIA EMAIL</u>

Marilyn Marks
930 W. Francis
Aspen, CO 81611

      RE: Open Records Request of September 17, 2009
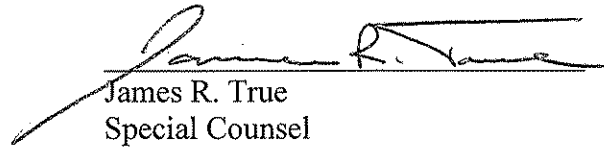
Dear Marilyn:

      I have reviewed your recent records request submitted pursuant to C.R.S. Section 24-72-204. We have identified the following two documents that would be responsive to such request:

1) Email from Caleb Kleppner to Kathryn Koch, dated September 2, 2009, with attachment; and
2) Email from Marilyn Marks to Sally Spaulding, dated September 17, 2009.

I have attached these two documents hereto. We do not have any documents upon which we are asserting any privilege.

      Thank you.

                      Sincerely,

                      James R. True
                      Special Counsel
                      920-5108

cc: John Worcester
    Kathryn Koch

Kathryn Koch

From:	Caleb Kleppner [caleb@trueballot.com]
Sent:	Wednesday, September 02, 2009 11:52 AM
To:	Kathryn Koch
Subject:	Some commentary on the Aspen election
Attachments:	The big picture ver 3.doc

Kathryn -- Here is a commentary I prepared. Would you be interested in authoring or co-authoring some version of this? If not, would you mind if I submitted it, with any edits or modifications that you request?

Cheers,
Caleb

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Aspen's May election: a model transparency and verifiability
Caleb Kleppner
[Draft 3, Sept 2, 2009, 792 words]
<!--[if !supportEmptyParas]--> <!--[endif]-->
Some recent commentary on the IRV election has distorted the facts and missed the big picture about Aspen's May election. The big picture is that the election was a model of transparency, verifiability and honesty, and the post-election audit was among the most thorough ever conducted.
<!--[if !supportEmptyParas]--> <!--[endif]-->
Let's start with transparency. Ballots were first counted in polling places using the county's Premier Accu-vote optical scanners. Then, in plain view of the public and cable viewers, TrueBallot scanned every ballot using commercial imaging scanners, processed the data on the images, and publicly reviewed every ballot not once but twice to make sure the computer interpretation of ballots matched human interpretation of voter intent. These images were projected publicly in city hall and broadcast on cable television. The Election Commission reviewed all potentially ambiguous ballots to assure that they were counted as the voter intended according to state law. The IRV tallies were conducted and announced on Election Night.
<!--[if !supportEmptyParas]--> <!--[endif]-->
In this election, unlike virtually any other public election in the country, members of the public could observe the removal of ballots from voting machines, the transportation of the ballots to city hall, the removal of ballots from sealed bags in city hall, the scanning of the ballots, and the review of ballot to ensure they were counted as the voters intended.
<!--[if !supportEmptyParas]--> <!--[endif]-->
But there's more. The city adopted an ordinance to make all election data public, and the city clerk has provided CD-ROMs with all of the election data to anyone who asked. This means that members of the public can perform independent verifications of the election results, and several have done so. The city also explained on its website what data would be produced in each stage of the processing and, importantly, how to independently verify it.
<!--[if !supportEmptyParas]--> <!--[endif]-->
It was also conducted honestly, with ample public notice of the rules and procedures that would be in effect, full observation of all steps, and full release of election data. And yes, when we made a mistake in the IRV tally for mayor – a mistake that affected 24 ballots only after a candidate had already reached a majority of votes, and therefore had been elected – the city made that information public. But more importantly, the data necessary to verify the IRV tallies was already public, so if there had been any error affecting the outcome, it would have come to light.

<!--[if !supportEmptyParas]--> <!--[endif]-->
And if all that wasn't enough, the city conducted a post-election audit that far exceeded anything required by law. First, the city randomly chose 10% of the ballots to make sure that the rankings on those ballots matched the electronic information stored. There were no discrepancies. Then the city performed independent verification that every ballot was tallied correctly in the IRV tallies. The independent tally for mayor is posted on the city's website, and again, there were no discrepancies.
<!--[if !supportEmptyParas]--> <!--[endif]-->
You really can't have more transparency and verifiability than that, unless you make the actual ballot images public. Right now, state law doesn't permit the city to release the ballot images, but if it did, I'm sure it would happily release them. Of course, we already publicly verified a random sample of 10% of the ballots, which should give rational members of the public pretty high confidence that all of the ballots were recorded correctly.
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A few folks have been howling about "monotonicity." We could just leave this topic with councilmembers Torre's shrewd line, "Monotonicity is monotonous," but we want to address it because it reveals these critics' misguided focus.
<!--[if !supportEmptyParas]--> <!--[endif]-->
Non-monotonicity matters in an election if it allows some voters to game the system by voting insincerely. Although this issue was raised repeatedly before the election, there is no evidence that anyone tried to game the system in this election. Indeed, anyone voting insincerely in this election would have been more likely to hurt rather than help their preferred candidate, which may be why no one did it. Furthermore, Aspen's former runoff system also suffers from non-monotonicity, and it's much easier to act on it in a runoff election than in an IRV election. To give a real-world example, Rush Limbaugh's exhorted Republicans to vote in the primary for Hillary Clinton because she'd be easier than Obama to beat in the general election.
<!--[if !supportEmptyParas]--> <!--[endif]-->
There has been and there should be in the future an honest debate about IRV. That debate should focus on whether it's better to have two separate elections to elect a majority winner or a single election in which voters rank candidates. There are legitimate reasons to prefer each system, but non-monotonicity isn't one of them.
<!--[if !supportEmptyParas]--> <!--[endif]-->
Whether you like IRV or hate IRV, Aspen's election was a model of transparency and verifiability, and American elections would be improved if they incorporated elements of Aspen's election.
<!--[if !supportEmptyParas]--> <!--[endif]-->
[Caleb Kleppner, a vice president at TrueBallot, Inc., has assisted with instant runoff elections in Aspen; San Francisco, California; Burlington, Vermont; and Cambridge, Massachusetts.]
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Caleb Kleppner
TrueBallot, Inc.
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9/17/2009

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[Caleb Kleppner, a vice president at TrueBallot, Inc., has assisted with instant runoff elections in Aspen; San Francisco, California; Burlington, Vermont; and Cambridge, Massachusetts.]

From:	Marilyn R Marks [marilyn@aspenoffice.com]
Sent:	Thursday, September 17, 2009 10:55 AM
To:	Sally Spaulding
Cc:	Jim True; Elizabeth Milias; Chris Bryan; Kathryn Koch; caleb@trueballot.com
Subject:	Today's guest opinion on IRV

Sally,

Given that the City has frequently responded to columns, blog postings, and articles to elaborate or present the City view of the information on the election debate, I am calling on you to do so again. It is always important for the public to see the City's perspectives on such matters.

I am requesting that you issue a press release, post correcting responses and a request a guest column to correct the many misstatements made by Caleb Kleppner today in his guest column. There are numerous and serious misstatements of fact, and unsupported statements of opinion as if they were fact.

Given that True Ballot was the contractual agent of the city to conduct the election and has a particular obligation to report the facts correctly. Given their failure to do so, it is particularly incumbent on the City to take quick action to correct those facts, which include:

1) While I have heard no claims about election "dishonesty," Mr. Kleppner's firm was in no position, as the City's contractor, to attest to the "honesty" of the election. His presenting this as "fact," given True Ballot's role in running the election is a very serious misrepresentation of the scope of their work and their conclusions. (Just as he could not attest to whether all who voted were registered electors.)
2) The pronouncement of a thorough post election audit is a gross misrepresentation. See my comments on the Times blog. There was no staff audit as claimed and no public audit, and a complete failure to meet basic post election auditing standards and expectations.
3) There are numerous discrepancies and misleading statements in the paragraph about "transparency." Please ask Mr Kleppner for corrections on all of these.
4) Members of the public could not review the removal of the ballots from the voting machines, as he states
5) The CD-Rom does not contain "all the election data." It does not contain most importantly, the images, the museum vote results, poll books, etc. The public cannot independently verify all the data, as claimed. Much trust is required in the interpretation software and other functions.
6) Ample notice was not provided of many changes and procedures----(Election eve software changes, and a supposed "post election audit", among others.) Nor was there full observation of all steps, including the LAT hand counting, the audit, the decision of changing software on Election night, etc. The LAT was not complied with in the most fundamental steps promised to the Secretary of State. The City violated basic principles of control and testing in the LAT.
7) The test of the ballot scanning was far from being an "audit." The samples were certainly not 10% of the election, and certainly not random or valid.
8) 40% of the ballots were not even brought into the room for testing in the above "audit."
9) There was no "independent verification" as he claims. And no "independent tally"
10) There is no state law prohibiting the release of ballot images.

These are but a few of the misrepresentations and misleading statements. I am sure that in collaboration with Mr. Kleppner, you will create a more complete listing of those misstatements and exaggerations.

If a private citizen were to make these comments, a City response would be appropriate. But given that True Ballot was the City's contractor for the election, a correcting column is imperative to maintain public trust.

Marilyn Marks
Aspen, CO
970 429 7535
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www.TheRedAnt.com