

STATE OF COLORADO

Department of State

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Bernie Buescher

Secretary of State

William A. Hobbs

Deputy Secretary of State

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Al Kokwicz
Colorado Voter Group
2867 Tincup Circle
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Dear Al

Thank you for the follow-up letter to our November 13th meeting.

Concerning identification numbers on the ballots, as I stated in our previous communication, we cannot interpret the constitution in a manner inconsistent with the Colorado District Court's ruling in *Schooler*. There, the Court did not find that a change to the current practice was required due to the ballot ID numbers. Rather, the Court appears to have made a binding legal conclusion that the use of ballot numbers does not violate Article VII, Section 8 of the Colorado Constitution. Therefore, the Court's ruling does not require any change to statute, rules, or the voting system certification program. Should a Colorado District Court promulgate a ruling that the use of ballot numbers violates either the Colorado or the United States Constitution, my office will certainly reexamine this issue. However, until such a ruling, the Secretary of State's office must abide by the *Schooler* holding.

Regarding public disclosure of ballot images, you suggest that any concerns about effectively disclosing the vote of electors in less populated precincts might be mitigated by election judges voting on precinct equipment. However, that provision is in place to ensure that the votes cast on DREs in less populated precincts are protected from disclosure. There is no similar provision available for paper ballots. At this time, while I am not opposed in principle to the public disclosure of images, I feel there are too many areas of concern to require that the counties make these images public. Thus, your best alternative may be to approach the counties individually, as they are in a better position to make these images available to you.

Finally, it appears that you seek a rule that would allow but not require the counties to make the images public. Again, while I do not oppose the principle, a rule that authorizes counties to purchase a certain type of scanning equipment is unnecessary as the counties are presently free to purchase the equipment they choose so long as they comply with the applicable statutory requirements and the equipment is certified in accordance with the statute and rules. We tend to avoid creating superfluous rules, which this one would be.

I hope that helps. Please feel free to engage Judd Choate or his staff on these issues as you continue to have questions.

Sincerely,

Bernie Buescher
Colorado Secretary of State